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

5:00 PM

TUESDAY, MAY 15, 2012

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 concerning legal issues regarding Exide and lead issues.

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

      i. Bordered by Eldorado Street on the north, Teel Parkway on the west, Preston Road on the east and Stonebrook Parkway on the south.

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.

INDIVIDUAL ITEMS

4. Recognition of Service for the Economic Development Corporation, Public Art Board, and Downtown Advisory Board of Directors. (CSO/JP)

INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

REPORTS

5. Recognition of Mayor's Youth Council

6. Development Services Activities Monthly Update April 2012

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

8. Police Department's crime statistics and response times for the month of April 2012.

9. Financial Services Department Monthly Budget Status Report

10. Fire Department Monthly Report on Incident Response and Educational Activities, April 2012.

11. Frisco Convention & Visitors Bureau April report on definite bookings, projected economic impact and media values.

12. Council Subcommittee reports for current activities of the Legislative, Governance, Frisco Square Management District and the Budget and Audit Committee.

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.)

13. Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and JBI Partners, Inc. to perform Design, Bid Package Preparation, and Construction Administration Services for Cotton Gin Road Improvements (Diamond Point Lane to approximately 1400 feet south). (Engineering/TN)

14. Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and JBI Partners, Inc. to perform Design, Bid Package Preparation, and Construction Administration Services for the west side of Coit Road from Buckeye Drive to Panther Creek Parkway and the south side of Panther Creek Parkway from Honey Grove Drive to Coit Road. (Engineering/JB)

15. Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Reclaimed Water Use Agreement by and between the City of Frisco and Phillips Creek Ranch Community Association (Engineering\PK)

16. Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and Garver, LLC for design and preparation of construction documents for 5th Street Reconstruction and Trail Improvements (Engineering/AH)

17. Consider and act upon a Resolution approving a grant agreement with the State of Texas, acting by and through the Texas Department of Transportation for the 2012 Click It or Ticket program and authorizing the submission of the grant application by the City Manager or his designee. (Police/GW)

18. Consider and Act on a Resolution approving the submission of a grant application to the CoServ Charitable Foundation to fund the purchase of wireless surveillance equipment and authorizing the submission of the grant application by the City Manager or his designee. (Police/GW)

19. Consider and act upon awarding a bid and approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and California Construction, LLP, for construction of a parking facility at Warren Sports Complex. (Parks/JED)

20. Consider and act upon a resolution ratifying the signature of the Deputy City Manager on a contract between Russell Madden, Inc and the City of Frisco for electrical services on the Community Park Water Well Project. (Parks/DR)

21. Consider and act upon a resolution authorizing the City Manager to execute an amendment to an agreement by and between Estrada Concrete Co, LLC for

additional work needed along Wade Blvd Hike and Bike Trail Infil. (Parks/DR)

22. Consider and act upon a Resolution authorizing the City Manager to submit an application for the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Fire Prevention and Safety Grant Program (FIRE / CK).

23. Consider and act upon approval of a purchase order for annual maintenance and support to SirsiDynix Corporation for the City's integrated library system. (Library/TJ)

24. Consider and act upon approval of a purchase order with Altec Industries, Inc. for the purchase of one - (1) bucket truck with material handler. (Engineering/TJ)

25. Consider and Act Upon a Resolution Ratifying the Signature of the City Attorney on an Agreement for legal Services with Bourland, Wall, and Wenzel, P.C. (CMO/HH)

26. Consider and act upon adoption of a Resolution authorizing the City Manager to execute an Impact Fee, Development and Reimbursement Agreement between Frisco Austin Ridge, LLC, One Austin Ridge Investments, LP and the City of Frisco, Texas. (CMO/RP)

27. Consider and act upon approval of a Resolution Denying the March 6, 2012 Effective Date of Atmos Energy Corp, Mid-Tex Division Requested Rate Change. (CMO/BB)

28. 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)

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.)

29. Consider and act upon adoption of an Ordinance for a Specific Use Permit for a Commercial Antenna Support Structure within a 600 square foot lease area on one lot 0.7± acre on the east side of Legacy Drive, 900± feet south of Warren Parkway. Zoned Planned Development-32-Commercial-1/Office with a SUP (S-28) for a Commercial Antenna. Neighborhood #34. Case No. SUP11-0009

(Development Services/RC)

30. Consider and act upon adoption of an Ordinance for a Specific Use Permit for an Assisted Living Facility on one lot on 2.0± acres on the north side of Timber Ridge Drive, 380± feet east of Teel Parkway. Zoned Planned Development-183-Office-1. Neighborhood #39. Case No. SUP12-0002 (Development Services/RC)

31. Consider and act upon adoption of a Resolution authorizing the City to construct Wayfield Drive located within the City of Frisco Parkland know as Frisco Commons; declaring a portion of the parkland necessary for the construction of the street to serve Creekside Village. PP12-0002. (Development Services/RC)

32. Consider and act upon adoption of two Ordinances to amend Planned Development-216-Mixed Use to modify the boundaries, amend the zoning exhibit and the development standards. The property contains 410.0± acres on the southwest corner of US Highway 380 and Dallas Parkway. Neighborhood #53. Zoning Case No. Z11-0020. (Development Services/MW)

REGULAR AGENDA

33. Public Hearing: Annexation Case A12-0003. A proposed voluntary annexation of 5.0± acres in the MEP & PRR Company No. 5 Survey, Abstract No. 941, Denton County, Texas, generally located on the south side of Gloryview Road, 1,300± east of Teel Parkway. Neighborhood #52. (Development Services/MW)

34. Public Hearing: Annexation Case A12-0004. A proposed voluntary annexation of 363.4± acres in the Samuel Whittenberg Survey, Abstract No. 1510; the J.L. Saling Survey, Abstract No. 1675; the J. Bates Survey, Abstract No. 1620; the A.W. Robertson Survey, Abstract No. 1487; the F. Hawkins Survey, Abstract No. 582; and the W.P. Bates Survey, Abstract No. 73, Denton County, Texas, generally located on the south side of US Highway 380, 1,150± east of FM 423. Neighborhood #51. (Development Services/MW)

35. Public Hearing: Annexation Case A12-0005. A proposed voluntary annexation of 2,816.04± acres in the Collin County School Land Survey, Abstract No. 148; the B.J. Naugle Survey, Abstract No. 669; the C. Rogers Survey, Abstract No. 1133; the W. Bates Survey, Abstract No. 90; the W. Bates Survey, Abstract No. 83; the MEP & PRR Survey, Abstract No. 921; the MEP & PRR Survey, Abstract No. 941; the C. Jackson Survey, Abstract No. 665; the Samuel Whittenberg Survey, Abstract No. 1510; the C. Jackson Survey, Abstract No. 665; the L. Neatherly Survey, Abstract No. 962; the L. Landrum Survey, Abstract No. 764; the J. Hogue Survey, Abstract No. 1714; and the C.L. Smith Survey, Abstract No. 1185, Denton and Collin Counties, Texas, generally located north of Panther Creek Parkway, south of US Highway 380, between FM 423 and Preston Road. Neighborhood Nos. 3, 48, 51, 52, & 53.

(Development Services/MW)

36. Public Hearing: Specific Use Permit SUP12-0005. A request for a Specific Use Permit for the expansion of a funeral home on four lots on 1.1± acres located on the north side of Main Street between Berkshire Drive and Hillside Drive and consider and act to direct staff to prepare an Ordinance of the same. Neighborhood #11. Zoned: Single Family-7. (Development Services/MW)

37. Public Hearing: Specific Use Permit SUP12-0006. A request for a Specific Use Permit for an automobile dealership on one lot on 7.3± acres on the northwest corner of SH 121 and Ohio Drive and consider and act to direct staff to prepare an Ordinance of the same. Neighborhood #29. Zoned: Highway. (Development Services/MW)

38. Public Hearing: Zoning Case Z12-0006. A request to amend Planned Development-62 regarding gated entry restrictions and consider and act to direct staff to prepare an Ordinance of the same. The property is located on the north side of Town & Country Boulevard, east of Spring Creek Parkway. Zoned Planned Development-62-Single Family-8.5. Neighborhood #33. (Development Services/MW)

39. Consider and Act Upon A Resolution of the City Council of the City of Frisco, Texas Endorsing and Supporting the Collin County Animal Shelter. (BA)

40. Consider and act upon moving the August 7, 2012 regular City Council meeting date due to conflict with National Night Out. (CSO/JP)

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

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

ADJOURN

CERTIFICATION

Henry 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, May 11, 2012 at 5:00 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.

PROGRESS IN MOTION

City Secretary's Office
City of Frisco, Texas

Memorandum

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

From: **Jenny Page, City Secretary**

Date: **May 10, 2012**

Agenda Caption: Boards and Commissions Recognition

The following Boards will be recognized during the City Council meeting on May 15, 2012. There will be a short recess and refreshments following the presentation of awards.

Economic Development Corporation
David Porter, Chair
Jeff Snowden, Vice-Chair
David Prince, Secretary-Treasurer
Richard Beaver, FISD Representative
Dan Bollner
Gerald Perrin
Jaime Ronderos

Downtown Advisory Board
Diane Bevan – Business Owner Representative
Danny Collins – At-Large
Rick Fletcher – At-Large
Kevin Hodes – At-Large
Robert Messina – Business Owner Representative
Jeanne Rubin – At-Large
Thomas Tucker – Business Owner Representative

Public Art Board
Laverne Forwark
Karyn Hutchinson
Robert Moroch
Troy Pelias
Donna-Marie Schmittler
Tenisha Turner
Jody Wissing

AGENDA ITEM #6.

FRISCO
DEVELOPMENT SERVICES

DEVELOPMENT SERVICES ACTIVITIES MONTHLY UPDATE APRIL 2012

April 1, 2012 – April 30, 2012

Department Mission:
"Support the City's efforts in becoming a community of value that focuses on the quality of life through the services we provide and by laying the foundation for a sustainable future through innovative planning and building practices."

By The Numbers For April 2012

102
Single Family Building Permits

3
Commercial Building Permits [1]
7,759,000 sq ft

126,576
Population
YTY[4] **+ 3.0%**

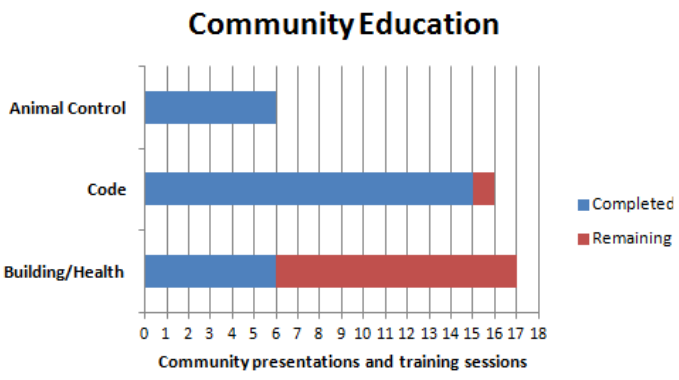
KEY PERFORMANCE INDICATORS

	FY09-10	FY10-11	FY 11-12	FY 12 April		
	FYTD	FYTD	FYTD	Prior Year Same Month [4]	Apr [6]	Status [7]
Single Family Permits Issued	731	751	634	120	102	↓
Commercial Permits Issued [2]	178	183	188	24	39	↑
Commercial Square Footage [3]	395,537	941,842	188,665	158,493	63,486	↓
All Other Permit Types [5]	3,912	4,511	5,650	922	1,035	↑
Building Inspections	21,936	23,116	23,268	3,750	3,482	↓
Health Inspections (food establishments)	910	1,060	729	212	179	↓
Calls for Service – Code Enforcement	1917	1745	2533	305	394	↑
Calls for Service – Animal Control[8]	2537	2468	4417	583	695	↑
Development Applications						
Zoning Changes	5	9	25	3	3	-
Preliminary Plat	7	10	14	3	2	↓
Preliminary Site Plans	15	15	23	5	3	↓
Site Plans	47	61	85	14	12	↓
Final Plats and Replats	31	41	90	7	17	↑

[1] Only new commercial and square footage of new construction
[2] Includes all new, finish outs, alterations, and other commercial
[3] Only new commercial structures/development
[4] Same month prior year's statistics
[5] Signs, pools, fences, alterations, electrical, health, mechanical, plumbing, multi-family & contractor registrations, and all others plumbing, etc
[6] Current reporting month's statistics
[7] Current month's comparison to same month of prior reporting year
[8] Numbers have risen significantly due to proactive calls being counted.

RECENT HIGHLIGHTS

For more in depth development activity reports please refer to the Development Services Department homepage and click "DEVELOPMENT REPORTS".



DETAILED DATA IS AVAILABLE F

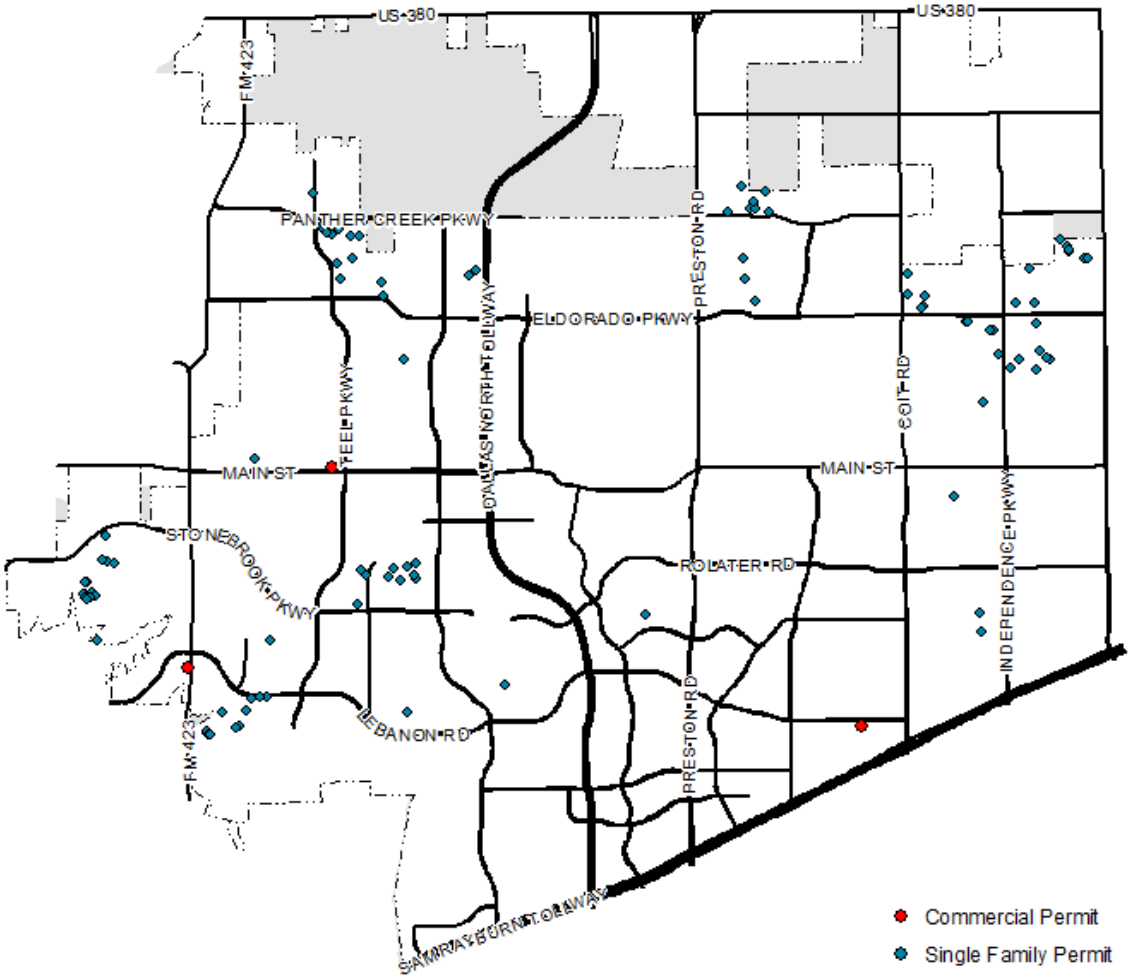
REPRESENTED IN THIS UPDATE

SIGNIFICANT ACTIVITIES

Digital Planning & Zoning Commission Packets – The P&Z Commission members are now accessing their packets electronically instead of receiving a hardcopy. Laptops are provided at the meeting for the Commissioners to access the agenda. This change saves an average of 800 pages of paper and 8 hours of staff time per semi-monthly packet required to prepare and deliver the packets to the commissioners' homes.

Frisco StrEATS Event in the old downtown. Julie Stallcup, Environmental Health Supervisor, and Judy Eguez, Planner, developed and coordinated this successful event on Saturday April 28th. The event included 10 Gourmet Food Trucks, with the School of Rock providing the entertainment.

NEW SINGLE FAMILY & COMMERCIAL PERMIT ACTIVITY – BY LOCATION



AGENDA ITEM #7.

Department of Public Works
11300 Research Road
Frisco, Texas 75034
Phone: 972-292-5800 Fax: 972-292-5891

Frisco Public Works

Memorandum

To: City Council

From: Gary Hartwell

CC: Henry Hill

Date: May 4, 2012

Re: Monthly Report for April, 2012

We recorded 2.4 inches of rainfall in April and used 604.1 million gallons of water for the month. Our average usage was 20.1 million gallons per day (mgd) or about 159 gallons per person per day (gpcd). Our daily water usage ranged from a minimum of 11.5 mgd (91 gpcd) on April 15 to a maximum of 34.2 mgd (271 gpcd) on April 30.

The April bacteriological and disinfectant by-product samples all tested negative for any contamination. All of our chlorine samples tested within the normal limits for water quality.

We installed 104 water meters in April and we televised 140 private service lines for new homes.

We issued 268 permits for construction in our Right-Of-Way Division and reviewed 466 test results on backflow devices in April.

Our licensed irrigators performed 278 free irrigation check-ups in April, of which 166 were for violations, one for new registration, 11 for high water bill checks, and two were for commercial customers. We now have 3,522 water customers signed up to receive the free e-mail for weekly watering advice. We have completed about 6,910 check-ups since this program began.

We inspected 831 fire hydrants and 54 manholes for proper operation. We repaired 13 sidewalks and installed/replaced 104 traffic signs in April.

With our contract street sweeping service, we had 658 miles of Frisco streets swept in April.

With the NTMWD reporting data delayed by one month, we collected about 2,880 residential tons and about 3,190 tons of commercial solid waste in March. Curbside recycling was about 1,150 tons in March.

Public Works Monthly Report To Council

	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12
Monthly Rainfall (Inches)	2.8	7.1	1.7	0.0	1.4	1.0	4.1	1.4	4.7	7.1	1.7	5.5	2.4
Productivity													
Street - Sidewalk Hazards Repaired/Month	9	10	8	7	5	7	8	8	7	7	13	15	13
Traffic - Signs Installed Per Week	20	60	36	55	95	20	44	21	16	25	37	23	25
Water - Fire Hydrants Inspected Per Day	29	40	35	35	51	31	42	21	22	10	6	17	40
Sewer - Manholes Inspected Per Month	247	184	79	114	322	255	169	205	222	230	377	108	54
Meter - Meters Installed Per Day	6	7	6	5	6	5	4	6	4	4	5	6	5
Street Sweeping (Curb Miles)	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0	658.0
Free Irrigation Check-ups	147	127	165	159	206	176	127	223	91	47	79	247	278
Water Quality and Usage													
Water Delivered To Frisco (Million Gallons)	704.2	685.2	1,119.1	1,447.8	1,452.6	1,296.8	916.4	568.5	447.3	451.5	418.1	499.8	604.1
Gallons Per Person Per Day	194.6	194.6	307.3	383.6	383.7	352.9	240.7	154.0	116.9	117.7	116.3	129.8	159.4
Bacteriological Samples Passing (90/Month)	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Chlorine Samples Passing (6/Day)	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
DBP Samples Passing (4/Quarter)			100%			100%			100%			100%	
Meter Division													
New Meters Installed	116	136	139	103	139	114	85	110	83	86	110	126	104
Construction Fire Hydrant Meters Rented	68	88	101	117	106	94	102	96	89	88	99	98	107
ROW Inspections													
Right of Way Permits Issued	70	49	64	67	63	73	218	243	200	283	243	216	268
Private Sewer Service Lines Televised	119	119	172	114	212	131	98	100	93	95	97	112	140
Environmental Services Division													
Residential Tonnage	2839.3	2,823.8	2,935.7	2,505.8	2,562.8	2,508.4	2,300.9	2,622.9	Delayed	2,720.5	2,285.7	2,880.6	Delayed
Residential Citizen Use	332.4	305.0	346.9	370.9	290.8	231.7	308.2	297.8	Delayed	313.3	234.6	346.1	Delayed
Commercial Tonnage	3040.5	3,386.5	3,090.8	2,897.4	3,188.3	2,927.0	2,942.8	2,887.8	Delayed	3,099.9	2,810.3	3,190.5	Delayed
Curbside Recycling Tonnage	1022.3	1,028.6	1,070.1	866.9	978.0	950.6	913.0	1,073.1	Delayed	1,222.4	946.8	1,143.4	Delayed
Compost (Yardwaste) Tonnage	341.2	225.6	206.6	151.8	146.7	130.1	130.9	136.2	Delayed	146.0	110.1	422.7	Delayed
Landfill Tonnage	655.7	916.6	872.3	1,471.7	1,007.4	1,007.9	950.3	705.6	Delayed	844.8	1,052.8	1,161.2	Delayed
*Cardboard (New Move-Ins) Tons	1.2	3.6	5.1	6.3	3.2	4.4	3.0	4.4	Delayed	2.1	3.8	7.7	Delayed

Public Works Monthly Report To Council

Annual Totals	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Monthly Rainfall (Inches)	52.8	37.9	66.7	34.4	35.1	68.1	38.9	41.8	31.3	26.9	16.7		
Productivity													
Street - Avg Sidewalk Hazards Repaired/Month	ND	ND	ND	ND	ND	33	18	27	16	7	12		
Traffic - Avg Signs Installed Per Week	ND	ND	ND	ND	ND	13	16	28	37	37	28		
Water - Avg Fire Hydrants Inspected Per Day	ND	ND	ND	ND	ND	55	41	41	41	32	18		
Sewer - Avg Manholes Inspected Per Month	ND	ND	ND	ND	ND	196	243	183	212	186	192		
Meter - Avg Meters Installed Per Day	ND	ND	ND	ND	ND	9	6	4	5	6	5		
Street Sweeping (Curb Miles)	4,839.2	6,106.0	6,020.0	3,206.3	10,334.5	10,260.5	12,646.5	12,750.1	7,896.0	7,896.0	2,632.0		
Free Irrigation Check-ups	ND	ND	ND	ND	660	515	933	1,260	1,193	1,592	651		
Water Quality and Usage													
Water Delivered To Frisco (Million Gallons)	4,926.9	5,912.0	5,588.3	7,767.0	8,033.6	6,890.1	8,612.4	7,628.9	8,862.2	10,111.0	1,973.5		
Average Gallons Per Person Per Day	267.0	292.4	230.6	287.9	249.3	196.1	233.8	201.1	205.0	228.0	130.8		
Bacteriological Samples Passing (90/Month)	100%	100%	100%	100%	100%	100.0%	100%	100%	100%	100%	100%		
Chlorine Samples Passing (6/Day)	100%	100%	100%	100%	100%	100.0%	100%	100%	100%	100%	100%		
Trihalomethane Samples Passing (4/Quarter)	100%	100%	100%	100%	100%	100.0%	100%	100%	100%	100%	100%		
Meter Division													
New Meters Installed	3,390	3,299	3,626	3,714	3,582	1,931	1,450	1,049	1,338	1,406	426		
Construction Fire Hydrant Meters Rented	130	161	162	178	1,198	1,826	1,963	1,395	928	1,077	392		
ROW Inspections													
Right of Way Permits Issued	832	505	724	1,694	1,220	1,176	1,127	695	680	1,183	1,010		
Private Sewer Service Lines Televised	3,361.0	3,213	3,957	4,398	4,124	2,079	1,327	1,048	1,557	1,527	444		
Environmental Services Division													
Residential Tonnage	21,702.3	25,082.4	26,991.5	24,522.1	26,239.4	29,278.1	30,701.0	28,668.9	31,763.4	28,674.9	7,886.7		
Residential Citizen Use	1,123.5	2,035.7	2,188.0	2,197.1	2,265.0	2,214.7	2,609.1	2,356.3	3,044.9	3,264.4	894.0		
Commercial Tonnage	19,973.0	21,987.3	25,495.6	25,619.1	28,631.0	31,026.4	32,465.6	29,591.6	34,735.8	32,658.8	9,100.7		
Curbside Recycling Tonnage	2,115.0	2,592.0	4,587.5	7,893.0	10,342.5	10,802.9	11,750.5	10,705.6	12,203.8	10,939.7	3,312.6		
Compost (Yardwaste) Tonnage	920.0	1,493.0	1,498.3	1,504.0	1,124.9	1,799.4	2,020.9	2,233.1	2,485.2	2,119.3	678.9		
Landfill Tonnage	5,366.2	18,005.2	25,220.2	22,546.6	23,481.6	26,414.8	27,148.7	16,904.5	9,119.5	10,161.2	3,058.7		
*Cardboard (New Move-Ins) Tons	ND	ND	18.8	87.0	108.5	141.2	186.7	47.9	37.4	36.4	13.6		

Note: *New program implemented August 2004. **ND = No Data** **Delayed = Data compiled by NTMWD**

COUNCIL STRATEGIC FOCUS **Performance measures**

Sustainable city	March	2012	2011	% Change
Residential Services	# of households	37,246	35,865	3.85%
	Tonnage - trash	2,880.58	2,780.93	3.58%
	Tonnage -recycling	1,143.38	1,076.24	6.24%
	Lbs per household recycling	61.40	60.02	2.30%
	Lbs per household trash	155	155	-0.26%
	Diversion Rate (r vs t)	28.41%	27.90%	1.83%
Commercial Services	Tonnage - trash	3,191.45	3,007.68	6.11%
	# Dumpster Accounts	744	636	16.98%
	# Compactor Accounts	74	66	12.12%
	# Commercial carts	151	147	2.72%
	# of roll offs	47	43	9.30%
	Lbs per cu yd (D)	80.31	61	32%
	Lbs per cubic yard (CO)	301	308	-2%
Construction Waste Services	# Accounts (Champion)	62	67	-7.46%
	C & D Landfill Tonnage	1085.61	779.83	39.21%
	# of hauls per month (Champion)	148	133	11.28%
	# of hauls per month (IESI)	19	25	-24.00%
Public Health and Safety				
	# of participants hhw	443	401	10.47%
Infrastructure	Roadside litter pick up (hours cleaned)	0	0	
Civic Involvement				
	# of educational presentations	9	14	-36%
	# of citizens reached	1730	1300	33%
	# of streets adopted	56	55	2%
	# of volunteer hours	48	27	78%
	Cost savings to City	$972.00	$546.75	78%
	# of participants chunk your junk/quarterly	N/A	N/A	
Excellence in City Government				
Call center work orders	Misc	936	1714	-45%
	# of deliveries newcomer packets	372	421	-12%
	# of deliveries - carts	115	121	-5%
	Total	1423	2256	-37%
Long Term Financial Health				
	Used Cardboard Sales	$664.68	$536.39	23.92%

Benchmarks

55 lbs per household - start of singlestream program, August 2004

EPA - Waste per person per day = 4.4 lbs, calculaton based on 2.89 persons per single family household

Plano Commercial services - 88 lbs per cubic yard (D) 447 (CO)

Construction waste services - 8 tons

Abbreviations (Recy) Recycling (t) Trash, (D) Dumpster (CO) Compactor, (Cu yd) cubic yard.

AGENDA ITEM #8.

Frisco Police Department
City of Frisco, Texas

Governance Monitoring Staff Report

To: The Honorable Maher Maso, Mayor, and the Frisco City Council
Thru: George Purefoy, City Manager
From: Todd Renshaw, Chief of Police
Date: 5/7/2012
Re: Monthly Report – April 2012

Report Summary:
Crime data and monthly departmental activity is summarized with a historical perspective.

Comparative Data:
Uniform Crime Index Offenses increased by 28 incidents from March primarily to the increase of burglaries and thefts, however, when compared to the same time last year, total offenses decreased by 17 incidents.

Report Analysis:
There were 42 reported assaults; 29 were family violence assaults.

Overall, burglaries increased by 14 incidents. Habitation burglaries increased by 15. Of the 33 habitation burglaries reported, force was used to gain entry in 14 homes. Eleven homes were entered through an open garage door or unlocked window and seven had no signs of forced entry and it is unknown how entry was made. One home was unlawfully entered with a key.

Building burglaries decreased by one incident. Ten of the 17 buildings burglarized were under construction.

Burglaries of Motor Vehicle only increased by one incident from last month. There were 40 burglaries. Fourteen vehicles were entered by force, 23 were unlocked, and it is unknown how entry was made in two vehicles. Eight of the 14 vehicles entered by force were parked at a residence location; however, 18 of the 23 vehicles left unlocked were parked at a residence location.

Motor Vehicle Thefts (MVTs) increased from 6 to 8.

Supporting Documents:
FPD statistics for April 2012

Staff Recommendation:
None.

Thank you for your consideration of this item; if I can be of any support, please contact me at 972.292.6103 or by email at police@friscotexas.gov

MONTHLY REPORT
April 2012
PART 1 OFFENSES

POPULATION DATA	
April-11	121,125
April-12	126,576

	MONTHLY				YEAR TO DATE					
Offense Category	**Monthly Totals**	**Previous Month's Totals**	**Amount of Change**	**Percent Increase/ Decrease**	**YTD 2012**	**2012 Per 1000/capita**	**YTD 11**	**2011 Per 1000/capita**	**Amount of Change**	**Percent Increase/D ecrease**
Murder	**0**	**0**	**No Change**	***NC**	**0**	**0.00**	**1**	**0.01**	**-1**	**-100.00**
Rape	**0**	**0**	**No Change**	***NC**	**4**	**0.03**	**2**	**0.02**	**2**	**100.00**
Robbery	**2**	**3**	**-1**	**-33.33**	**7**	**0.06**	**9**	**0.07**	**-2**	**-22.22**
Individual	2	1	1	100.00	3	0.02	3	0.02	No Change	0.00
Business	0	2	-2	-100.00	4	0.03	6	0.05	-2	-33.33
Assaults	**42**	**47**	**-5**	**-10.64**	**179**	**1.41**	**207**	**1.71**	**-28**	**-13.53**
Aggravated	4	2	2	100.00	17	0.13	26	0.21	-9	-34.62
Other Assaults	38	45	-7	-15.56	162	1.28	181	1.49	-19	-10.50
Burglary	**50**	**36**	**14**	**38.89**	**167**	**1.32**	**157**	**1.30**	**10**	**6.37**
Habitation	33	18	15	83.33	81	0.64	59	0.49	22	37.29
Building	17	18	-1	-5.56	86	0.68	98	0.81	-12	-12.24
Theft	**168**	**148**	**20**	**13.51**	**594**	**4.69**	**592**	**4.89**	**2**	**0.34**
Burglary Vehicle	40	39	1	2.56	148	1.17	170	1.40	-22	-12.94
Burglary Coin-Op Machine	0	0	No Change	*NC	0	0.00	4	0.03	-4	-100.00
Thefts	120	103	17	16.50	423	3.34	384	3.17	39	10.16
Motor Vehicle Theft	8	6	2	33.33	23	0.18	34	0.28	-11	-32.35
TOTAL OFFENSES	**262**	**234**	**28**	**11.97**	**951**	**7.51**	**968**	**7.99**	**-17**	**-1.76**

***NC = NOT CALCULABLE**
BECAUSE SCIENTIFIC CONVENTION STATES DIVISION BY ZERO IS NOT POSSIBLE

Uniform Crime Index Offenses do not always coincide with State offenses; therefore, some offenses may not reflect in UCR statistics (Example: Aggravated Sexual Assault of a male does not reflect in rape, but in assaults.

TRAFFIC ACCIDENT SUMMARY

ACTIVITY	MONTHLY				YEAR TO DATE					
	Monthly Totals	Previous Month's Totals	Amount of Change	Percent Increase/ Decrease	YTD 2012	2012 Per 1000/capita	YTD 11	2011 Per 1000/capita	Amount of Change	Percent Increase/Decrease
Motor Vehicle Accidents	103	119	-16	-13.45	445	3.52	460	3.80	-15	-3.26
Injury Accidents	60	80	-20	-25.00	244	1.93	186	1.54	58	31.18
Number Transported	38	68	-30	-44.12	193	1.52	128	1.06	65	50.78
Fatality Accidents	0	0	No Change	*NC	0	0.00	1	0.01	-1	-100.00
Fatalities	0	0	No Change	*NC	0	0.00	1	0.01	-1	-100.00
High Accident Location(s)	0	0								
Criteria: 5 or more accidents at location										

PATROL ACTIVITY

ACTIVITY	MONTHLY				YEAR TO DATE					
	Monthly Totals	Previous Month's Totals	Amount of Change	Percent Increase/ Decrease	YTD 2012	2012 Per 1000/capita	YTD 11	2011 Per 1000/capita	Amount of Change	Percent Increase/Decrease
Calls for Service	4,835	4,952	-117	-2.36	18,641	147.27	19,956	164.76	-1315	-6.59
Citations*	1,714	2,054	-340	-16.55	8,336	65.86	5,298	43.74	3038	57.34
Red Light Camera Summons	389	445	-56	-12.58	1,780	14.06	508	4.19	1272	250.39
9-1-1 Calls	3,770	3,839	-69	-1.80	15,026	118.71	14,792	122.12	234	1.58

**Speeding: 811; Red Light: 16; Stop Sign: 46*

CRIMINAL INVESTIGATION ACTIVITY

ACTIVITY	MONTHLY				YEAR TO DATE					
	Monthly Totals	Previous Month's Totals	Amount of Change	Percent Increase/ Decrease	YTD 2012	2012 Per 1000/capita	YTD 11	2011 Per 1000/capita	Amount of Change	Percent Increase/Decrease
Cases Assigned	752	624	128	20.51	2,700	21.33	2,722	22.47	-22	-0.81
Cases Cleared	1005	892	113	12.67	3,883	30.68	4,128	34.08	-245	-5.94
Cases Inactive	293	222	71	31.98	1,012	8.00	1,051	8.68	-39	-3.71
Cases Unfounded	16	16	No Change	0.00	64	0.51	48	0.40	16	33.33
Cases Filed (Collin County)	95	106	-11	-10.38	457	3.61	519	4.28	-62	-11.95
Juvenile Cases Filed (Collin)	14	28	-14	-50.00	72	0.57	81	0.67	-9	-11.11
Cases Filed (Denton County)	16	26	-10	-38.46	90	0.71	79	0.65	11	13.92
Juvenile Cases Filed (Denton)	0	5	-5	-100.00	8	0.06	5	0.04	3	60.00

DWI AND ADULT ARRESTS

	MONTHLY				YEAR TO DATE					
ACTIVITY	Monthly Totals	Previous Month's Totals	Amount of Change	Percent Increase/ Decrease	YTD 2012	2012 Per 1000/capita	YTD 11	2011 Per 1000/capita	Amount of Change	Percent Increase/Decrease
DWI Arrests	21	27	-6	-22.22	92	0.73	107	0.88	-15	-14.02
Adult Arrests	200	221	-21	-9.50	908	7.17	797	6.58	111	13.93

JUVENILE DATA

	MONTHLY				YEAR TO DATE					
Offense Category	Monthly Totals	Previous Month's Totals	Amount of Change	Percent Increase/ Decrease	YTD 2012	2012 Per 1000/capita	YTD 11	2011 Per 1000/capita	Amount of Change	Percent Increase/Decrease
Murder	**0**	**0**	**No Change**	***NC**	**0**	**0.00**	**0**	**0.00**	**No Change**	***NC**
Rape	**0**	**0**	**No Change**	***NC**	**0**	**0.00**	**0**	**0.00**	**No Change**	***NC**
Robbery	**0**	**0**	**No Change**	***NC**	**0**	**0.00**	**0**	**0.00**	**No Change**	***NC**
Individual	0	0	No Change	*NC	0	0.00	0	0.00	No Change	*NC
Business	0	0	No Change	*NC	0	0.00	0	0.00	No Change	*NC
Assaults	**2**	**2**	**No Change**	**0.00**	**6**	**0.05**	**13**	**0.11**	**-7**	**-53.85**
Aggravated	0	0	No Change	*NC	0	0.00	2	0.02	-2	-100.00
Other Assaults	2	2	No Change	0.00	6	0.05	11	0.09	-5	-45.45
Burglary	**0**	**0**	**No Change**	***NC**	**2**	**0.02**	**0**	**0.00**	**2**	***NC**
Habitation	0	0	No Change	*NC	0	0.00	0	0.00	No Change	*NC
Building	0	0	No Change	*NC	2	0.02	0	0.00	2	*NC
Theft	**9**	**13**	**-4**	**-30.77**	**32**	**0.25**	**46**	**0.38**	**-14**	**-30.43**
Burglary Vehicle	0	0	No Change	*NC	0	0.00	3	0.02	-3	*NC
Burglary Coin-Op Machine	0	0	-4	-30.77	0	0.00	0	0.00	No Change	-25.58
Thefts	9	13	-4	-30.77	32	0.25	43	0.36	-11	-25.58
Motor Vehicle Theft	0	0	**No Change**	***NC**	0	**0.00**	0	**0.00**	**No Change**	***NC**
Runaway	0	0	**No Change**	***NC**	1	**0.01**	0	**0.00**	**1**	***NC**
Other	**2**	**6**	**-4**	**-66.67**	**15**	**0.12**	**13**	**0.11**	**2**	**15.38**
Drug/Alcohol Offenses	1	2	-1	-50.00	8	0.06	7	0.06	1	14.29
Criminal Mischief/DOC	0	0	No Change	*NC	0	0.00	0	0.00	No Change	*NC
Other	1	4	-3	-75.00	7	0.06	6	0.05	1	16.67
Warrants	4	4	**No Change**	**0.00**	18	**0.14**	4	**0.03**	**14**	**350.00**
TOTAL CHARGES*	**13**	**21**	**-8**	**-38.10**	**74**	**0.58**	**76**	**0.63**	**-2**	**-2.63**
# Juvenile Custodies	13	21	-8	-38.10	56	0.44	57	0.47	-1	-1.75
# Juvenile Curfew Contacts	4	11	-7	-63.64	19	0.15	4	0.03	15	375.00
# Juvenile Curfew Citations	4	11	-7	-63.64	17	0.13	24	0.20	-7	-29.17

RESPONSE TIME FOR EMERGENCY CALLS FOR SERVICE

CALL TYPE	MONTHLY				YEAR TO DATE			
	Monthly Totals	Avg Response	Previous Month's Totals	Previous Month's Avg Response	YTD 2012 Response	YTD 11 Response	Amount of Change	Percent Increase/ Decrease
Domestic Disturbance	94	0:07:23	81	0:07:05	0:07:07	0:07:31	-00.24	-5.32
Fight in Progress	12	0:04:37	6	0:03:34	0:03:39	0:03:50	-00.11	-4.68
Major Vehicle Accident	68	0:08:04	72	0:07:38	0:07:55	0:07:25	0:00:30	6.81
Robbery Alarm	27	0:06:14	18	0:05:50	0:06:08	0:06:43	-00.35	-8.69
TOTALS	**201**	0:07:18	**177**	0:07:04	0:07:07	0:07:15	-00.08	**-1.93**

RESPONSE TIME FOR NON-EMERGENCY CALLS FOR SERVICE

CALL TYPE	MONTHLY				YEAR TO DATE			
	Monthly Totals	Avg Response	Previous Month's Totals	Previous Month's Avg Response	YTD 2012 Response	YTD 11 Response	Amount of Change	Percent Increase/ Decrease
Burglary of Building	16	0:48:28	13	0:12:21	0:30:06	0:16:48	0:13:17	79.03
Burglary of Home	23	0:12:52	12	0:16:16	0:13:39	0:11:34	0:02:05	18.05
Burglary of Vehicle	44	0:13:16	37	0:20:28	0:15:12	0:12:01	0:03:11	26.40
Deliver Message	4	0:14:01	1	0:16:07	0:16:42	0:17:12	-00:30	-2.91
Criminal Mischief	64	0:11:00	73	0:12:30	0:12:11	0:14:39	-02:28	-16.86
TOTALS	**151**	0:16:00	**136**	0:15:01	0:15:38	0:13:45	0:01:53	**13.70**

AGENDA ITEM #9.

CITY OF FRISCO TEXAS



MONTHLY FINANCIAL REPORTS

FOR THE MONTH OF

April 2012

PRESENTED TO COUNCIL May 15, 2012

FINANCIAL SERVICES DEPARTMENT

Staff Report

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

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

From: **Anita Cothran, Director of Financial Services**

Date: **May 7, 2012**

Re: **Monthly Report for April 2012**

Financial Report Summary:

The Budget Summary Report provides financial information for the month of April 2012 for the operating funds, with comparative numbers for April 2011.

Comparative Data: The General Fund revenues collected of $63,143,135 represent 75% of the budget. Total expenditures are 51% of the amended budget at $43,848,352.

The Utility Fund revenues collected of $29,046,326 are 55% of the budget. Expenses total $31,142,297. The total percentage of expenses to budget is 62% for FY 2012 compared to 63% for FY 2011.

Stormwater Utility Fee Operating Fund revenues total $801,592 or 50% of the budget year to date with expenses of $587,009 at 4/30/2012.

The Environmental Services Fund revenue collections of $5,980,677 are 59% of the budget, while spending levels reflect 51% of the budget expended.

The Hotel Motel Fund revenues are $1,791,754 or 51% of the budget, which reflects six months of taxes. Expenditures are $2,555,587or 76% of the budget and include the annual debt service payment made in February.

Financial Report Analysis: Financial schedules are provided for your review; one provides department totals, the other schedule provides detail at the division level.

Finance Division:

Volume indicators:

	April 2012	YTD 2012	April 2011	YTD 2011	YTD % Change
AP checks issued	1,290	8,675	1,067	8,183	6.01%
Payroll checks/vouchers issued	1,923	15,085	2,823	15,677	-3.78%

Revenue Collections Division:

The monthly Property Tax Collection Report prepared by the County Tax Collector/Assessor was not received in time to submit with this report, but I will submit to you in next month's financial report.

Utility Billing activity for the month:

	April 2012	April 2011	YTD % Change
Customers/accounts	41,545	40,093	3.6%
# new meter sets	201	102	97.1%
# new customers	236	251	-6.0%
# disconnects/month	234	206	13.6%
# move in/out readings	288	296	-2.7%
# of on-line payments	2,508	3,690	-32.0%
On-line payments	$237,541	$371,375	-36.0%
*% customers paying on-line	7%	10%	N/A
**% payments made on-line	6%	9%	N/A
# of bank draft payments	3,695	3,393	8.9%
Bank draft payments	$285,435	$287,663	-0.8%
* Total payments processed were 37,188 and 2,508 were online payments. ** Total payments received were $3,946,981 and $237,541 were online payments.			

Investment Report Summary as of 4/30/2012

Texpool Investment Pool	$ 65,405,680
TexStar Investment Pool	78,512,821
Wells Fargo Choice IV Account	9,841,767
Investments	96,150,000
Total City Portfolio	$249,910,268
Texpool Yield	0.1110%
TexStar Yield	0.1098%
Wells Fargo Yield	0.2600%
Investment Portfolio Yield	0.4480%

Supporting Documents:

Budget Summary – April 2012
Sales Tax Revenue Report
Sales Tax Comparison Report – Top 20 Cities
Municipal Court – Monthly Statistics
First Southwest Asset Management Reports
Permits – Building Inspections End of Month April

If I can be of further assistance, please contact me at (972) 292-5510 acothran@friscotexas.gov.

Staff providing information for this report:

Jennifer Hundt, Assistant Finance Director, 972-292-5511, jhundt@friscotexas.gov
Danny Collier, Assistant Finance Director, 972-292-5512, dcollier@friscotexas.gov
April Spann, Revenue Collections Manager, 972-292-5525,aspann@friscotexas.gov
Tanya Anderson, Accounting Manager, 972-292-5519,tanderson@friscotexas.gov
Matthew Freeman, Court Administrator, 972-292-5560, mfreeman@friscotexas.gov
Steve Covington, Chief Building Official, 972-292-5330, scovington@friscotexas.gov

Budget Summary for April
Fiscal Year 2012
(Compare to 58.33%)

	Original FY12 Budget	Revised FY12 Budget	Monthly Actual	% of Bdgt	YTD Actual	% of Bdgt	FY 2011 Actual	Monthly Actual	% of YTD Act	YTD Actual	% of YTD Act	% Inc /(Dec) 11/12
Gen Fund Rev												
Property Tax	35,685,602	35,685,602	125,221	0%	35,889,954	101%	34,606,994	376,862	1%	33,690,841	97%	7%
Sales Tax	22,758,048	22,758,048	103,428	0%	13,684,352	60%	21,852,287	1,439,495	7%	12,065,717	55%	13%
Beverage Tax	436,968	436,968	219,887	50%	198,143	45%	482,310	121,209	25%	237,272	49%	-16%
Franchise Tax	7,557,032	7,557,032	0	0%	4,382,370	58%	7,752,003	12,590	0%	4,154,726	54%	5%
Development Fees	5,342,300	5,402,300	16,559	0%	2,798,552	52%	5,310,839	569,471	11%	2,968,474	56%	-6%
Fire & Amb Fees	1,638,064	1,691,793	159,099	9%	803,137	47%	1,977,377	129,231	7%	1,062,543	54%	-24%
Misc Fees/Charges	1,149,713	1,199,713	241,177	20%	790,317	66%	1,182,736	67,302	6%	607,527	51%	30%
Court Fines	2,464,396	2,464,396	273,951	11%	1,283,696	52%	2,076,088	185,242	9%	1,195,806	58%	7%
Parks & Recreation	4,063,850	4,071,496	5,887	0%	2,482,977	61%	4,224,369	251,685	6%	2,348,371	56%	6%
Library	128,141	128,141	38,960	30%	43,778	34%	145,931	23,636	16%	96,959	66%	-55%
Police Fees	1,093,542	1,102,512	9,213	1%	639,887	58%	1,583,482	41,010	3%	748,290	47%	-14%
Interest	151,500	151,500	2	0%	60,231	40%	103,260	9,268	9%	72,159	70%	-17%
Non-departmental	1,008,488	1,033,996	3,329,809	322%	85,741	8%	1,260,277	-129	0%	636,112	50%	-87%
Total	83,477,644	83,683,497	4,945,970	6%	63,143,135	75%	82,557,953	3,226,872	4%	59,884,797	73%	5%

Gen Fund Exp												
Administration	3,604,919	3,789,919	350,436	9%	2,017,678	53%	3,486,883	328,997	9%	1,814,111	52%	11%
Financial Services	5,355,885	5,452,062	241,044	4%	2,838,638	52%	5,929,375	1,140,274	19%	3,937,514	66%	-28%
Police	20,534,423	20,883,956	1,603,290	8%	11,134,289	53%	18,778,228	2,057,532	11%	10,242,597	55%	9%
Fire	20,032,192	20,149,588	1,536,666	8%	10,156,601	50%	18,294,876	1,900,379	10%	9,607,953	53%	6%
Public Works	5,303,259	5,304,610	336,648	6%	2,469,925	47%	4,472,432	424,707	9%	2,404,996	54%	3%
Human Resources	975,505	994,147	80,901	8%	481,899	48%	917,081	96,041	10%	503,115	55%	-4%
Administrative Serv	4,743,722	4,975,961	311,578	6%	2,755,517	55%	4,481,150	337,189	8%	2,656,874	59%	4%
Library	3,455,548	3,586,142	241,374	7%	1,824,509	51%	3,328,304	335,054	10%	1,610,082	48%	13%
IT Serv	1,951,195	1,951,195	152,658	8%	943,588	48%	1,455,630	98,817	7%	657,543	45%	44%
Parks & Recreation	10,249,119	10,256,825	756,209	7%	4,995,907	49%	9,937,780	919,724	9%	5,021,036	51%	-1%
Engineering Serv	2,085,432	2,199,555	146,400	7%	976,229	44%	1,769,374	194,291	11%	933,247	53%	5%
Development Serv	5,231,085	5,231,466	462,021	9%	2,891,918	55%	4,786,874	556,343	12%	2,760,410	58%	5%
Non-departmental	-101,209	597,072	29,465	5%	361,654	61%	1,206,076	38,656	3%	286,252	24%	26%
Total	83,421,075	85,372,498	6,248,690	7%	43,848,352	51%	78,844,063	8,428,004	11%	42,435,730	54%	3%
One Time Transfers	0	0	0		0		1,170,202	0	0%	0	0%	NA
Total	83,421,075	85,372,498	6,248,690	7%	43,848,352	51%	80,014,265	8,428,004	11%	42,435,730	53%	3%
Rev-Exp	56,569	(1,689,001)	(1,302,720)		19,294,783		2,543,688	(5,201,132)		17,449,067		

Budget Summary for April
Fiscal Year 2012
(Compare to 58.33%)

	Original FY12 Budget	Revised FY12 Budget	Monthly Actual	% of Bdgt	YTD Actual	% of Bdgt	FY 2011 Actual	Monthly Actual	% of YTD Act	YTD Actual	% of YTD Act	% Inc /(Dec) 11/12
Utility Rev												
Water	34,671,629	34,671,629	1,826,464	5%	15,999,924	46%	36,394,197	2,368,687	7%	16,177,980	44%	-1%
Sewer	15,261,077	15,261,077	1,358,713	9%	9,964,193	65%	15,312,966	1,316,409	9%	8,394,877	55%	19%
Const Inspect Fees	320,990	570,990	18,024	3%	835,302	146%	602,326	50,622	8%	238,465	40%	250%
Interest	10,000	10,000	1,464	15%	7,219	72%	829	27	3%	280	34%	2478%
Misc	2,588,663	2,588,663	18,891	1%	2,239,688	87%	2,659,969	26,194	1%	2,285,686	86%	-2%
Total	52,852,359	53,102,359	3,223,556	6%	29,046,326	55%	54,970,287	3,761,939	7%	27,097,288	49%	7%
Utility Exp												
Financial Serv - UB	977,087	1,029,687	81,939	8%	540,367	52%	952,375	67,398	7%	494,155	52%	9%
Public Works	33,221,417	33,452,483	2,718,810	8%	19,760,110	59%	27,505,859	2,363,397	9%	16,527,446	60%	20%
IT Serv - GIS	1,426,761	1,431,452	162,752	11%	785,316	55%	1,349,703	149,111	11%	772,734	57%	2%
Engineering Serv	2,600,841	2,691,796	184,963	7%	1,283,337	48%	2,250,167	239,173	11%	1,216,971	54%	5%
Development Serv	0	0	0	NA	0	NA	85,446	11,274	13%	60,891	71%	-100%
Non-departmental	11,879,241	11,879,240	0	0%	8,773,167	74%	11,499,556	0	0%	8,290,482	72%	6%
Total	50,105,347	50,484,658	3,148,464	6%	31,142,297	62%	43,643,106	2,830,353	6%	27,362,679	63%	14%
Rev-Exp	2,747,012	2,617,701	75,092		(2,095,971)		11,327,181	931,586		(265,391)		
Utility Stormwater												
Revenue	1,617,500	1,617,500	115,661	7%	801,592	50%	1,318,309	108,820	8%	761,882	58%	5%
Expenses	1,607,083	1,772,797	147,861	8%	587,009	33%	1,096,015	66,315	6%	575,182	52%	2%
Rev-Exp	10,417	(155,297)	(32,200)		214,583		222,294	42,505		186,700		
Environmental												
Revenue	10,095,681	10,095,681	882,697	9%	5,980,677	59%	9,802,147	803,733	8%	5,566,954	57%	7%
Expenses	10,104,391	10,168,698	809,245	8%	5,208,391	51%	9,325,121	738,700	8%	5,309,208	57%	-2%
Rev-Exp	(8,710)	(73,017)	73,452		772,286		477,026	65,033		257,746		
Hotel/Motel												
Revenue	3,514,351	3,514,351	284,980	8%	1,791,754	51%	3,867,404	261,626	7%	1,466,302	38%	22%
Expenses	3,379,089	3,379,089	112,159	3%	2,555,587	76%	3,651,151	179,499	5%	2,516,685	69%	2%
Rev-Exp	135,262	135,262	172,821		(763,833)		216,253	82,127		(1,050,383)		

Budget Summary for April
Fiscal Year 2012
(Compare to 58.33%)

	Original FY12 Budget	Revised FY12 Budget	Monthly Actual	% of Bdgt	YTD Actual	% of Bdgt	FY 2011 Actual	Monthly Actual	% of YTD Act	YTD Actual	% of YTD Act	% Inc /(Dec) 11/12
Gen Fund Rev												
Property Tax	35,685,602	35,685,602	125,221	0%	35,889,954	101%	34,606,994	376,862	1%	33,690,841	97%	7%
Sales Tax	22,758,048	22,758,048	103,428	0%	13,684,352	60%	21,852,287	1,439,495	7%	12,065,717	55%	13%
Beverage Tax	436,968	436,968	219,887	50%	198,143	45%	482,310	121,209	25%	237,272	49%	-16%
Franchise Tax	7,557,032	7,557,032	0	0%	4,382,370	58%	7,752,003	12,590	0%	4,154,726	54%	5%
Development Fees	5,342,300	5,402,300	16,559	0%	2,798,552	52%	5,310,839	569,471	11%	2,968,474	56%	-6%
Fire & Amb Fees	1,638,064	1,691,793	159,099	9%	803,137	47%	1,977,377	129,231	7%	1,062,543	54%	-24%
Misc Fees/Charges	1,149,713	1,199,713	241,177	20%	790,317	66%	1,182,736	67,302	6%	607,527	51%	30%
Court Fines	2,464,396	2,464,396	273,951	11%	1,283,696	52%	2,076,088	185,242	9%	1,195,806	58%	7%
Parks & Recreation	4,063,850	4,071,496	5,887	0%	2,482,977	61%	4,224,369	251,685	6%	2,348,371	56%	6%
Library	128,141	128,141	38,960	30%	43,778	34%	145,931	23,636	16%	96,959	66%	-55%
Police Fees	1,093,542	1,102,512	9,213	1%	639,887	58%	1,583,482	41,010	3%	748,290	47%	-14%
Interest	151,500	151,500	2	0%	60,231	40%	103,260	9,268	9%	72,159	70%	-17%
Non-departmental	1,008,488	1,033,996	3,329,809	322%	85,741	8%	1,260,277	(129)	0%	636,112	50%	-87%
Total	83,477,644	83,683,497	4,945,970	6%	63,143,135	75%	82,557,953	3,226,872	4%	59,884,797	73%	5%
Gen Fund Exp												
Administration	1,614,087	1,798,487	135,759	8%	832,410	46%	1,480,672	156,822	11%	823,064	56%	1%
PIO	698,646	699,246	63,679	9%	359,451	51%	601,906	62,343	10%	299,366	50%	20%
City Secretary	288,830	288,830	24,997	9%	153,344	53%	295,463	26,875	9%	177,142	60%	-13%
Legal	654,900	654,900	109,354	17%	541,404	83%	801,368	60,928	8%	376,172	47%	44%
City Council	122,438	122,438	5,854	5%	46,898	38%	98,553	5,576	6%	57,395	58%	-18%
Records Mgmt	226,018	226,018	10,793	5%	84,171	37%	208,921	16,453	8%	80,972	39%	4%
Fin-Administration	534,392	588,282	47,910	8%	274,165	47%	519,837	55,786	11%	287,918	55%	-5%
Fin-Finance	1,270,304	1,312,591	64,453	5%	760,685	58%	1,273,920	124,688	10%	819,519	64%	-7%
Fin-Rev Collections	831,021	831,021	9,515	1%	481,734	58%	751,103	19,753	3%	422,142	56%	14%
Fin-Court	1,462,418	1,462,418	113,889	8%	836,147	57%	1,305,885	133,585	10%	724,276	55%	15%
Fin-Sales Tax Grant	1,257,750	1,257,750	5,277	0%	485,907	39%	2,078,630	806,462	39%	1,683,659	81%	-71%
Pol-Admin	1,085,316	1,095,287	89,972	8%	629,136	57%	1,030,175	118,152	11%	571,307	55%	10%
Pol-Services	8,163,496	8,175,332	570,035	7%	4,429,014	54%	7,506,096	806,372	11%	4,249,013	57%	4%
Pol-Operations	11,285,611	11,613,337	943,283	8%	6,076,139	52%	10,241,957	1,133,008	11%	5,422,277	53%	12%
Fire-Admin	959,229	1,075,960	78,529	7%	560,866	52%	891,674	100,582	11%	505,366	57%	11%
Fire-Suppression	18,440,171	18,552,851	1,436,597	8%	9,375,013	51%	16,462,689	1,759,494	11%	8,832,075	54%	6%
Fire-EMS	632,792	520,777	21,540	4%	220,722	42%	940,513	40,303	4%	270,512	29%	-18%
Public Works-Streets	3,038,525	3,039,806	172,553	6%	1,370,916	45%	2,468,339	257,716	10%	1,393,075	56%	-2%
Public Works-Traffic	944,734	944,804	48,551	5%	436,415	46%	734,999	70,083	10%	377,979	51%	15%
Public Works-Lighting	1,320,000	1,320,000	115,544	9%	662,594	50%	1,269,094	96,908	8%	633,942	50%	5%
Human Resources	975,505	994,147	80,901	8%	481,899	48%	917,081	96,041	10%	503,115	55%	-4%
Admin-Purchasing	414,390	424,380	35,458	8%	240,159	57%	401,596	46,316	12%	224,601	56%	7%
Admin -Support Serv	2,051,231	2,044,572	105,977	5%	1,241,632	61%	1,852,354	93,122	5%	1,323,782	71%	-6%
Admin-Build Serv	1,626,068	1,854,966	125,556	7%	923,663	50%	1,636,806	135,999	8%	779,209	48%	19%
Admin-Fleet	652,033	652,043	44,587	7%	350,063	54%	590,394	61,752	10%	329,282	56%	6%
IT Serv	1,951,195	1,951,195	152,658	8%	943,588	48%	1,455,630	98,817	7%	657,543	45%	44%
Library	3,455,548	3,586,142	241,374	7%	1,824,509	51%	3,328,304	335,054	10%	1,610,082	48%	13%
Parks-Admin	394,960	394,885	35,890	9%	235,949	60%	412,332	41,655	10%	220,001	53%	7%
Parks	4,630,909	4,638,630	352,213	8%	2,371,798	51%	4,729,277	435,126	9%	2,464,248	52%	-4%
Parks-Recreation	4,923,843	4,923,836	329,024	7%	2,230,836	45%	4,538,055	406,630	9%	2,185,298	48%	2%
Parks-CIP Planning	299,407	299,474	39,082	13%	157,324	53%	258,116	36,313	14%	151,489	59%	4%
ES-Signal Control	1,161,660	1,162,388	73,959	6%	493,696	42%	947,481	106,620	11%	479,585	51%	3%
ES-Transportation	923,772	1,037,167	72,441	7%	482,533	47%	821,893	87,671	11%	453,662	55%	6%
DS-Planning	1,285,846	1,285,911	98,463	8%	688,259	54%	1,247,486	134,370	11%	722,523	58%	-5%
DS-Health	378,829	379,329	25,990	7%	176,062	46%	0	0	NA	0	NA	0%
DS-Bldg Insp	2,381,416	2,380,916	185,609	8%	1,315,543	55%	2,416,942	258,724	11%	1,357,290	56%	-3%
DS-Animal Control	646,339	647,665	107,837	17%	424,558	66%	633,829	108,734	17%	407,049	64%	4%
DS-Code Enforcement	538,655	537,645	44,122	8%	287,496	53%	488,617	54,515	11%	273,548	56%	5%
Non-departmental	-101,209	597,072	29,465	5%	361,654	61%	2,376,278	38,656	2%	286,252	12%	26%
Total	83,421,075	85,372,498	6,248,690	7%	43,848,352	51%	80,014,265	8,428,004	11%	42,435,730	53%	3%
Rev-Exp	56,569	(1,689,001)	(1,302,720)		19,294,783		2,543,688	(5,201,132)		17,449,067		

Budget Summary for April
Fiscal Year 2012
(Compare to 58.33%)

	Original FY12 Budget	Revised FY12 Budget	Monthly Actual	% of Bdgt	YTD Actual	% of Bdgt	FY 2011 Actual	Monthly Actual	% of YTD Act	YTD Actual	% of YTD Act	% Inc /(Dec) 11/12
Utility Rev												
Water	34,671,629	34,671,629	1,826,464	5%	15,999,924	46%	36,394,197	2,368,687	7%	16,177,980	44%	-1%
Sewer	15,261,077	15,261,077	1,358,713	9%	9,964,193	65%	15,312,966	1,316,409	9%	8,394,877	55%	19%
Const Inspect Fees	320,990	570,990	18,024	3%	835,302	146%	602,326	50,622	8%	238,465	40%	250%
Interest	10,000	10,000	1,464	15%	7,219	72%	829	27	3%	280	34%	2478%
Misc	2,588,663	2,588,663	18,891	1%	2,239,688	87%	2,659,969	26,194	1%	2,285,686	86%	-2%
Total	52,852,359	53,102,359	3,223,556	6%	29,046,326	55%	54,970,287	3,761,939	7%	27,097,288	49%	7%
Utility Exp												
Financial Serv-UB	977,087	1,029,687	81,939	8%	540,367	52%	952,375	67,398	7%	494,155	52%	9%
Public Works-Adm	411,267	411,267	50,659	12%	183,857	45%	315,717	32,508	10%	181,651	58%	1%
Public Works-Water	17,933,510	18,093,040	1,451,696	8%	10,278,487	57%	16,778,022	1,376,357	8%	9,647,569	58%	7%
Public Works-Sewer	12,262,299	12,316,201	1,007,089	8%	7,950,867	65%	7,979,392	710,877	9%	5,372,517	67%	48%
Public Works-Meters	1,860,922	1,879,017	156,484	8%	955,371	51%	1,738,014	164,666	9%	940,932	54%	2%
Public Works-ROW Ins	753,419	752,958	52,882	7%	391,528	52%	694,714	78,989	11%	384,777	55%	2%
IT Serv	1,426,761	1,431,452	162,752	11%	785,316	55%	1,349,703	149,111	11%	772,734	57%	2%
ES-Admin	485,714	485,714	37,278	8%	230,483	47%	411,459	43,132	10%	241,924	59%	-5%
ES-Construct Insp	868,791	894,129	68,193	8%	449,322	50%	772,521	83,536	11%	421,003	54%	7%
ES-Engineering	1,246,336	1,311,953	79,492	6%	603,532	46%	1,066,187	112,505	11%	554,044	52%	9%
DS-Bldg Insp Supp	0	0	0	NA	0	NA	85,446	11,274	13%	60,891	71%	-100%
Non Departmental	11,879,241	11,879,240	0	0%	8,773,167	74%	11,499,556	0	0%	8,290,482	72%	6%
Total	50,105,347	50,484,658	3,148,464	6%	31,142,297	62%	43,643,106	2,830,353	6%	27,362,679	63%	14%
Rev-Exp	2,747,012	2,617,701	75,092		(2,095,971)		11,327,181	931,586		(265,391)		
Utility Stormwater												
Revenues	1,617,500	1,617,500	115,661	7%	801,592	50%	1,318,309	108,820	8%	761,882	58%	5%
Expenses	1,607,083	1,772,797	147,861	8%	587,009	33%	1,096,015	66,315	6%	575,182	52%	2%
Rev-Exp	10,417	(155,297)	(32,200)		214,583		222,294	42,505		186,700		
Environmental												
Revenues	10,095,681	10,095,681	882,697	9%	5,980,677	59%	9,802,147	803,733	8%	5,566,954	57%	7%
Expenses	10,104,391	10,168,698	809,245	8%	5,208,391	51%	9,325,121	738,700	8%	5,309,208	57%	-2%
Rev-Exp	(8,710)	(73,017)	73,452		772,286		477,026	65,033		257,746		
Hotel/Motel												
Revenues	3,514,351	3,514,351	284,980	8%	1,791,754	51%	3,867,404	261,626	7%	1,466,302	38%	22%
Expenses	3,379,089	3,379,089	112,159	3%	2,555,587	76%	3,651,151	179,499	5%	2,516,685	69%	2%
Rev-Exp	135,262	135,262	172,821		(763,833)		216,253	82,127		(1,050,383)		

City of Frisco
Sales Tax Revenue Analysis

Fiscal Year Tracking - Accrual Basis

Month Received	Monthly Receipts FY 2012	% Change Over Same Month Prior Year	FY 2011-12 Year to Date Total	% Change YTD 11-12	Monthly Receipts FY 2011	% Change Over Same Month Prior Year	FY 2010-11 Year to Date Total	% Change YTD 10-11
	FY12				**FY 11**			
Dec	3,497,198	19.50%	3,497,198	19.50%	2,926,429	5.69%	2,926,429	5.69%
Jan	3,640,120	15.87%	7,137,318	17.62%	3,141,612	9.27%	6,068,041	7.52%
Feb	5,549,946	6.04%	12,687,264	12.26%	5,233,928	11.03%	11,301,969	9.11%
Mar	3,427,402	19.05%	16,114,665	13.64%	2,878,995	6.23%	14,180,964	8.52%
Apr	3,427,296	19.05%	19,541,961	14.55%	2,878,991	13.63%	17,059,955	9.35%
May		0.00%	-	0.00%	4,247,202	5.72%	21,307,156	8.60%
Jun		0.00%	-	0.00%	3,208,067	9.64%	24,515,223	8.74%
Jul		0.00%	-	0.00%	3,313,526	0.69%	27,828,750	7.71%
Aug		0.00%	-	0.00%	4,401,177	8.28%	32,229,927	7.79%
Sep		0.00%	-	0.00%	3,553,146	12.14%	35,783,073	8.21%
Oct		0.00%	-	0.00%	3,556,044	11.70%	39,339,117	8.51%
Nov		0.00%		0.00%	4,370,704	12.27%	43,709,821	8.88%
Grand Total	**19,541,961**				**17,059,955**			
General Fund	**9,770,981**				**8,529,977**			
EDC/CDC	**4,885,490**				**4,264,989**			

Allocation Comparison Summary Reports

Top 20 City Sales and Use Tax Comparison Summary - April 2012

	City	Net Payment This Period	Comparable Payment Prior Year	% Change
1	**Houston**	39,786,793.00	34,990,748.44	13.70%
2	**San Antonio**	17,513,465.67	14,997,329.81	16.77%
3	**Dallas**	16,141,885.32	14,621,100.82	10.40%
4	**Austin**	11,357,077.01	9,773,194.54	16.20%
5	**Fort Worth**	8,372,050.38	6,954,833.59	20.37%
6	**Arlington**	6,116,597.18	5,803,577.71	5.39%
7	**El Paso**	5,723,881.35	5,291,509.49	8.17%
8	**Corpus Christi**	5,412,310.01	4,457,637.96	21.41%
9	**Plano**	5,260,579.75	4,534,159.96	16.02%
10	**Amarillo**	4,809,705.50	4,251,878.75	13.11%
11	**McAllen**	4,448,729.85	3,923,247.18	13.39%
12	**Round Rock**	4,250,510.77	4,518,082.84	-5.92%
13	**Lubbock**	4,004,242.84	3,548,951.95	12.82%
14	**Midland**	3,903,767.50	2,922,198.76	33.59%
15	**Irving**	3,552,604.08	3,015,421.21	17.81%
16	**Frisco**	3,427,295.93	2,878,990.65	19.05%
17	**Abilene**	3,058,565.26	2,548,763.14	20.00%
18	**Sugar Land**	3,003,777.92	3,301,740.68	-9.02%
19	**Grand Prairie**	2,904,226.58	2,511,121.67	15.65%
20	**Laredo**	2,843,196.01	2,515,516.91	13.02%

Municipal Court Division:

The court processed 1870 new citations for the month of April. Of these, 91% were for traffic violation, 3% for city ordinance violations, and 6% for other class C misdemeanor charges. There were 5 Teen Court referrals for the month of April.

Work Flow Performance Measures	2011-2012 April	2011-2012 YTD	2011-2012 Proposed	2010-2011	2009-2010
es Filed	1870	15213	21000	20076	21935
es Closed	2187	13985	22000	19951	22283
rants Issued and Cleared	469 / 302	2594 / 2878	5000 / 5700	4668 / 4961	5134 / 5504
enile Cases Filed	128	640	1000	1106	1065
Juvenile Cases Referred to Teen Court*	4%	10%	20%	15%	20%

enue Performance Measures	2011-2012 April	2011-2012 YTD	2011-2012 Proposed	2010-2011	2009-2010
l New Bench Fines Levied**	$467,159	$3,921,161	$5,824,140	$5,567,888	$5,823,871
Levied Bench Fines Collected	73%	61%	61%	61%	60%
Total Revenues Collected	$341,524	$2,373,367	$3,553,838	$3,376,843	$3,497,292
City General Fund Revenues	$188,854	$1,254,517	$2,209,801	$1,904,035	$2,075,735
Expenditures	$113,889	$836,147	$1,381,367	$1,305,885	$1,244,799
Total Revenue Per Case	$156	$170	$162	$169	$157
Total General Fund Revenue Per Case	$86	$90	$100	$95	$93
Court Processing Cost per Case	$61	$55	$66	$65	$57
City Net Per Case	$25	$35	$35	$30	$36
General Fund Revenues Minus Expenditures	$74,966	$418,370	$828,435	$598,150	$830,936
% Processed By Web and Phone	11%	16%	20%	20%	18%
% Processed By Mail	18%	16%	10%	11%	10%
% Processed At Municipal Court	71%	68%	70%	69%	72%

* Percentage of Cases Eligible for Teen Court

**Total New Bench Fines Levied are the set fines when a case is filed. Disposition of a case may result in dismissal or a lower fine and cost being paid.

FirstSouthwest

Relative Value Report
Today's Date: 27-Apr-12
Settlement Date: **30-Apr-12**

DISCLAIMER: Securities listed here represent the best market offers as of early morning on this date. All information is subject to change at any time without notice. This report is intended for informational purposes only, and is in no way a solicitation or offer to sell any securities or services. This information has been obtained from sources believed to be reliable, but we do not warrant or guarantee the accuracy or timeliness of this information. There are no warranties, expressed or implied, as to accuracy, completeness, or results obtained from this information.

MATURITY DATE	SECURITY TYPE	DISCOUNT/ SPREAD	YIELD
Agency Discount Notes			
25-May-12	FHLB	0.100%	0.102%
29-Jun-12	FHLB	0.115%	0.117%
27-Jul-12	FHLB	0.115%	0.117%
29-Aug-12	FHLMC	0.100%	0.102%
21-Sep-12	FHLMC	0.110%	0.112%
26-Oct-12	FHLB	0.145%	0.148%
29-Nov-12	FHLB	0.120%	0.122%
27-Dec-12	FFCB	0.150%	0.153%
30-Jan-13	FHLMC	0.150%	0.153%
25-Feb-13	FHLMC	0.160%	0.163%
28-Mar-13	FHLMC	0.170%	0.173%
1-Apr-13	FHLMC	0.180%	0.183%
Commercial Paper			
29-May-12	General Electirc Co	0.120%	0.122%
29-Jun-12	General Electirc Co	0.140%	0.142%
30-Jul-12	Toyota Motor Credit	0.170%	0.172%
27-Aug-12	Toyota Motor Credit	0.210%	0.213%
25-Sep-12	GE Capital Corp	0.290%	0.294%
26-Oct-12	Toyota Motor Credit	0.370%	0.376%
22-Jan-13	Toyota Motor Credit	0.570%	0.580%
Agency Bullets (Non-Callable)			
30-Apr-13	FHLB 0.125	-3.0	0.228%
23-Jul-13	FFCB 0.25	0.0	0.258%
15-Oct-13	FNMA 4.625	+3.0	0.288%
29-Jan-14	FHLB 0.375	+3.5	0.293%
23-Apr-14	FFCB 0.30	+6.0	0.318%
30-Oct-14	FNMA 0.625	+18.0	0.438%
17-Apr-15	FHLMC 0.50 ***	+14.0	0.523%

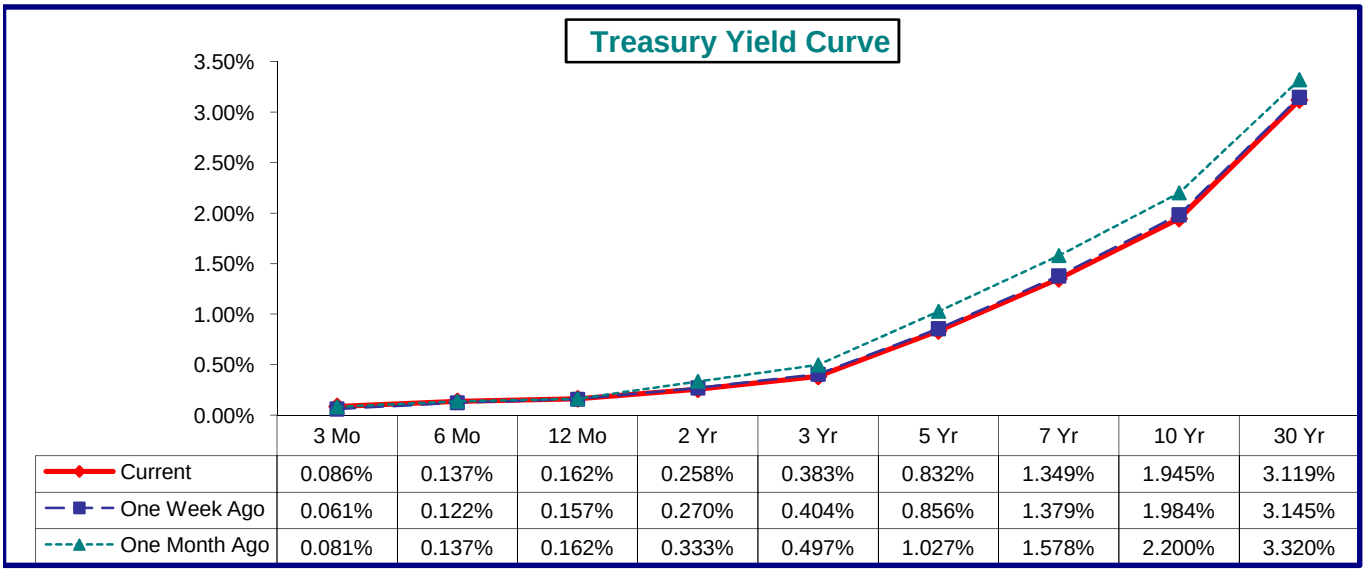
*** Spread versus 3-Year Treasury (All others vs 2-Year)

Investment Pool Yields:	TexPool	TexSTAR
Previous Day:	0.102%	0.095%
7 Day Moving Avg:	0.092%	0.095%

Agency Discount Note Yields	Current	Week Ago	Month Ago
1 Mo	0.102%	0.061%	0.066%
2 Mo	0.117%	0.071%	0.076%
3 Mo	0.117%	0.081%	0.092%
6 Mo	0.148%	0.137%	0.153%
9 Mo	0.153%	0.168%	0.173%
12 Mo	0.183%	0.183%	0.173%

Commercial Paper Yields	Current	Week Ago	Month Ago
1 Mo	0.120%	0.100%	0.080%
2 Mo	0.140%	0.140%	0.130%
3 Mo	0.170%	0.170%	0.170%
4 Mo	0.210%	0.210%	0.230%
5 Mo	0.290%	0.290%	0.290%
6 Mo	0.370%	0.370%	0.350%
9 Mo	0.570%	0.570%	0.520%

Agency Bullet Yields	Current	Week Ago	Month Ago
1 Yr	0.228%	0.230%	0.248%
1.5 Yr	0.288%	0.300%	0.343%
2 Yr	0.318%	0.345%	0.388%
2.5 Yr	0.438%	0.450%	0.483%
3 Yr	0.523%	0.544%	0.627%



	3 Mo	6 Mo	12 Mo	2 Yr	3 Yr	5 Yr	7 Yr	10 Yr	30 Yr
Current	0.086%	0.137%	0.162%	0.258%	0.383%	0.832%	1.349%	1.945%	3.119%
One Week Ago	0.061%	0.122%	0.157%	0.270%	0.404%	0.856%	1.379%	1.984%	3.145%
One Month Ago	0.081%	0.137%	0.162%	0.333%	0.497%	1.027%	1.578%	2.200%	3.320%

City of Frisco
Permits - Bldg Insp End of Month Report (No Impact Fees)
For the Period 4/1/2012 thru 4/30/2012

Type	Subtype	Description	Sq Footage	Valuation	Fees Assessed	Fees Paid	Collin	Denton	Permits Issued
BUILDING	CNEW	New commercial structures	63,486.00	$7,759,000.00	$27,132.61	$27,132.61	2	1	3
BUILDING	CALT	Commercial alterations	15,964.00	$1,609,471.18	$8,113.19	$8,113.19	12	1	13
BUILDING	CIFO	Commercial interior finish-outs (storefronts)	49,971.00	$2,992,764.00	$20,844.53	$20,844.53	18	2	20
BUILDING	CADD	Commercial additions	348.00	$800.00	$32.65	$32.65	1		1
BUILDING	COMM	Miscellaneous commercial modifications (cellular equip., paving, etc.)		$80,000.00	$512.25	$512.25	1		1
CO		Certificates of Occupancy	11,271.00		$890.00	$890.00	6	2	8
NG	CDMO	Commercial demolitions			$50.00	$50.00	1		1
NG	SCHA	Existing school, alteration or addition to							0
NG	SCHL	New school / education facility building							0
		Section Subtotals	**141,040.00**	**$12,442,035.18**	**$57,575.23**	**$57,575.23**	**41**	**6**	**47**
NG	MNEW	Multifamily structure							0
NG	MADD	Addition to existing multifamily structure							0
NG	MALT	Alteration to existing multifamily structure							0
FAMILY		Multifamily registration for bldg and site insp							0
		Section Subtotals							**0**
BUILDING	SNEW	Single-family dwellings	432,566.00	$25,711,874.37	$229,414.54	$229,414.54	42	60	102
BUILDING	SADD	Addition to existing single-family structure	34.00	$56,720.00	$1,022.00	$1,022.00	1	2	3
BUILDING	SALT	Alteration to existing single-family structure	18,266.00	$1,364,930.11	$23,169.68	$23,169.68	66	64	130
BUILDING	MISC	Various miscellaneous modifications (concrete slab, etc.)							0
BUILDING	SDMO	Single-family residential demolition							0
BUILDING	DPLX	Duplex							
BUILDING	MOBH	Mobilehome							
BUILDING	Others	Other building permits	4,278.00	$63,000.00	$535.15	$535.15	4	2	
		Section Subtotals	**455,144.00**	**$27,196,524.48**	**$254,141.37**	**$254,141.37**	**113**	**128**	**2**
POOL	RES POOL	Residential swimming pools and spas		$1,999,825.00	$8,950.00	$8,950.00	32	24	
POOL	SEMI PUB POOL	New pool/spa construction (apartments, hotels, HOA, etc.)							
POOL	Others	Miscellaneous water features (ponds, fountains, other water features over 2 ft in depth)							
		Section Subtotals		**$1,999,825.00**	**$8,950.00**	**$8,950.00**	**32**	**24**	**56**

Note: Fees Assessed may reflect additional fees after permit issuance.

AGENDA ITEM #9.

Packet Page -35-

Type	Subtype	Description	Sq Footage	Valuation	Fees Assessed	Fees Paid	Collin	Denton	Permits Issued
FENCE	RES	Residential fence installation				$2,281.10	50	62	112
FENCE	SCRN WALL	Masonry screening wall installation				$60.00	2	1	3
FENCE	RETAINING WALL	Masonry or wood retaining wall over 2ft				$400.00	18	12	30
FENCE	Others	Other Fence installations				$220.15	6	2	8
		Section Subtotals				**$2,961.25**	**76**	**77**	**153**
ELECTRICAL	ALT/ADD	Upgrade panels and other electrical				$775.00	14	2	16
ELECTRICAL	NEW	New electrical systems installation							0
PLUMBING	ALT/ADD	Upgrade existing plumbing				$1,092.00	23	16	39
PLUMBING	WATER HEATER	Water heater installation				$3,311.00	67	51	118
PLUMBING	IRRIGATION	Irrigation/sprinkler system installation				$20,112.50	51	55	106
PLUMBING	OSSF	On-site sanitation facility							0
MECHANICAL	ALT/ADD	Furnace/air conditioner systems				$4,765.00	50	31	81
MECHANICAL	NEW	New mechanical installations							0
ELECTRICAL	Other	Other miscellaneous electrical							0
PLUMBING	Other	Other miscellaneous plumbing							0
MECHANICAL	Other	Other miscellaneous mechanical							0
		Section Subtotals				**$30,055.50**	**205**	**155**	**360**
SIGN	BANN	Temporary Banners				$675.00	6	3	9
SIGN	INFLATABLE SIGN	Large secured static balloon, temporary advertisement				$300.00	4		4
SIGN	MONUMENT INDIVIDUAL	Permanent sign with masonry border				$450.00	2	1	3
SIGN	PROJECT/DEVELOPMENT	Temporary wooden sign advertising future development				$1,350.00	5	4	9
SIGN	REAL ESTATE	Temporary wooden sign at property for lease or sale				$450.00	3		3
SIGN	SUBDIVISION MONUMENT	Decorative entry, or other location, features within a development				$150.00	1		1
SIGN	SUBDIVISION IDENTITY	Masonry signage incorporated with the subdivision screen wall							
SIGN	WALL	Permanent sign attached to side of an approved wall of a structure							
SIGN	CANOPY	Canopy							
SIGN	MENU BOARD	Drive-thru menu boards				$750.00		3	
SIGN	PROJECTING	Sign installed that extends outward from a wall							
SIGN	Others	Other miscellaneous signs				$3,150.00	14	6	
		Section Subtotals				**$7,275.00**	**35**	**17**	**52**

Note: Fees Assessed may reflect additional fees after permit issuance.

Type	Subtype	Description	Sq Footage	Valuation	Fees Assessed	Fees Paid	Collin	Denton	Permits Issued
HEALTH	CONV	Convenience stores				$1,210.00	5	1	6
HEALTH	CAFT	Cafeteria (i.e. hospitals, office buildings)							0
HEALTH	DAYC	Daycares, includes private & religious daycare facilities				$405.00	2		2
HEALTH	GROC	Grocery stores				$2,480.00	3		3
HEALTH	HLTD	Other businesses required by government regulatory authority to have health-related inspections (i.e. bed & breakfast)				$100.00		2	2
HEALTH	MBHT	Mobile catering vehicles, hot							0
HEALTH	MBCD	Mobile catering vehicles, cold				$600.00	1		3
HEALTH	KIOSK HLTH	Food-related sales - non-mobile							0
H	PRIVATE HLTH	Nursing, assisted living, or the like				$205.00		1	1
H	REST	Restaurants, dining food establishments				$10,850.00	24	2	26
H	SCHOOL / CITY	School district and private educational facilities, City facilities							0
H	THLT	Temporary health permits				$1,325.00	42	1	43
H	Others	Other health permits				$1,600.00	4	1	5
		Section Subtotals				**$18,775.00**	**81**	**8**	**91**
	SWPUB	Public pools and spas							0
	SWRES	HOA community pools and spas							0
	SWSEMI	Hotels and apartment communities pools and spas				$7,465.00	10	8	18
		Section Subtotals				**$7,465.00**	**10**	**8**	**18**
SPECIALEVENT	Others	Miscellaneous SPECIALEVENTs							0
SPECIALEVENT	SIDEWALK	Existing business sidewalk sale				$200.00	2		2
SPECIALEVENT	OUTDOOR	Outdoor							0
SPECIALEVENT	PARKING LOT	Parking lot				$200.00	2		
SPECIALEVENT	SEASONAL	Seasonal - holiday trees, pumpkins, etc.							
SPECIALEVENT	TENT	Tent				$225.00	3		
		Section Subtotals				**$625.00**	**7**		

Note: Fees Assessed may reflect additional fees after permit issuance.

AGENDA ITEM #9.

Packet Page -37-

Type	Subtype	Description	Sq Footage	Valuation	Fees Assessed	Fees Paid	Collin	Denton	Permits Issued
REGISTRATION	ELEC REG	Electrical contractors registrations				$802.00			17
REGISTRATION	MECH REG	Mechanical contractor registrations				$855.00			18
REGISTRATION	PLUMB REG	Plumbing contractor registrations							23
REGISTRATION	GENERAL REG	General contractor registrations, no fees							72
REGISTRATION	IRRIGATION	iRRIGATION contractor registrations, no fees				$301.00			7
REGISTRATION	Others	Other contractor registrations				$426.50			14
		Section Subtotals				**$2,384.50**			**151**
		Totals on report	**596,184.00**	**$41,638,384.66**	**$320,666.60**	**$390,207.85**	**600**	**423**	**1,176**

Note: Fees Assessed may reflect additional fees after permit issuance.

AGENDA ITEM #10.

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: **May 15, 2012**

Subject: **Fire Department Monthly Report on Incident Response and Educational Activities, April 2012**

Report Summary: The Frisco Fire Department responds to a variety of calls for service. A call may require a single ambulance or multiple fire trucks to mitigate an emergency. The monthly report allows for Department staff to review service calls by type and analyze the responses for adequate personnel and equipment.

Comparative Data: The included graphs show the Fire Department's activity during the past year.

Report Analysis: Activity Report for April 2012 is below:

1. ***Incident Analysis*** –

- *April 2012* – The Fire Department responded to 667 calls during the month of April, including 1 Structure Fire resulting in $15,000 in damages, 1 Vehicle Fire resulting in $4,000 in damages, 329 emergency medical calls and 72 motor vehicle accidents.

	Alarm Type	Total Alarms	% of Total Alarms
1	Structure Fires	1	0.15%
2	Vehicle Fires	1	0.15%
3	Grass Fires	0	0.00%
4	Smoke / Alarm Investigation	96	14.39%
5	Motor Vehicle Accidents	72	10.79%
6	Medical Calls	329	49.33%

FRISCO FIRE DEPARTMENT

CITY OF FRISCO
8601 GARY BURNS DRIVE
FRISCO, TEXAS 75034
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	Alarm Type (Continued)	Total Alarms	% of Total Alarms
7	Mutual Aid (Fire)	4	0.60%
8	Mutual Aid (EMS)	1	0.15%
9	Other	163	24.44%
10	**Total Monthly Alarms**	**667**	**100.00%**

2. ***Summary of Monthly Activity*** –

   - *April 2012* – 220 fire safety inspections and 189 SAFER plans were completed in April 2012. 143 new construction inspections were performed by the Fire Marshal's Office in April.

3. ***Response Time Analysis*** –

   - Average monthly response times for April by District:

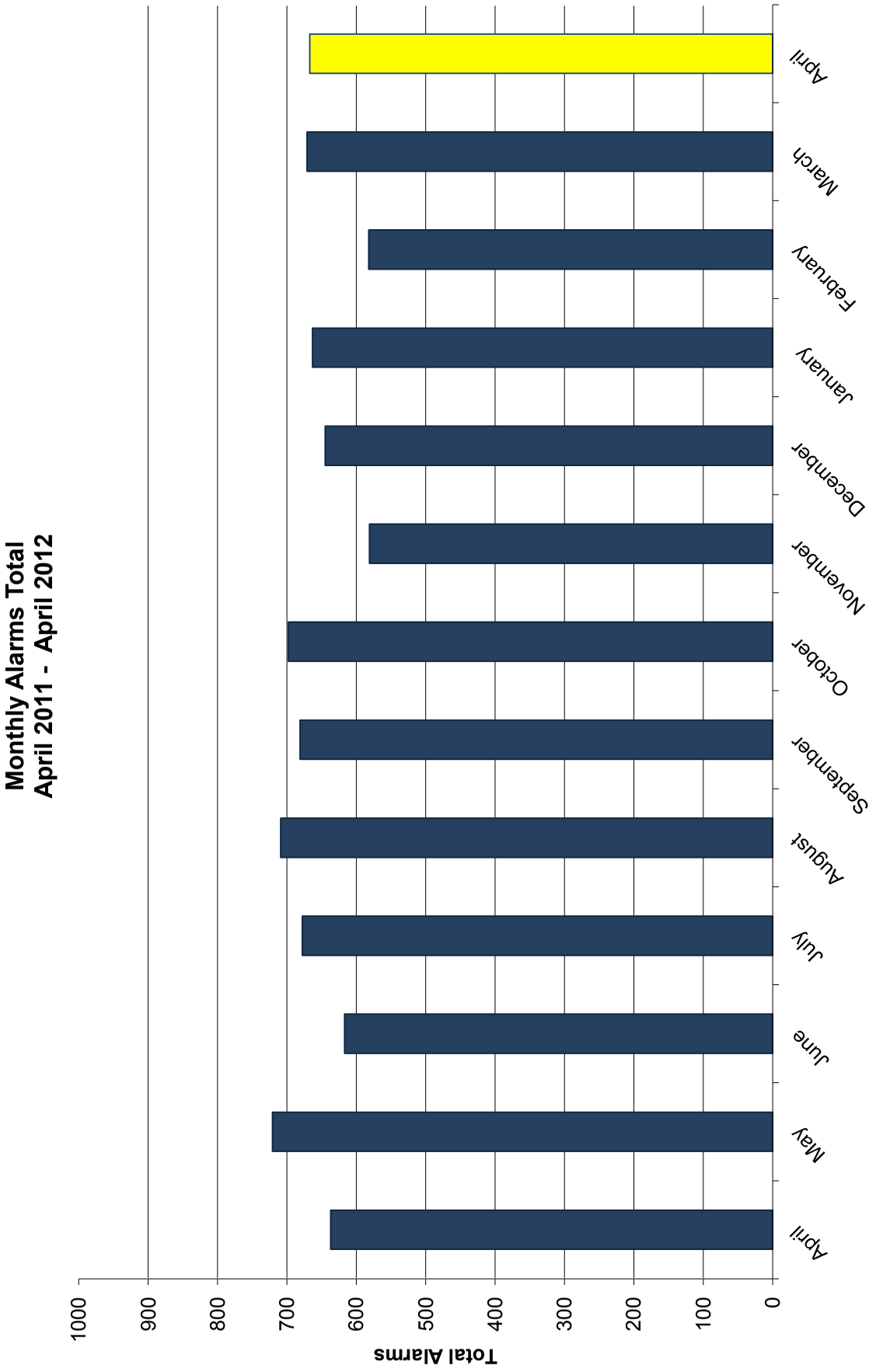
1	District 1	4.36
2	District 2	4:22
3	District 3	4:53
4	District 4	5:39
5	District 5	5:36
6	District 6	4:52
Overall Average Response Time, City		**4:54**

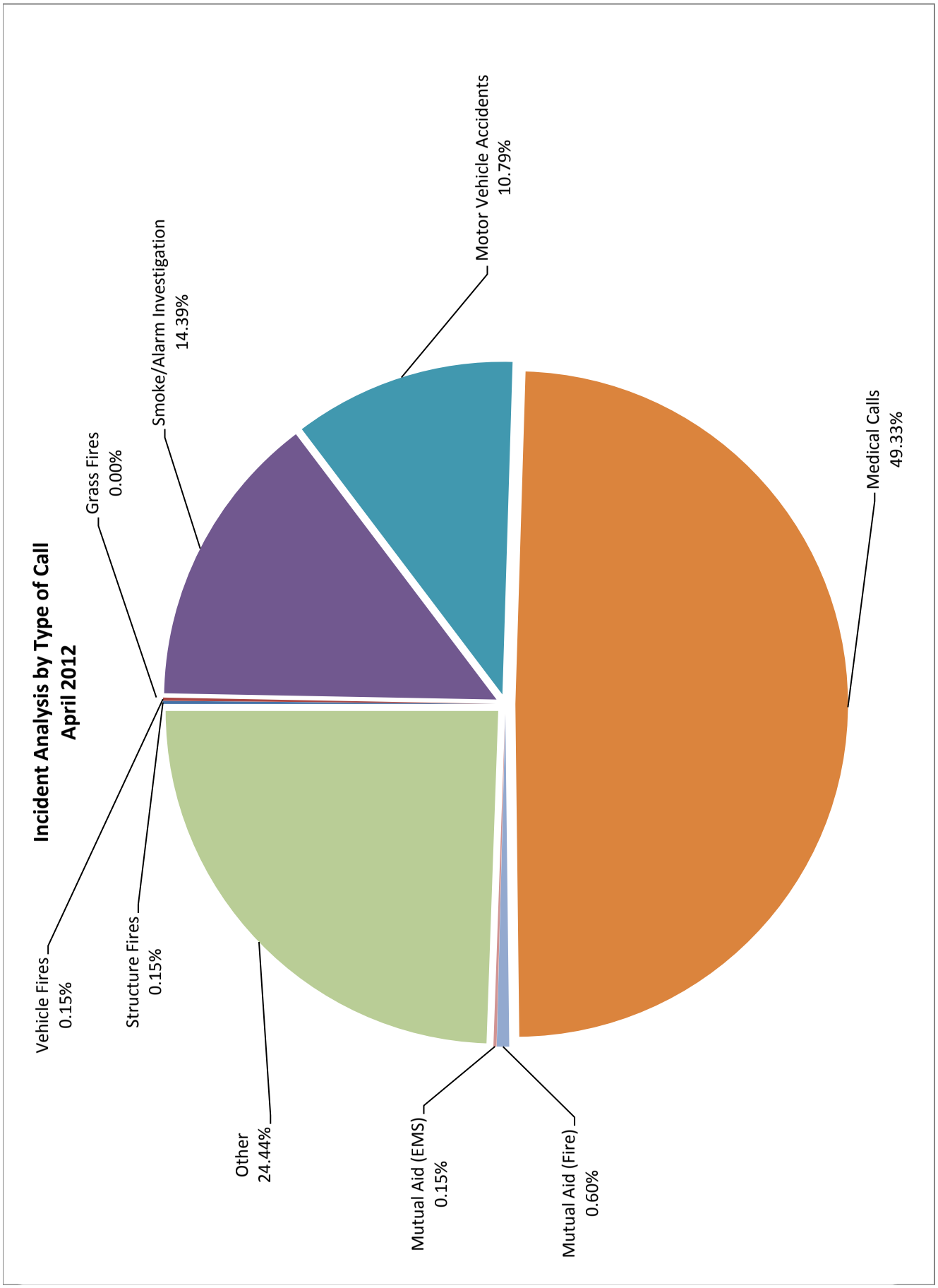
Supporting Documents: Supporting documents include the following items:

- *April 2012*:
  - Frisco Fire Department Monthly Summary, April 2011-April 2012;
  - Monthly Alarms Total, April 2011- April 2012;
  - Frisco Fire Department Incident Analysis by Type of Call – April 2012;
  - Frisco Fire Department Incident Analysis, April 2001- April 2012;
  - Frisco Fire Department Public Education Summary, April 2012.

Frisco Fire Department Monthly Summary
April 2011 - April 2012

	Structure Fires	Vehicle Fires	Grass Fires	Smoke/Alarm Investigation	Motor Vehicle Accidents	Medical Calls	Mutual Aid (Fire)	Mutual Aid (EMS)	Other	Total Alarms
April	4	3	5	98	80	311	10	1	125	637
May	3	2	1	110	89	352	1	2	161	721
June	2	2	4	96	66	301	11	2	133	617
July	0	4	7	91	70	320	3	1	182	678
August	1	3	5	102	74	331	11	5	177	709
September	1	2	5	92	73	338	10	5	155	681
October	0	5	3	88	110	305	1	0	186	698
November	2	2	1	91	79	279	2	1	124	581
December	2	3	1	100	65	305	2	1	166	645
January	1	2	4	100	77	334	4	3	138	663
February	0	0	3	77	72	289	2	1	138	582
March	3	3	0	97	78	356	4	2	128	671
April	**1**	**1**	**0**	**96**	**72**	**329**	**4**	**1**	**163**	**667**
2011-2012 Grand Totals	20	32	39	1238	1005	4150	65	25	1976	8550


Monthly Alarms Total
April 2011 - April 2012
Total Alarms
0
100
200
300
400
500
600
700
800
900
1000
April
May
June
July
August
September
October
November
December
January
February
March
April


Incident Analysis by Type of Call
April 2012
Medical Calls
49.33%
Motor Vehicle Accidents
10.79%
Smoke/Alarm Investigation
14.39%
Grass Fires
0.00%
Vehicle Fires
0.15%
Structure Fires
0.15%
Other
24.44%
Mutual Aid (EMS)
0.15%
Mutual Aid (Fire)
0.60%

Frisco Fire Department Incident Analysis April 2001 - April 2012

	Structure Fires	Vehicle Fires	Grass Fires	Smoke/Alarm Investigation	Motor Vehicle Accidents	Medical Calls	Mutual Aid (Fire)	Mutual Aid (EMS)	Other	**Total Alarms**
2001	35	20	36	493	445	1524	30	31	615	**3229**
2002	30	26	40	635	460	1962	27	28	798	**4006**
2003	26	27	46	813	630	1975	25	55	991	**4588**
2004	21	15	23	703	681	2207	20	42	1235	**4947**
2005	33	41	75	806	731	2583	31	65	1460	**5825**
2006	31	37	85	1042	782	2809	32	42	1440	**6300**
2007	35	20	23	1065	775	2961	21	20	1610	**6530**
2008	27	32	20	1036	701	3237	45	42	1742	**6882**
2009	35	27	32	1021	792	3282	92	192	1773	**7246**
2010	24	25	20	1210	791	3533	59	21	1751	**7434**
2011	20	28	40	1276	890	3807	70	25	2030	**8186**
2012	**5**	**6**	**7**	**370**	**299**	**1308**	**14**	**7**	**567**	**2583**

FRISCO FIRE DEPARTMENT

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Frisco Fire Department Public Education Summary

April 2012

Frisco Fire Department	Number	Students
Fire Station Tours	19	110
Birthday Party	14	415
CFA	4	76
CERT	5	60
CPR	2	26
Frisco Fire Safety Town	**Number**	**Students**
Frisco Fire Safety Town Educational Tours	24	128
Frisco Fire Safety Town Programs	45	1950
Community Education Event	**Number**	**Students**
➢ Parade @ Ashley Elementary (900) ➢ Shattered Dreams @ Heritage High (1700) ➢ Fire Presentation @ 6400 Stonebrook (62) ➢ Fire Presentation @ 6400 Stonebrook (154) ➢ Clean It & Green It @ Ikea (500) ➢ Book Fair @ Ashley Elementary (450) ➢ Family Day @ Discovery Learning Center (500) ➢ Golf Ball Drop @ Frisco Lakes @ (34)	8	4300
Total Audience		7,065

SHATTERED DREAMS @ HERITAGE HIGH SCHOOL



AGENDA ITEM #11.

TEXAS' RISING STAR
FRISCO
CONVENTION & VISITORS BUREAU

EXECUTIVE DIRECTOR/STAFF REPORT: April 2012

- **Visitor Guide Fulfillments** Mail: **562** e-Brochures: **1,233** Downloads: **3**
  - April 2011: Mail: **461** e-Brochures: **1,390** Downloads: **17**
  - Tour Texas – 152
  - Southern Living – 141
  - Texas Monthly – 32
  - See Texas First – 237
  - Tour Texas PDF Downloads – 3
  - See Texas First e-Brochure – 1,233
- **Convention Groups Serviced**:
  - SWEMA
  - Mary Kay
  - TxPRIMA
  - Frisco Soccer Association
  - NSFA
- **Site Inspections:**
  - ThyssenKrupp
  - SAGA
  - STN Media
  - Canyon Creek Travel/Spirit Celebration
- **Meetings/Events Attended**:
  - Texas Tour & Magazine Guide
  - Crissy w/Alliance Hockey, re: Texas Trust Fund
  - New CVB Website
  - CVB/Dealey Marketing – Summer Campaign
  - The Knowland Group demo
  - Chamber Strategic Planning Meeting
  - FY2013 Budget Kick Off
  - IDSS Exact Target Meeting
  - See's Candies VIP Event (Stonebriar Mall)
  - Review of Tentative Sales Accounts
  - Collin College Hospitality/Travel Class
  - RoughRiders FAM
  - MPI Chapter Luncheon
  - Tyler Tech Meeting

  - Seventh Day Adventist Luncheon & Tour
  - CTA Webinar, re: CTA Updates
  - IDSS Webinar, re: DMAI Calculator Integration
- **Presentations:**
  - Monthly Report to City Council
  - Association Meeting Planner Luncheon
  - TML Meeting Planners
  - Frisco Rotary
- **Sales Missions/Travel**:
  - DFWAE Association Day
  - Independence Business Park Blitz
  - Local Sales Calls w/Embassy Suites & Hilton Garden Inn
  - Austin, TX – Sales Calls & Client Luncheon
  - Hartford, CT – NASC Sports Symposium
  - Waco, TX – TTIA Travel Fair/Travel Counselors
  - Las Vegas, NV – Collaborate Marketplace
- **Special Projects/Events**
  - Simpleview DEMO
  - Destination 3000 DEMO
  - ACES Powerpoint for Bid
  - Pre-Planning TSAE Summer Break Event (Austin)
  - CVB/Sales Training for David Pak w/Wingate
  - CVB/Sales Training for Amanda Saunders w/Aloft
  - Pre-Planning YUM Vendor Fair
  - Pre-Planning Site for NurolFeedback
  - Supervisory Academy
  - Leadership Academy

Monthly Sales Report
FY 11-12

	Turned Definite				Turned Tentative				Turned Lost			
	FY12		FY11		FY12	FY11	FY10	FY09	FY12	FY11	FY10	FY09
	Rm Nts	# Groups	Rm Nts	# Groups	Room Nights				Room Nights			
October	4,094	14	1,385	5	4,717	2,721	290	608	8,169	1,610	420	1,425
November	4,463	11	2,011	8	11,877	2,847	7,434	2,107	5,555	40	1,470	2,081
December	2,070	6	2,960	5	8,909	5,438	380	3,230	7,591	900	0	555
January	3,390	12	1,124	8	11,979	5,700	3,733	7,288	10,107	3,732	3,198	9,316
February	2,289	8	2,258	6	14,908	3,842	4,657	12,884	5,207	1,002	2,256	5,403
March	1,870	5	742	5	10,522	2,015	5,935	5,236	3,292	1,430	5,014	2,867
April	1,882	5	2,187	6	5,619	2,938	16,354	3,361	6,890	380	150	2,755
May			450	2		3,117	2,523	3,156		3,930	8,143	1,096
June			833	6		12,328	5,964	1,511		2,890	903	2,219
July			1,178	4		11,838	6,547	2,650		2,245	4,375	1,216
August			4,134	8		10,223	8,045	813		4,571	6,044	690
September			260	3		7,155	1,642	5,629		2,560	5,008	1,542
Total	**20,058**	**61**	**19,522**	**66**	**68,531**	**70,162**	**63,504**	**48,473**	**46,811**	**25,290**	**36,981**	**31,165**

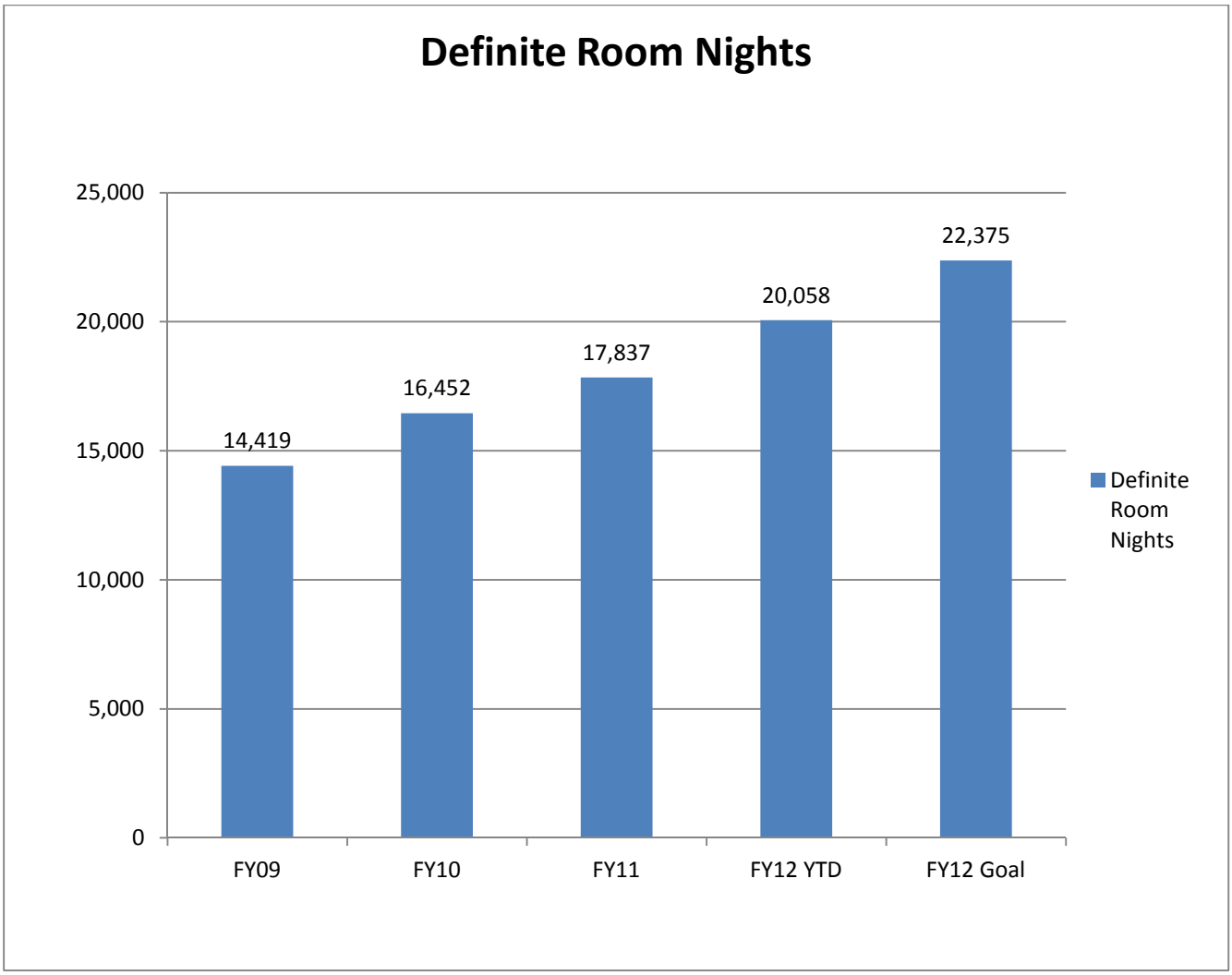
Projected Economic Impact of Business Turned Definite

	FY12	FY11	FY10	FY09
October	$ 7,829,406	$ 1,845,499	$ 1,561,928	$ -
November	7,420,499	1,940,336	62,000	70,183
December	1,586,307	2,862,666	2,755,540	1,860,006
January	2,470,529	892,165	6,593,670	358,000
February	2,314,630	1,732,634	1,345,565	206,120
March	4,526,175	980,262	2,052,900	1,067,816
April	937,195	1,370,282	1,225,375	1,187,400
May		381,950	1,121,060	7,258,532
June		509,705	13,951	393,148
July		1,601,035	308,255	204,000
August		4,327,785	5,731,300	636,888
September		1,034,216	2,137,350	830,853
Total	27,084,741	19,478,535	24,908,894	14,072,946

May 2 2012

Note: Primary lost business reasons include: availability of space/rooms, rates, board decision; location

* December numbers were adjusted for cancelation of an event.


Definite Room Nights
25,000
20,000
15,000
10,000
5,000
0
14,419
16,452
17,837
20,058
22,375
FY09
FY10
FY11
FY12 YTD
FY12 Goal
Definite Room Nights

PUBLICITY VALUATION
FY 2011 - 2012

YEAR-TO-DATE PRINT PUBLICITY	Media Hosted	Media Missions	Monthly Print Value	Monthly Electronic Value	Total Media Value	FY 11 Value
2011 - 2012 Fiscal Year Publicity						
October	**0**		$ 56,419	$ 1,455	$ 57,874	$ 28,736
November	**0**		6,850	41,723	48,573	53,894
December	**1**		14,492	47,535	62,027	57,851
January		LA & San Fran	44,482	27,444	71,926	47,171
February		Austin	7,137	108,701	115,838	128,639
March			41,972	931	42,903	91,890
April	**1**		39,109	17,032	56,141	36,737
May					-	28,035
June					-	64,882
July						102,773
August						17,586
September					-	66,277
2004 - 05 Fiscal Year Print/Electronic Values		**398**	**169,177**	**31,950**	**201,127**	
2005 - 06 Fiscal Year Print/Electronic Values		**1,380**	**145,336**	**34,358**	**179,695**	
2006 - 07 Fiscal Year Print/Electronic Values		**1,804**	**121,295**	**190,354**	**311,649**	
2007 - 08 Fiscal Year Print/Electronic Values		**803**	**436,587**	**233,375**	**669,962**	
2008 - 09 Fiscal Year Print/Electronic Values			**299,217**	**383,929**	**683,145**	
2009 - 10 Fiscal Year Print/Electronic Values			**426,875**	**167,470**	**594,345**	
2010 - 11 Fiscal Year Print/Electronic Values			**508,356**	**216,116**	**724,472**	
2011 - 12 Fiscal Year-to-Date Print/Electronic Values			**210,461**	**244,821**	**455,282**	**767,796**

	Column Inches:		Publicity Value:
NEWSPAPER:			
Dallas Morning News			
"Parents Guide to Summer / Quannah Parker Exhibit/Heritage Museum"	2.00	$	1,300.00
"Community Calendar / Quannah Parker Last Chief of the Comanches"	1.00	$	650.00
Plano Star Courier			
"Uncovering History: Frisco Heritage Museum/Quannah Parker Exhibit"	40.00	$	754.00
Mesquite News			
"Uncovering History: Frisco Heritage Museum/Quannah Parker Exhibit"	30.00	$	727.50
NeighborsGo/Allen/Frisco/McKinney			
"Residents Invited to Take Part in Annual Photo Contest"	1.00	$	21.00
"Go & Do / Quannah Parker Exhibit / Frisco Heritage Museum"	2.00	$	42.00
"Conference to Discuss Resources for Schools / Nat'l School Foundation"	11.00	$	231.00
"Photo Contest Entry Deadline is April 20"	6.50	$	136.50
"Parents Guide to Summer / Quannah Parker Exhibit/Heritage Museum"	2.50	$	52.50
Frisco Enterprise			
"Uncovering History: Frisco Heritage Museum/Quannah Parker Exhibit"	20.00	$	404.00
MAGAZINE:			
Courier Magazine			
Texas/Frisco to Welcome Trainiacs / Museum of the American Railroad"	7.50	$	600.75
Rejuvenate Magazine			
"Places: Texas / Frisco"	38.00	$	6,906.72
Small Market Meetings Magazine			
"Keeping the Faithful / Maureen Gutierrez"	48.00	$	3,150.00
Texas Meetings & Events Magazine			
"Destination: It's All About Frisco"	55.50	$	6,930.84
Texas Highways Magazine			
"Weekender: Fun in Frisco"	71.00	$	16,827.00
San Antonio Magazine			
"A LoneStar Nosh / Josephine's Italian Bistro"	8.00	$	375.00
Total Print		**$**	**39,108.81**
ONLINE			
NBCDFW.com			
"RoughRiders Celebrate 10 Years in Frisco"	1.00	$	500.00
DallasNews.com/FriscoBlog			
"Quannah Parker Exhibit / Frisco Heritage Museum"	1.00	$	200.00
"Frisco strEATS Gourmet Food Truck Festival"	1.00	$	200.00
"Frisco strEATS Gourmet Food Truck Festival"	1.00	$	200.00
TexasHighways.com			
"Weekender: Fun in Frisco"	1.00	$	500.00

	Column Inches:	Publicity Value:
DFW.com		
"Frisco strEATS Gourmet Food Truck Festival"	1.00	$ 31.00
"Recap of Frisco strEATS"	1.00	$ 31.00
Dmagazine.com		
"Sidedish / Coolhaus / Frisco strEATS Gourmet Food Truck Festival"	1.00	$ 525.00
"FrontBurner / Frisco strEATS Gourmet Food Truck Festival"	1.00	$ 525.00
SanAntonioMag.com		
"A LoneStar Nosh / Josephine's Italian Bistro"	1.00	$ 350.00
NeighborsGo.com		
"Quannah Parker Exhibit / Last Chief...Frisco Heritage Museum"	1.00	$ 150.00
"You Be the Tour Guide Contest Ends April 20"	1.00	$ 150.00
PegasusNews.com		
"Frisco's First Gourmet Food Truck Festival / Frisco strEATS"	1.00	$ 31.00
"Frisco Gourmet Food Truck Festival / Frisco strEATS"	1.00	$ 31.00
"Quannah Parker / American Indian Exhibit at Frisco Heritage Museum"	1.00	$ 31.00
"Frisco strEATS Gourmet Food Truck Festival"	1.00	$ 31.00
"Kids & Family Things to Do: Frisco strEATS"	1.00	$ 31.00
Frisco-Online.com		
"Inaugural downtown Frisco strEATS Festival"	1.00	$ 150.00
"Discover, Experience & Connect / Quannah Parker Exhibit"	1.00	$ 150.00
"Quannah Parker / American Indian Exhibit at Frisco Heritage Museum"	1.00	$ 150.00
SCNTX.com		
"Uncovering History: Frisco Heritage Museum Unveils Latest…"	1.00	$ 25.00
Dallas.eater.com		
"Frisco Does Food Trucks / Frisco strEATS"	1.00	$ 10.00
"Coolhaus / Frisco strEATS"	1.00	$ 10.00
Cravedfw.com		
"Frisco strEATS Gourmet Food Truck Festival"	1.00	$ 10.00
Thrillist.com		
"Downtown Frisco strEATS Festival"	1.00	$ 750.00
PlanoStar.com		
"Uncovering History: Frisco Heritage Museum Unveils Latest…"	1.00	$ 25.00
TELEVISION		
KTVT/CBS 11		
"Frisco strEATS Food Truck Festival"		$ 1,200.00
KXAS/NBC 5		
"RoughRiders Celebrate 10 Years / 4pm and 6pm		$ 11,035.20
Total Electronic		**$ 17,032.20**
TOTAL PUBLICITY		**$ 56,141.01**



TH tip
See the Dallas Stars practice for free in Frisco

Fun in Frisco

This rapidly growing North Texas city is a fine home base for shopping and sporting adventures.

Text by **LORI MOFFATT**

WHEN I TOLD FRIENDS I WAS HEADING UP TO Frisco for the weekend to see Cirque du Soleil, they all agreed it was a good plan. "Such a great city," they concurred. "Will you have time to visit Napa while you're in California?"

I cocked my head in a moment of confusion, and then clarified. "No, not San Francisco. Frisco. It's a city north of Dallas." I mentioned that there's an IKEA there to really cement the recognition.

North of the Metroplex, with the skyscrapers and spaghetti-bowl highway intersections out of sight, it becomes clear that Frisco—which straddles the line between Collin and Denton counties—is Blackland Prairie country. Jackrabbits dart across suburban lawns, and the absence of any significant topographical variation affords a misleading, almost two-dimensional sense of scale. Frisco itself, founded in 1902 and named for a rail line intended to connect Texas to San Francisco, was in its early years a trading center for the area's wheat, cotton, and corn farmers. As recently as 1990, I learned, Frisco had a population that hovered around 6,000. But in the past two decades, thanks in part to the many corporations thriving in Collin County, population here has skyrocketed—and now numbers nearly 125,000. "In the old days, our main business was cotton," one resident told me. "Now, it's roofs."

Flanked by a log cabin, a one-room schoolhouse, a church, historic homes, and a reproduction of a train depot, the Frisco Heritage Museum traces Frisco's development since the 1880s.

PHOTO: © ROGER ROBINSON

Sports are a big deal here, too: Most of Frisco's tourist attractions and hotels are between Preston Road and the Dallas North Tollway, including the multipurpose Dr Pepper Arena, home to both the National Basketball Association Development League team the Texas Legends and the Texas Tornado of the North American Hockey League. Here, too, hockey fans can watch free practice sessions of the Dallas Stars, as well as exhibitions of martial arts, professional tennis, boxing, skating, and family shows like Cirque du Soleil. Just south of the arena lies the Dr Pepper Ballpark, home to the AA Texas Rangers affiliate baseball team the Rough Riders; five miles north lies the FC Dallas Stadium, where you can watch professional soccer.

> The big museum news in Frisco is the much-anticipated development of the 13-acre Museum of the American Railroad.

The morning after the spellbinding Cirque du Soleil show, I took a pedestrian sidewalk under the busy Tollway to explore the Texas Sculpture Garden at Hall Office Park, the 62-acre business campus of developer and philanthropist Craig Hall. In the late 1990s, convinced that art stimulates creative thinking, Hall dedicated a four-acre





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*Three exhibitions in **El Paso** shine the spotlight on works from Mexico City*

THROUGH MAY 27 AT THE EL PASO MUSEUM OF ART, VISITORS can see works by 51 Mexican artists in three exhibitions focusing on the 20th-Century Mexican art scene.

On loan from museums in Mexico City, the 91 works on display include paintings by such artists as Diego Rivera, Jose Clemente Orozco, David Alfaro Siqueiros, and others who embraced both modern art trends of Europe and the spirit of Mexican nationalism in Mexico.



Rufino Tamayo's *Ofrenda con frutas*, 1987.

"One of the exhibitions—*Diego Rivera and the Cubist Vision from the Museo de Art Carrillo Gil, México*—focuses on the period before Rivera returned to Mexico from Europe in the 1920s," says El Paso Museum of Art Director Michael Tomor. "He had met Picasso and begun to explore Cubism, and later became engaged in the Mexican struggle for civil rights and the mural program. Rivera made more than 200 Cubist paintings during this period, and we selected seven of the strongest, including a portrait of his Russian wife and their child, who lived only two years.

"The other two—*Magnitud Mexicana: Visions of Art* and *Dibujos Divinos: 20th Century Drawings from the National Museum of Art-MUNAL, Mexico*—deal directly with Mexico's contributions to modern art," Tomor continues. "Together, they give you the opportunity to see a variety of styles and to witness the transition from an academic style based on anatomical form to abstraction."

Call 915/532-1707; www.elpasoartmuseum.org. —*Lori Moffatt*

PHOTO: © D.R. RUFINO TAMAYO/HEREDEROS/MÉXICO/2011, FUNDACIÓN OLGA Y RUFINO TAMAYO, A.C.

tract at the campus' entrance to highlighting works by Texas sculptors and entrusted curator Patricia Meadows to collect pieces from living artists he admired. The result, a 40-piece collection of contemporary pieces ranging from imposing limestone monoliths to delicate pieces of poplar and steel, is on view throughout the grounds and buildings, free of charge. "Craig likes to look out his office window and see parents and children, school groups, and tenants wandering around enjoying the art," says Meadows. Artworks by some 120 national and international artists complete this outdoor museum.

Under the spell of Sanger artist Jerry Daniel's graceful *Dancers MM*, a sculptural brushstroke of intertwined steel and concrete, I enjoyed the fresh air and gratifying ambiance of this rare museum without walls.

Museums *with* walls have their place in Frisco, as well. Since more than a third of the population is younger than 18, most attractions in Frisco are designed for children as well as adults. So when I learned that the Sci-Tech Discovery Center (one of three attractions that make up the new Frisco Discovery Center) was hosting a traveling exhibition

> Convinced that art stimulates creative thinking, developer Craig Hall dedicated four acres of his Frisco business campus to works by Texas sculptors.

on the science of animation, I jumped at the chance to try my skills at cartoon voiceovers and green-screen pratfalling. (The current exhibition here, *Amusement Park Science*, continues through September.)

Nearby, adjacent to the city's Central Fire Station, lies Frisco Fire Safety Town, an interactive "museum" of sorts that highlights safety for kids in a variety of arenas. Skeptical about the entertainment value at first, I changed my tune upon visiting with firefighters about their jobs, studying a wall mounted with various firefighting equipment, and crawling into a real fire truck. For school-age children, Safety Town encourages tours of its Weather Safety Room, where visitors experience an extremely believable tornado simulation; and the Fire Room, a recreation of a living room that fell victim to an electrical fire. "We don't talk down to the kids," says Fire Chief Mack Borchardt. "We want them to recognize the tools we use, and to know exactly what to do to survive."

Outside, 5/8-scale models of 20 Frisco businesses make up the attraction's



My kids really liked being in the middle of everything and my wife and I really liked that we weren't.

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Packet Page -58-



Part of the Texas Sculpture Garden at Hall Office Park, sculptor David Iles' *HOP Jackrabbits* pays whimsical homage to these fleet-footed creatures.

traffic-safety village, complete with paved streets and working traffic and crosswalk signals. A fleet of bicycles and battery-operated jeeps invite school groups to ride through the facility, learning about seat belts, helmets, and how to be street-wise.

Kids and adults alike enjoy learning about history at the Frisco Heritage Museum, where exhibits illustrate the area's history in regard to the railroad, agriculture, and growth. Outside, a relocated log cabin and church, a re-created schoolhouse, and homes dating to 1896 help paint a picture of North Texas on the cusp of a new century.

But the big museum news in Frisco is the much-anticipated (and much-delayed) development of the 13-acre Museum of the American Railroad, which will eventually house the extensive collection of historic rolling stock—including the Union Pacific "Big Boy," the largest steam locomotive in the world—now found at a cramped site in Dallas' Fair Park. "The Heritage Museum is a few hundred feet from our new site," says Museum of the American Railroad director Bob LaPrelle, "so visitors to the museum can watch the rolling stock come in. We're in the process of packing and loading at Fair Park, and the trains should start arriving here by early May."

Later that evening, after a fig-and-spring-greens salad at TruFire Kitchen (see texashighways.com/weekender for more on Frisco restaurants), I ventured to the massive Stonebriar Centre Mall to check out the thriving retail scene. Tourism studies indicate that shopping is Frisco's Number One draw for visitors, so I wasn't surprised to see the mall buzzing on a Friday night. But the next morning, as I explored Frisco's Main Street, I happened upon the Good Steward consignment shop and realized that Collin County's affluence benefits the secondhand scene, too. "People bring us brand-new things—Louis Vuitton, Coach—that they never got around to wearing," says owner Elizabeth Rimes, who carries both men's and women's clothing, a rarity in the consignment world. I ask her: What's the key to finding the good stuff? Rimes pauses a bit, then replies, "Frequency. Come visit us often."

Yet another reason for a return trip. TH



Frisco
is north of the Dallas/Fort Worth Metroplex. Contact the Frisco Convention and Visitors Bureau at **877/GO-FRISCO**; **www.visitfrisco.com**.

Sun Block

Head to West Texas to see the annular eclipse

FOR SHEER GRANDEUR, FEW SIGHTS CAN BEAT A West Texas sunset. On May 20, though, the moon will heighten the drama by blocking most of the sun from view, leaving a brilliant ring of fire to drop below the western horizon.

Do!
Protect your eyes when viewing the sun

Known as an annular solar eclipse, the phenomenon occurs when the moon passes directly between Earth and the sun and creates a "ring" of sun around the moon. "It's a little bit strange," says Tom Heisey, president of the South Plains Astronomy Club in Lubbock. "The moon is farther away from Earth, so it doesn't completely cover the sun like it does during a total eclipse."

Nearly everyone in Texas (and in most of the United States) can see a partial eclipse that day, with the sun looking like a phase of the moon. However, the "annular" portion of the eclipse will be limited to a narrow path from northern California to the Texas Panhandle and a small portion of the Permian Basin. It's the first annular eclipse visible from the United States since 1994. "This doesn't happen very often, so if you have a chance to see it, do it," says Mike Jacquez, president of the West Texas Astronomers club in Midland.

Skywatchers can watch the eclipse safely through special telescopes set up on the grounds of Midland's Marian Blakemore Planetarium. The telescopes will be equipped with safety filters and members of the West Texas Astronomers club will explain what's happening. Viewers will be able to see not just the eclipse but activity on the sun itself, such as eruptions of hot gas known as prominences, and dark sunspots indicating intense magnetic activity.

In Midland, the eclipse begins at 7:33 p.m., when the moon first touches the solar disk. At 8:36, the moon will be fully immersed in the sun, beginning the annular portion of the eclipse, which ends when the sun sets soon thereafter.

Lubbock is near the center of the eclipse path, providing a slightly longer view—four minutes, 16 seconds of annularity. The South Plains Astronomy Club will host an eclipse-watching party at Lubbock Lake Landmark, also with properly equipped telescopes. You don't need a telescope to view the eclipse, though—just a clear, flat, western horizon and protection from the sun's brilliance, which can cause eye damage even during an eclipse. Experts recommend a pair of inexpensive eclipse glasses, which are available through websites and astronomy magazines.

Regardless of where and how you view it, the annular eclipse is sure to add a grand twist to your sky-watching adventures—and to a spectacular West Texas sunset. —*Damond Benningfield*

PHOTO: COURTESY TEXAS SCULPTURE GARDEN





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**

From: **Henry J. Hill, Deputy City Manager**

Date: **May 10, 2012**

Re: **Council Subcommittee Reports**

Action Requested: Reports regarding current activity of Council Subcommittees.

The City Council has requested that regular information regarding any meetings of the standing Council Subcommittees be provided on each Council agenda. The following Subcommittees are the formal appointed Council Subcommittees that meet from time to time.

- Budget and Audit Committee
- Governance Committee
- Legislative Committee
- Frisco Square Management District

These Committees did not meet since the last City Council meeting.

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 Services
Elizabeth Metting, P.E., Asst. Director/City Engineer

From: **Tin Nguyen, P.E. Civil Engineer**

Date: **May 15, 2012**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and JBI Partners, Inc. to perform Design, Bid Package Preparation, and Construction Administration Services for Cotton Gin Road Improvements (Diamond Point Lane to approximately 1400 feet south).**

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco, Texas and JBI Partners, Inc. of Addison, Texas, in the amount of $55,800 to perform Design, Bid Package Preparation, and Construction Administration Services for Cotton Gin Road Improvements (Diamond Point Lane to approximately 1400 feet south)

Background Information: JBI Partners, Inc. will provide engineering design, bid phase, and construction administration services for the construction of two southbound lanes of Cotton Gin Road. The total length of the Cotton Gin Road project is approximately 1,400 lineal feet and includes grading, paving, and drainage.

In addition, this project includes landscape architecture services for the construction of a screening wall, landscape planting and irrigation for the buffer area along the roadway using funds previously escrowed by the developer of Village Lakes Phase 2. Upon completion of this project, two separate sections of Cotton Gin Road along the Village Lakes Subdivision will be connected. The right-of-way for this roadway section was previously dedicated.

The Professional Services Agreement includes surveying, geotechnical investigation, assessment of existing utilities, design and bid package preparation, easement document preparation, utility coordination, and construction administration services.

Design is expected to be complete in September 2012. Construction is anticipated to begin in late 2012 and to be completed by the middle of 2013.

Alternatives: City Council could consider the following alternatives:

- Approval of a Resolution
- Deny approval of the Resolution

Financial Considerations: The cost of the Agreement is $55,800. Staff recommends funding for the Project come from the 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:

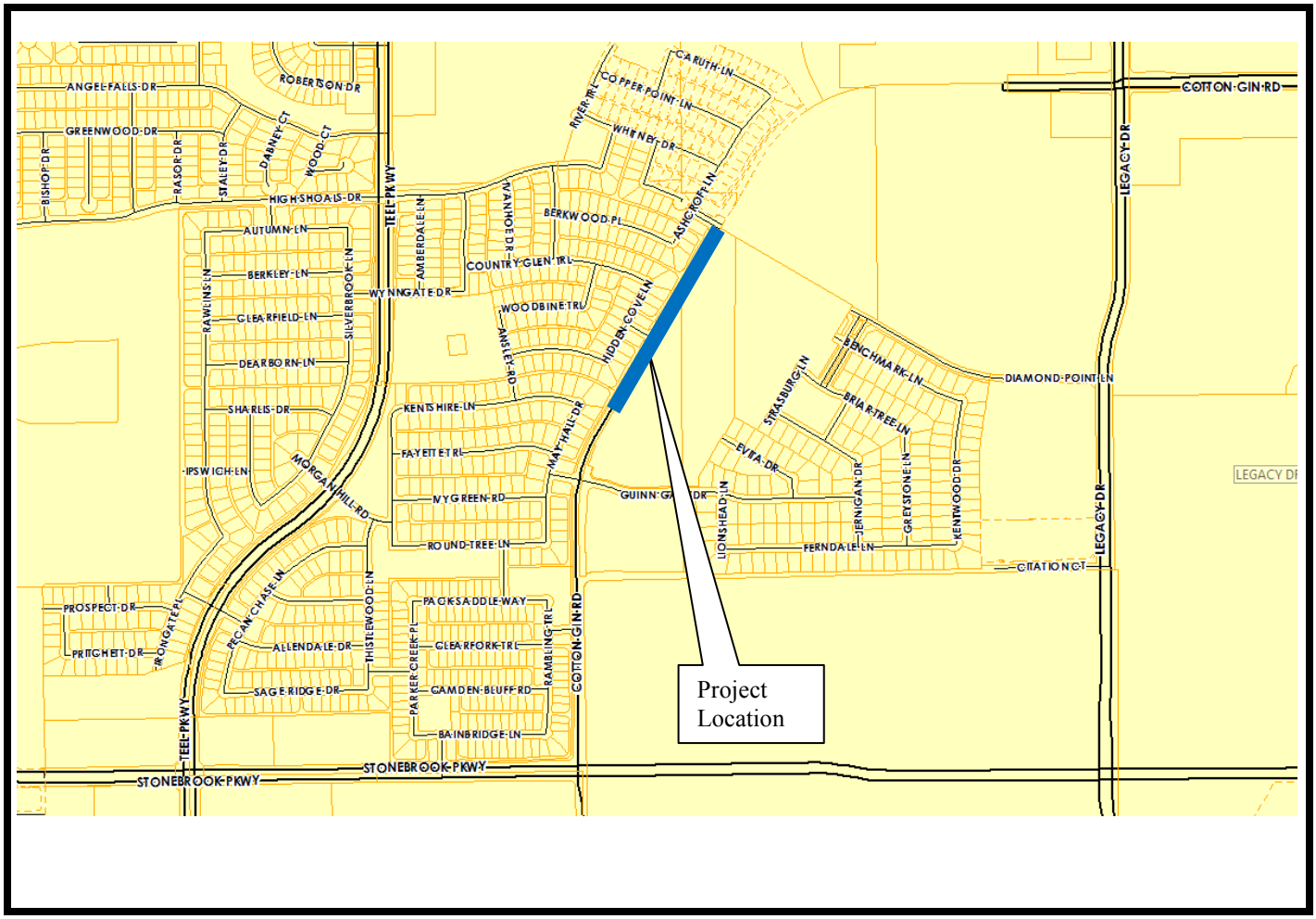
- Project Location Map
- Copy of Resolution
- Copy of Professional Services Agreement

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

FRISCO
PROGRESS IN MOTION

Cotton Gin Road

(Diamond Point Lane to approximately 1400 feet south)
Professional Services Agreement – JBI Partners, Inc
May 15, 2012



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 A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND JBI PARTNERS, INC. FOR DESIGN, BID PACKAGE PREPARATION, AND CONSTRUCTION ADMINISTRATION SERVICES FOR COTTON GIN ROAD IMPROVEMENTS (DIAMOND POINT LANE TO APPROXIMATELY 1400 FEET SOUTH).

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, a Professional Services Agreement by and between The City of Frisco and JBI Partners, Inc. for Design, Bid Package Preparation, and Construction Administration Services for Cotton Gin Road Improvements (Diamond Point Lane to approximately 1400 feet south), 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_____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

JBI Partners, Inc. (CONSULTANT)

FOR

PROFESSIONAL SERVICES

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

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: **JBI Partners, Inc.**
16301 Quorum Drive, #200 B
Telephone: (972) 248-7676
Facsimile: (972) 248-1414

for the following Project: **Cotton Gin Road (Diamond Point Lane to existing Cotton Gin Road)**

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 **JBI Partners, Inc.**, 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 perform professional services for Design, Bid Package Preparation and Construction Administration for Cotton Gin Road from Diamond Point Lane to existing Cotton Gin Road for the City, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional engineering 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 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.

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 as follows: Basic & Special Services to be performed on a Lump Sum Basis, for an amount not to exceed **Fifty-Five Thousand Eight Hundred and 00/100 Dollars ($55,800.00)**, 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 for Basic Services. 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 five percent (5%) of Consultant's Fee for Basic Services 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*
	Professional Engineer	$190
	Registered Professional and Surveyor	$170
	Registered Landscape Architect	$170
	Professional Land Planner	$170
	Professional Engineer	$150
	Graduate Engineer	$120
	Engineering Technician	$100
	Registered Professional Land Surveyor	$140
	Survey Technician	$90
	Survey Field Crew (2-man)	$140
	Survey Field Crew (3-man)	$160
	Registered Landscape Architect	$140
	Landscape Designer	$90
	Professional Land Planner	$140

Construction Manager	$150
Construction Estimator	$120
Administrative Assistant	$80

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). 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:

Paul Knippel, P.E.
Director of Engineering Services
City of Frisco
6101 Frisco Square Boulevard
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:

Jeff Miles, P.E.
President
JBI Partners, Inc.
16301 Quorum Drive, #200 B
Addison, TX 75001

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 Professional Services 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 2011-2012 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 2011-2012 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
JBI Partners, Inc.

By: _____
Jeff Miles, P.E.

Title: ~~President~~ EXECUTIVE VICE PRESIDENT

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 _____, 2012.

_____
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 JEFFREY P. MILES 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 7 DAY OF May, 2012.

NANCY S. LEE
MY COMMISSION EXPIRES
November 25, 2015

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 11-25-15

EXHIBIT "A"
SCOPE OF SERVICES

Agreement by and between the City of Frisco, Texas (City)
and JBI Partners, Inc. (Consultant) for
Cotton Gin Road from Diamond Point Lane to Existing Cotton Gin Road

I. GENERAL REQUIREMENTS

A. Specific design requirements shall be obtained from the City of Frisco Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

B. Engineer shall coordinate with the utility companies, including, but not limited to franchised utilities, City of Frisco, pipeline companies, railroad companies, TxDOT, NTTA, or any other entity which has facilities within or adjacent to the Project, any and all exposure, removal, and/or relocation work necessary for implementation of Project. This shall also include the preparation of additional plans and paperwork necessary to obtain any permits required by any of these entities.

C. Each time the Engineer submits plans and/or specifications to City, eight (8) copies of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Engineer for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

D. The Engineer shall submit a weekly report outlining, at a minimum, the work on the project which occurred the previous week, the work expected to be completed the following week, the next major project milestone, and any information needed from the City.

II. DATA COLLECTION

A. **Survey Services** - Engineer shall furnish a survey field party to collect all field information necessary to prepare complete and detailed plans, specifications, and contract documents consistent with prevailing engineering standards. This field information shall be based on NAD-83 datum.

B. **Right of Entry** - Before the survey party is engaged in surveying on private property, the Engineer shall send letters to all adjacent property owners notifying them of the survey party's intent to survey on private property. The Engineer shall provide the City with the name, address and contact information of the property owners, as well as the property address of the affected property. Permission to survey on private property shall be obtained

EXHIBIT "A"
SCOPE OF SERVICES

from the property owners before surveying is commenced. The letter of permission shall include permission for the Engineer to set iron pins and control monuments for future right-of-way and/or easements to be acquired by the City at a later date. The Engineer will provide copies of the Right of Entry letters to the City for the project files.

C. **Field Survey** – The Engineer shall direct the work of the field party to perform the following:

1. Establish control using City primary control and benchmarks. Permanent control points will be set in concrete at approximate and will define the X, Y and Z coordinates for the Project. The permanent control points shall be set outside the limits of construction (if possible) and shall be a 5/8" iron rod set with a plastic cap. The control points shall be tied to the City benchmarks via a differential level.

2. Establish the proposed centerline or a suitable reference base line on the ground as required by City.

3. Obtain natural ground elevations and cross-sections every fifty feet (50') along the Right-of-Way, and all grade breaks will be surveyed. Collect spot elevations as required to facilitate the generation of one-foot (1') contours.

4. Determine existing pavement type.

5. Determine limits of existing Right of Way.

6. Make a complete topographic survey of all existing features above ground level that would or could affect proposed construction. These features shall include, but are not limited to, above-ground utility appurtenances, manholes (including invert elevations), structures, bridges, culverts, retaining walls, trees, curbs, pavements, sidewalks, fences, property corners, block corners, points of curvature (PC's), points of tangents (PT's), and points of intersections (PI's). Also, all buildings, trees, steps, and other topographical features which would be of interest to the property owner in discussing the plans with the City must be shown accurately.

7. Locate underground utilities or structures that may be within the limits of the Project. Such utilities include, but are not limited to wastewater, water, gas, electric, storm sewer, telephone and television cable. Consultant will contact 1-800-DIG-TESS or individual utility companies to mark existing underground utilities in the field and shall show such utilities on the base map either based upon field locations or available construction as-builts.

EXHIBIT "A"
SCOPE OF SERVICES

D. **Geotechnical Investigation** – The Engineer will provide a Geotechnical Engineering Report, no later than the conceptual design plan submittal, containing the following:

1. Exploration and Sampling – The Engineer shall provide a subgrade investigation in accordance with City of Frisco Engineering Design Standards, Section 8 – Subgrade Design Requirements.

2. Laboratory Testing – The Engineer shall determine soil properties in accordance with City of Frisco Engineering Design Standards, Section 8 – Subgrade Design Requirements.

3. Pavement Design – The Engineer shall recommend a pavement design based on the results of the above testing and in accordance with City of Frisco Engineering Design Standards

III. CONCEPTUAL DESIGN PLANS

A. **Design** - Conceptual Design Plans for the project shall be prepared to such detail as is necessary to resolve all conceptual issues. Conceptual Design Plans are to be prepared to a scale not smaller than 1"=100' and must be approved by the City prior to the Engineer commencing with the preparation of Preliminary Design Plans. Upon approval of the Conceptual Design Plans, the Engineer will provide the City with the approved plans in pdf format, a revised Opinion of Probable Construction Cost (OPCC), and revised schedule for completion of the project. Conceptual Design Plans shall include the following information:

1. Approximate alignment of existing and proposed facility, including curve data.
2. Lane assignments
3. As applicable, the location and size of all proposed median openings and left and right turn bays.
4. The location of existing driveways.
5. Preliminary drainage study which includes:
6. Drainage areas
7. Location and size of existing drainage facilities
8. Approximate size and alignment of proposed drainage facilities.
9. Preliminary locations for water and sanitary sewer lines, noting sizes and any major structures required.
10. Existing right of way and preliminary construction easement and/or right of way needs.

B. **Meeting with Affected Property Owners (MAPO)** – Upon approval of the Conceptual Design Plans by the City, the Engineer will prepare exhibits for and attend a MAPO conducted by the City, if necessary. The Engineer shall

provide the City with the name and address of the property owners, as well as the property address of the affected property.

C. **Construction Estimate** - At the time of submittal of the Conceptual Design Plans, the Engineer shall prepare an estimate of construction quantities and develop preliminary statement of probable construction cost.

D. **Utility Coordination** - Upon approval of the Conceptual Design Plans, the Engineer shall supply Conceptual Design Plans, in both hard copy and pdf format, for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City.

IV. PRELIMINARY DESIGN PLANS

A. **Design** – At such time as the Engineer is directed by the City, the Engineer shall prepare and submit seven (7) sets of Preliminary Design Plans for review on 11" x 17" sheets. At the time of submittal of the Preliminary Design Plans, any supporting studies and/or calculations (i.e. flood studies, structural calculations) shall be submitted for review by the City. Preliminary Design Plans must be approved by the City prior to the Engineer commencing with the preparation of Final Design Plans. Upon approval of the Preliminary Design Plans, the Engineer will provide the City with the approved plans in pdf format and revised schedule for completion of the project. Preliminary Design Plans shall include, at a minimum, the following information:

1. Title Sheet
2. Project Layout
3. Existing and Proposed Typical Sections
4. Preliminary Traffic Control Plan
5. Paving Plan/Profile
6. Drainage Sheets
7. Drainage Area Map
8. Hydraulic Calculation Sheets
9. Drainage Plans
10. Culvert Layout Sheets
11. Signing and Pavement Markings
12. Cross Sections – Prepare detailed cross section in sufficient detail for construction at a maximum of 50' intervals and include at a minimum the following information:
    a. Existing and Proposed Conditions.
    b. Baseline and Right-of-Way Designations.
    c. Existing Natural Ground extending at least 10' beyond proposed ROW line
    d. Ditch Flowlines labeled with offsets and elevations.
    e. Plot existing utilities that will remain in place.

f. Side slope ratios.

13. Landscape Plans – Prepare detailed plans and details along Village Lakes, Phase 2 according to Village Lakes Phase 2 escrow agreement for the following:
    a. Screening wall plans and details
    b. Sidewalk plans
    c. Landscape plan and details
    d. Irrigation plan and details.

B. **Construction Estimate** - At the time of submittal of the Preliminary Design Plans, the Engineer shall prepare an estimate of construction quantities and develop preliminary statement of probable construction cost.

C. **Right of Way Documents** - Upon approval of the Preliminary Design Plans, the Engineer shall survey, render field notes, and prepare individual parcel exhibits for easements, including temporary construction easements, needed for the Project.

D. **Parcel Exhibits** – Individual parcel exhibits shall be in both hard copy (8 1/2 " x 11") and pdf format, shall be sealed, signed and dated by a Registered Professional Land Surveyor and shall contain the following:

1. Parcel number
2. Area required
3. Legal description
4. Current owner
5. Any existing platted easements or easements filed by separate instrument including easements provided by utility companies.
6. All physical features
7. Metes and bounds descriptions of parcel to be acquired. The description shall be provided on a separate sheet from the exhibit. Each type of easement shall be described separately.

E. **Utility Coordination** - Upon approval of the Preliminary Design Plans, the Engineer shall supply Preliminary Design Plans, in both hard copy and pdf format, for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also provide a Utility Exhibit showing the alignment of franchise utilities within the project limits and potential conflict points. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City.

V. FINAL DESIGN / CONSTRUCTION PLANS

A. At such time as the Engineer is directed by the City, the Engineer shall prepare Final Design / Construction Plans. Final Design Plans shall be

consistent with the content and format of the Preliminary Design Plans and, in addition, shall include the following:

1. General Notes – Construction General Notes shall be compiled and inserted in the plans after the Typical Sections.

2. Quantity Summary Sheets – Quantities shall be compiled and summarized in a tabular format with the description of the items matching that of the bid documents. Quantity Summary Sheets shall be located in the plans following the General Notes.

3. Final Earthwork Calculations - Earthwork shall be calculated using the average end area method of cross section on a usual spacing of even fifty foot (50') stations plus additional critical locations (such as culvert locations) needed to properly quantify earthwork. Cut and Fill quantities for each cross section will be calculated and shown on the cross section sheets.

4. Details and Standards – Appropriate details and standards shall be compiled and inserted into the plans following the section in which the detail or standard is applied.

5. Bid Proposal

6. Special Specifications, if applicable.

7. Construction Estimate - The Engineer shall develop and submit a final estimate of construction cost.

B. Utility Coordination - Upon completion of the Final Design / Construction Plans, the Engineer shall distribute any changes from the Preliminary Design Plans for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City.

VI. BID PHASE SERVICES

The Engineer shall provide services to assist the City in selection of a Contractor for the construction of the Project. These services shall consist of the following:

1. Preparation and Delivery of Bid Documents – The Engineer shall assist the City in the delivery of the Bid Documents to prospective bidders. The Engineer shall maintain a list of prospective bidders receiving the Bid Documents. The Engineer may sell sets of Bid Documents to contractors, suppliers, subcontractors, etc. The purchase price paid should offset the reproduction and distribution costs. In addition, the Engineer will send

Construction Documents to appropriate contractor plan rooms and three (3) sets to the City.

2. Bid Period Requests for Information (RFI) – The Engineer shall develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders questions and requests and the response thereto. The Engineer shall provide technical interpretation of the Bid Documents and shall prepare proposed responses to all contractors' questions and requests to be approved by the City. The responses may be in the form of addenda.

3. Addenda – The Engineer shall assist the City in issuing Addenda to the Bid Documents and shall distribute Addenda to the bidders. All Addenda shall be approved by the City.

4. Bid Opening – The Engineer shall assist the City in opening of bids. The Engineer shall review all bids and evaluate them for responsiveness and bid amount and prepare bid tabulation for all responsive bidders. The bid tabulation shall be delivered to the City in Excel format. The Engineer will also verify through reasonable investigation the financial and performance history documentation submitted by the low bidder and second low bidder. The Engineer shall prepare a report of its review and evaluation and include recommendations for award of the contract for construction, or other action as may be appropriate. The City shall make the final decision on the award of the contract for construction and the acceptance or rejection of all bids.

5. Recommendation of Contract Award – The Engineer shall assist the City in preparing the notice of award; assembly, delivery and execution of the contract documents for construction; and preparation of the notice to proceed.

6. Conformed Document Preparation – The Engineer shall incorporate all addenda into contract documents and issue conformed sets. Eight (8) conformed sets of original contract documents will be distributed to the City and the successful contractor.

VII. CONSTRUCTION ADMINISTRATION

These services are intended to assist the City in administering the contract for construction, monitoring the performance of the construction Contractor, verifying that the Contractor's work is in substantial compliance with the contract documents, and assisting the City in responding to the events that occur during construction. The Engineer shall provide Construction Administration Services as defined below.

EXHIBIT "A"
SCOPE OF SERVICES

1. Pre-Construction Conference – The Engineer shall coordinate and attend the preconstruction conference with the Contractor to review the Project communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the Project. The Engineer will take minutes or otherwise record the results of this conference. Meeting minutes from the Conference will be returned to the City within a seventy-two (72) hour period after the conference is held.

2. Review of Shop Drawings, Samples and Submittals - The Engineer shall coordinate with the City for the reviews of the Contractor's shop drawings, samples and other submittals for conformance with the design concept and general compliance with the requirements of the contract for construction. The Engineer will log and track all shop drawings, samples and submittals.

3. Requests for Information – The Engineer will review the Contractor's requests for information or clarification of the contract for construction. The Engineer will coordinate and issue responses to requests to the City. The Engineer will log and track the Contractor's requests.

4. Review of Contractor's Requested Changes – The Engineer shall review all Contractor-requested changes to the contract for construction. The Engineer will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, the Engineer shall prepare final change order documents.

5. TDLR Notice of Substantial Compliance – The Engineer shall complete tasks as specified in Article 3, Section 3.1.4 of the Agreement.

6. Completion of Record Documents – The Engineer shall prepare construction Record Documents based on information received from the Construction Contractor within thirty (30) days of substantial completion of construction and provide to the City the items (and quantities as stated) identified in Paragraph V(A)(8).

VIII. ATTACHMENTS (If Applicable)

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

Agreement by and between the City of Frisco, Texas (City)
and JBI Partners, Inc. (Consultant) for
Cotton Gin Road from Diamond Point Lane to Existing Cotton Gin Road

I. COMPENSATION SCHEDULE

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
May 15, 2012	--	City Council approval of a Resolution authorizing the City Manager to execute the Agreement; City issues Notice to Proceed to Consultant.
May 15, 2012	--	Consultant's receipt of fully executed Agreement.
June 15, 2012	$4,000.00	**Surveying Services** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
June 15, 2012	$8,000.00	**Geotechnical Investigation (**Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
July 2, 2012	$6,000.00	**Conceptual Design Plans** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
September 4, 2012	$9,000.00	**Preliminary Design Plans** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
September 4, 2012	$2,000.00	**Right of Way Documents** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
November 2, 2012	$12,000.00	**Final Design/Construction Plans** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
January 2, 2013	$4,000.00	**Bid Phase Services** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
August 2, 2013	$7,000.00	**Construction Administration Services** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
August 2, 2013	$1,000.00	**TDLR Notice of Substantial Compliance.**
August 2, 2013	$2,800.00	**Completion of Record Documents.**
TOTAL CONSULTANT'S FEE (LUMP SUM, NOT-TO-EXCEED)	**$55,800.00**	

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

II. PROJECT BUDGET SUMMARY.

A. Data Collection.	
1. Surveying Services.	$ 4,000
2. Geotechnical Investigation.	$ 8,000
3. ***Subtotal, Data Collection***	***$ 12,000***
B. Conceptual Design.	***$ 6,000***
C. Preliminary Design.	
1. Preliminary Design Plans	$ 9,000
2. Right of Way Documents	$ 2,000
3. ***Subtotal, Preliminary Design Plans***	***$ 11,000***
D. Final Design/Construction Plans.	***$ 12,000***
E. Bid Phase Services.	***$ 4,000***
F. Construction Administration Services.	
1. Construction Administration	$ 7,000
2. TDLR Notice of Substantial Compliance. *(5% of Consultant's Fee Allocated for Road Design)*	$ 1,000
3. Completion of Record Documents. *(5% of Consultant's Fee)*	$ 2,800
4. ***Subtotal, Construction Administration***	***$ 10,800***
G. Total Basic Services (Lump Sum, Not-To-Exceed)	**$ 55,800**
H. Total Direct Expenses (Lump Sum, Not-To-Exceed)	***$ 0***

I. ***Project Budget, Grand Total (Lump Sum, Not-To-Exceed) $ 55,800***

EXHIBIT "C"
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

EXHIBIT "D"
CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

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 PROFESSIONAL SERVICES 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 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 PROFESSIONAL SERVICES 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 DALLAS §

I, JEFFREY P. MILES, 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: _____.

X 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 7th day of MAY, 2012.

JEFFREY P. MILES, EXEC. V.P.
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Jeffrey P. Miles 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 7th day of May, 2012.

NANCY S. LEE
MY COMMISSION EXPIRES
November 25, 2015

Notary Public in and for the State of Texas
My commission expires: 11-25-2015

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.**

JBI PARTNERS, INC., JEFFREY P. MILES ITS EXEC. V. P.

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.**

NONE

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.**

NONE

Amended 01/13/2006

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.**

NONE

7

JEFFREY P. MILES — 5/7/2012

Signature of person doing business with the governmental entity — Date

Amended 01/13/2006

AGENDA ITEM #14.

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: **May 15, 2012**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and JBI Partners, Inc. to perform Design, Bid Package Preparation, and Construction Administration Services for the west side of Coit Road from Buckeye Drive to Panther Creek Parkway and the south side of Panther Creek Parkway from Honey Grove Drive to Coit Road.**

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco, Texas and JBI Partners, Inc. (JBI), in the amount of $100,590 to perform Design, Bid Package Preparation, and Construction Administration Services for the west side of Coit Road from Buckeye Drive to Panther Creek Parkway and the south side of Panther Creek Parkway from Honey Grove Drive to Coit Road.

Background Information: JBI will provide engineering design, bid phase, and construction administration services for the construction of the two lanes on the west side of Coit Road from Buckeye Drive to Panther Creek Parkway. The City of McKinney is currently constructing the east two lanes of Coit within these limits as part of a residential development project; therefore, upon completion of Frisco's project, Coit Road will be four lanes from SH 121 to Panther Creek Parkway. In addition, JBI will provide engineering design, bid phase, and construction administration services for the construction of the two lanes on the south side of Panther Creek Parkway from Honey Grove Drive to Coit Road. Upon completion, Panther Creek Parkway will be continuous as a two lane roadway between Preston Road and Coit Road. The complete intersection design of Coit Road and Panther Creek Parkway is also included in JBI's proposed scope. Finally, JBI will provide a preliminary alignment study for location of a future 48" water transmission line along

or near Coit Road to the north. The total length of new roadway to be designed and constructed is approximately 5,400 feet and includes paving, sidewalks, and drainage.

The Professional Services Agreement includes surveying, geotechnical investigation, design and bid package preparation, preparation of right of way and/or easement documents, and construction administration services.

Design is estimated to be complete by the end of 2012. Construction is anticipated to begin in early 2013 and is expected to be completed by Fall 2013.

Alternatives: City Council could consider the following alternatives:

- Approval of a Resolution
- Deny approval of the Resolution

Financial Considerations: The cost of the Agreement is $100,590. Funding for the Project will come from General Obligation Bonds. Coit Road is included on the 2007 Collin County Bond Program. Fifty percent (50%) of the total cost of the Coit Road portion of the project, including engineering and construction, will be reimbursed by Collin County.

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

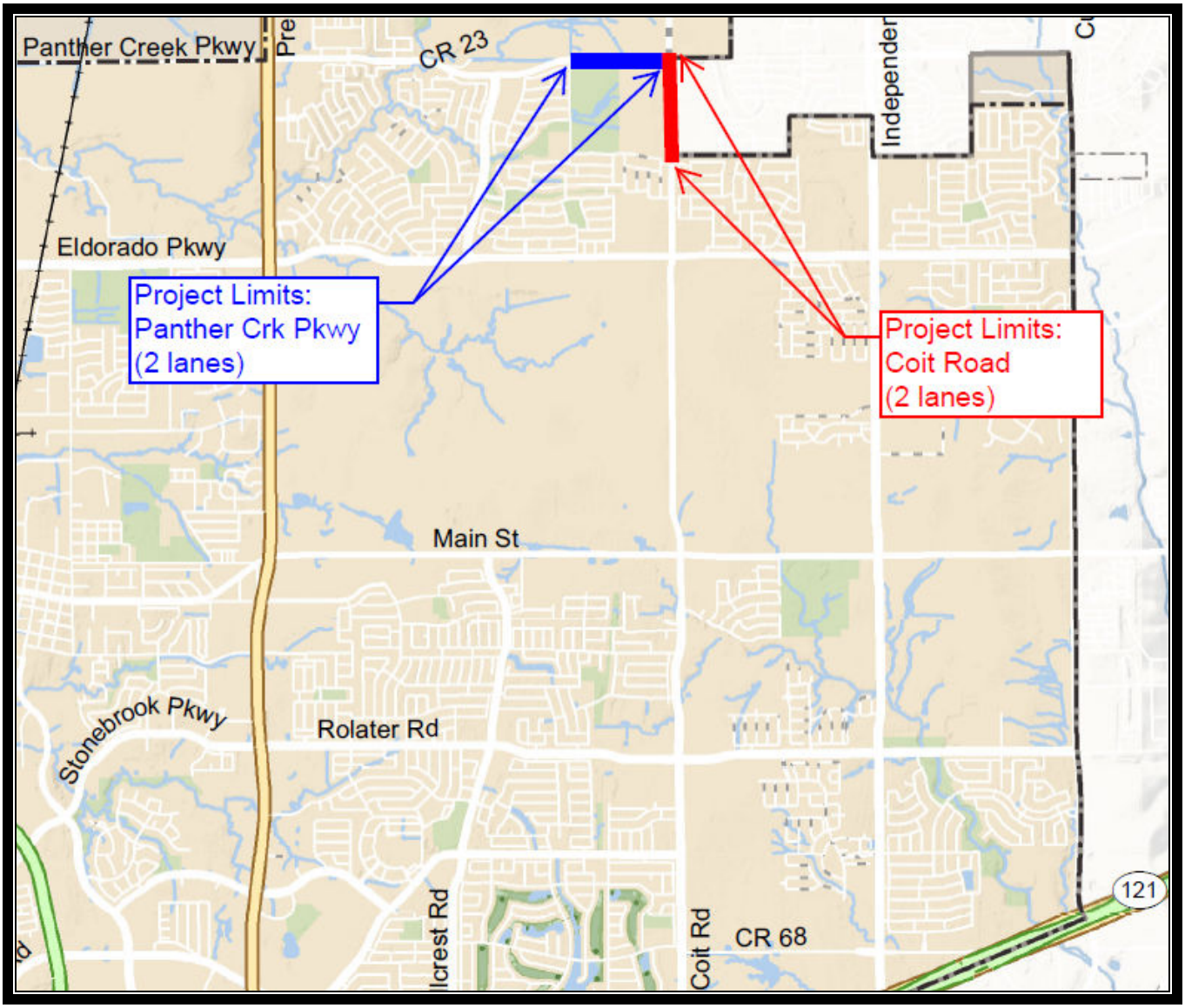
Supporting Documents: Supporting documents include the following items:

- Project Location Map
- Copy of Professional Services Agreement
- Copy of Resolution

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

FRISCO
PROGRESS IN MOTION

Coit Road and Panther Creek Parkway Improvements
Professional Services Agreement – JBI Partners, Inc.
May 15, 2012



AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

JBI Partners, INC. (CONSULTANT)

FOR

PROFESSIONAL SERVICES

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

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: **JBI Partners, Inc.**
16301 Quorum Drive #200 B
Addison, TX 75001

Telephone: 972-248-7676 (office)
Facsimille: 972-248-1414

for the following Project: **Coit Road and Panther Creek Parkway (Design, Bid Package Preparation and Construction Administration)**

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 **JBI Partners, Inc.**, 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 perform professional services for Coit Road and Panther Creek Parkway (Design, Bid Package Preparation and Construction Administration) for the City, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional engineering 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 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.

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 as follows: Basic & Special Services to be performed on a Lump Sum Basis, for an amount not to exceed **One Hundred Thousand Five Hundred Ninety and 00/100 Dollars ($100,590.00)**, 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 for Basic Services. 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 five percent (5%) of Consultant's Fee for Basic Services 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*
	Principals	Hourly Rate
	Professional Engineer	$190
	Registered Professional Land Surveyor	$170
	Registered Landscape Architect	$170
	Professional Land Planner	$170
	Staff	
	Professional Engineer	$150
	Graduate Engineer	$120
	Engineering Technician	$100
	Registered Professional Land Surveyor	$140
	Survey Technician	$90
	Survey Field Crew (2-man)	$140
	Survey Field Crew (3-man)	$160
	Registered Landscape Architect	$140
	Landscape Designer	$90

Professional Land Planner	$140
Construction Manager	$150
Construction Estimator	$120
Administrative Assistant	$80

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). 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:

Paul Knippel, P.E.
Director of Engineering Services
City of Frisco
6101 Frisco Square Boulevard
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:

Thomas K. Juhn, P.E.
President
JBI Partners, Inc.
16301 Quorum Drive, #200 B
Addison, TX 75001

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 2011-2012 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 2011-2012 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
JBI Partners, Inc.

By: _____
Title: PRESIDENT

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 _____, 2012.

_____
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 Thomas K. Juhn 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 7th DAY OF May, 2012.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 11-25-2015

NANCY S. LEE
MY COMMISSION EXPIRES
November 25, 2015

EXHIBIT "A"
SCOPE OF SERVICES

Agreement by and between the City of Frisco, Texas (City) and JBI Partners, Inc. (Consultant) to perform Design, Bid Package Preparation and Construction Administration for Coit Road and Panther Creek Parkway

I. PROJECT DESCRIPTION

Professional services for construction plans, bid package preparation, and construction administration for two lanes (west side) of Coit Road, including the median, from Buckeye Drive north, approximately 2700 linear feet, to Panther Creek Parkway and two lanes (south side) of Panther Creek Parkway from Honey Grove Drive east, approximately 2700 linear feet, to Coit Road and including the Panther Creek Parkway/Coit Road intersection. In addition, the Engineer will perform a study for alternatives for the alignment of the City water transmission line.

1. Engineer will coordinate with Cowin Engineers and the City of McKinney for information regarding construction of the east side lanes of Coit Road.
2. Engineer will design Coit Road median (sod) with conduit installed at median openings for future irrigation and illumination.
3. Irrigation plans are not included as requested by the City and NOT included in this scope of services.
4. Median design for Panther Creek Parkway is not included.
5. City will coordinate with Atmos Gas facility on Coit Road, north of Buckeye.
6. Construction staking is NOT included in this scope of services.
7. City to provide inspection.

II. GENERAL REQUIREMENTS

A. Specific design requirements shall be obtained from the City of Frisco Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

B. Engineer shall coordinate with the utility companies, including, but not limited to franchised utilities, City of Frisco, pipeline companies, railroad companies, TxDOT, NTTA, or any other entity which has facilities within or adjacent to the Project, any and all exposure, removal, and/or relocation work necessary for implementation of Project. This shall also include the preparation of additional plans and paperwork necessary to obtain any permits required by any of these entities.

C. Each time the Engineer submits plans and/or specifications to City, eight (8) copies of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Engineer for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans,

specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

D. The Engineer shall submit a weekly report outlining, at a minimum, the work on the project which occurred the previous week, the work expected to be completed the following week, the next major project milestone, and any information needed from the City.

III. DATA COLLECTION

A. Survey Services - Engineer shall furnish a survey field party to collect all field information necessary to prepare complete and detailed plans, specifications, and contract documents consistent with prevailing engineering standards. This field information shall be based on NAD-83 datum.

1. Right of Entry - Before the survey party is engaged in surveying on private property, the Engineer shall send letters to all adjacent property owners notifying them of the survey party's intent to survey on private property. The Engineer shall provide the City with the name, address and contact information of the property owners, as well as the property address of the affected property. Permission to survey on private property shall be obtained from the property owners before surveying is commenced. The letter of permission shall include permission for the Engineer to set iron pins and control monuments for future right-of-way and/or easements to be acquired by the City at a later date. The Engineer will provide copies of the Right of Entry letters to the City for the project files.

2. Field Survey – The Engineer shall direct the work of the field party to perform the following:

   a. Establish control using City primary control and benchmarks. Permanent control points will be set in concrete at approximate and will define the X, Y and Z coordinates for the Project. The permanent control points shall be set outside the limits of construction (if possible) and shall be a 5/8" iron rod set with a plastic cap. The control points shall be tied to the City benchmarks via a differential level.

   b. Establish the proposed centerline or a suitable reference base line on the ground as required by City.

   c. Obtain natural ground elevations and cross-sections every fifty feet (50') along the Right-of-Way, and all grade breaks will be surveyed. Collect spot elevations as required to facilitate the generation of one-foot (1') contours.

   d. Determine existing pavement type.

e. Determine limits of existing Right of Way.

f. Make a complete topographic survey of all existing features above ground level that would or could affect proposed construction. These features shall include, but are not limited to, above-ground utility appurtenances, manholes (including invert elevations), structures, bridges, culverts, retaining walls, trees, curbs, pavements, sidewalks, fences, property corners, block corners, points of curvature (PC's), points of tangents (PT's), and points of intersections (PI's). Also, all buildings, trees, steps, and other topographical features which would be of interest to the property owner in discussing the plans with the City must be shown accurately.

g. Locate underground utilities or structures that may be within the limits of the Project. Such utilities include, but are not limited to wastewater, water, gas, electric, storm sewer, telephone and television cable. Consultant will contact 1-800-DIG-TESS or individual utility companies to mark existing underground utilities in the field and shall show such utilities on the base map either based upon field locations or available construction as-builts.

h. City will coordinate with Atmos Gas regarding relocation of gas facilities.

B. Geotechnical Investigation – The Engineer will provide a Geotechnical Engineering Report, no later than the conceptual design plan submittal, containing the following:

1. Exploration and Sampling – The Engineer shall provide a subgrade investigation in accordance with City of Frisco Engineering Design Standards, Section 8 – Subgrade Design Requirements.

2. Laboratory Testing – The Engineer shall determine soil properties in accordance with City of Frisco Engineering Design Standards, Section 8 – Subgrade Design Requirements.

3. Pavement Design – The Engineer shall recommend a pavement design based on the results of the above testing and in accordance with City of Frisco Engineering Design Standards.

IV. CONCEPTUAL DESIGN PLANS

A. Design – Conceptual Design Plans for the project shall be prepared to such detail as is necessary to resolve all conceptual issues. Conceptual Design Plans are to be prepared to a scale not smaller than 1"=100' and must be approved by the City prior to the Engineer commencing with the preparation of Preliminary Design Plans. Upon approval of the Conceptual Design Plans, the Engineer will provide the City with the approved plans in PDF format, a revised Opinion of Probable

Construction Cost (OPCC), and revised schedule for completion of the project. Conceptual Design Plans shall include the following information:

1. Approximate alignment of existing and proposed facility, including curve data.
2. Lane assignments
3. As applicable, the location and size of all proposed median openings and left and right turn bays.
4. The location of existing driveways.
5. Preliminary drainage study which includes:
    a. Drainage areas
    b. Location and size of existing drainage facilities
    c. Approximate size and alignment of proposed drainage facilities.
6. Preliminary locations for water and sanitary sewer lines, noting sizes and any major structures required.
7. Existing right of way and preliminary construction easement and/or right of way needs.

B. Meeting with Affected Property Owners (MAPO) – Upon approval of the Conceptual Design Plans by the City, the Engineer will prepare exhibits for and attend a MAPO conducted by the City, if necessary. The Engineer shall provide the City with the name and address of the property owners, as well as the property address of the affected property.

C. Construction Estimate - At the time of submittal of the Conceptual Design Plans, the Engineer shall prepare an estimate of construction quantities and develop preliminary statement of probable construction cost.

D. Utility Coordination - Upon approval of the Conceptual Design Plans, the Engineer shall supply Conceptual Design Plans, in both hard copy and PDF format, for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City.

V. PRELIMINARY DESIGN PLANS

A. Design – At such time as the Engineer is directed by the City, the Engineer shall prepare and submit eight (8) sets of Preliminary Design Plans for review on 11" x 17" and/or 22" x 34" sheets, as requested by the City. At the time of submittal of the Preliminary Design Plans, any supporting studies and/or calculations (i.e. flood studies, structural calculations) shall be submitted for review by the City. Preliminary Design Plans must be approved by the City prior to the Engineer commencing with the preparation of Final Design Plans. Upon approval of the Preliminary Design Plans, the Engineer will provide the City with the approved plans in PDF format and revised schedule for completion of the project. Preliminary Design Plans shall include, at a minimum, the following information:

EXHIBIT "A"
SCOPE OF SERVICES

1. Title Sheet
2. Project Layout
3. Existing and Proposed Typical Sections
4. Preliminary Traffic Control Plan
5. Paving Plan/Profile
6. Intersection Layouts
7. Drainage Sheets
    a. Drainage Area Map
    b. Hydraulic Calculation Sheets
    c. Drainage Plans
    d. Culvert Layout Sheets
8. Signing and Pavement Markings
9. Cross Sections – Prepare detailed cross section in sufficient detail for construction at a maximum of 100' intervals and include at a minimum the following information:
    a. Existing and Proposed Conditions.
    b. Baseline and Right-of-Way Designations.
    c. Existing Natural Ground extending at least 10' beyond proposed ROW line
    d. Ditch Flowlines labeled with offsets and elevations.
    e. Existing utilities that will remain in place.
    f. Side slope ratios.

B. **Construction Estimate** - At the time of submittal of the Preliminary Design Plans, the Engineer shall prepare an estimate of construction quantities and develop preliminary statement of probable construction cost.

C. **Right of Way Documents** - Upon approval of the Preliminary Design Plans, the Engineer shall survey, render field notes, and prepare right-of-way (ROW) maps and individual parcel exhibits for any additional ROW and/or easements, including temporary construction easements, needed for the Project.

1. Right of Way Maps – The Engineer shall prepare the ROW strip maps on 11" x 17" paper. The maps shall also be submitted in PDF format for review. The maps shall be sealed, signed and dated by a Registered Professional Land Surveyor and shall contain the following:
    a. Summary sheet of parcels to be acquired. The summary sheet shall contain the following information:
        i. Parcel number
        ii. Property owner
        iii. Legal description of the property
        iv. Gross area of the property
        v. Square footage and type of easements to be acquired
        vi. Current volume and page
        vii. Blank column for volume and page filing information

b. Location of all existing and proposed property pins, including coordinates and station and offset to the centerline
c. Parcel numbers
d. Area required
e. Current owner
f. Any existing platted easements or easements filed by separate instrument including easements provided by utility companies.

2. Parcel Exhibits – Individual parcel exhibits shall be in both hard copy (8 1/2 " x 11") and PDF format, shall be sealed, signed and dated by a Registered Professional Land Surveyor and shall contain the following:
   a. Parcel number
   b. Area required
   c. Area remaining
   d. Legal description
   e. Current owner
   f. Any existing platted easements or easements filed by separate instrument including easements provided by utility companies.
   g. All physical features
   h. Metes and bounds descriptions of parcel to be acquired. The description shall be provided on a separate sheet from the exhibit. Each type of easement shall be described separately.

D. Utility Coordination - Upon approval of the Preliminary Design Plans, the Engineer shall supply Preliminary Design Plans, in both hard copy and PDF format, for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also provide a Utility Exhibit showing the alignment of franchise utilities within the project limits and potential conflict points. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City. Engineer will provide PDF of the plans and the City will coordinate.

VI. **FINAL DESIGN / CONSTRUCTION PLANS** – At such time as the Engineer is directed by the City, the Engineer shall prepare Final Design / Construction Plans. Final Design Plans shall be consistent with the content and format of the Preliminary Design Plans and, in addition, shall include the following:

A. General Notes – Construction General Notes shall be provided by the City and inserted in the plans by the Engineer.

B. Quantity Summary Sheets – Quantities shall be compiled and summarized in a tabular format with the description of the items matching that of the bid documents.

C. Final Earthwork Calculations - Earthwork shall be calculated using the average end area method of cross section on a usual spacing of even one hundred foot (100') stations plus additional critical locations (such as culvert locations) needed

to properly quantify earthwork. Cut and Fill quantities for each cross section will be calculated and shown on the cross section sheets.

D. **Details and Standards** – Appropriate details and standards shall be provided by the City and inserted into the plans by the Engineer.

E. **Bid Book** - City will provide format and standard documentation. Engineer will complete sections specific to the Project.

F. **Special Specifications**, if applicable.

G. **Construction Estimate** - The Engineer shall develop and submit a final estimate of construction cost.

H. **Utility Coordination** - Upon completion of the Final Design / Construction Plans, the Engineer shall distribute any changes from the Preliminary Design Plans for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Engineer shall also attend any utility coordination meetings for the Project, if requested by the City.

VII. **BID PHASE SERVICES** – The Engineer shall provide services to assist the City in selection of a Contractor for the construction of the Project. These services shall consist of the following:

A. **Preparation and Delivery of Bid Documents** – The Engineer shall assist the City in the delivery of the Bid Documents to prospective bidders. The Engineer shall maintain a list of prospective bidders receiving the Bid Documents. The Engineer may sell sets of Bid Documents to contractors, suppliers, subcontractors, etc. The purchase price paid should offset the reproduction and distribution costs. In addition, the Engineer will send Construction Documents to appropriate contractor plan rooms and three (3) sets to the City.

B. **Bid Period Requests for Information (RFI)** – The Engineer shall develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders questions and requests and the response thereto. The Engineer shall provide technical interpretation of the Bid Documents and shall prepare proposed responses to all contractors' questions and requests to be approved by the City. The responses may be in the form of addenda.

C. **Addenda** – The Engineer shall assist the City in issuing Addenda to the Bid Documents and shall distribute Addenda to the bidders. All Addenda shall be approved by the City.

D. **Bid Opening** – The Engineer shall assist the City in opening of bids. The Engineer shall review all bids and evaluate them for responsiveness and bid

amount and prepare bid tabulation for all responsive bidders. The bid tabulation shall be delivered to the City in Excel format. The Engineer will also verify through reasonable investigation the financial and performance history documentation submitted by the low bidder and second low bidder. The Engineer shall prepare a report of its review and evaluation and include recommendations for award of the contract for construction, or other action as may be appropriate. The City shall make the final decision on the award of the contract for construction and the acceptance or rejection of all bids.

E. **Recommendation of Contract Award** – The Engineer shall assist the City in preparing the notice of award; assembly, delivery and execution of the contract documents for construction; and preparation of the notice to proceed.

F. **Conformed Document Preparation** – The Engineer shall incorporate all addenda into contract documents and issue conformed sets as required by the City.

VIII. **CONSTRUCTION ADMINISTRATION** – These services are intended to assist the City in administering the contract for construction, monitoring the performance of the construction Contractor, verifying that the Contractor's work is in substantial compliance with the contract documents, and assisting the City in responding to the events that occur during construction. The Engineer shall provide Construction Administration Services as defined below.

A. **Pre-Construction Conference** – The Engineer shall coordinate and attend the preconstruction conference with the Contractor to review the Project communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the Project. The Engineer will take minutes or otherwise record the results of this conference. Meeting minutes from the Conference will be returned to the City within a seventy-two (72) hour period after the conference is held.

B. **Review of Shop Drawings, Samples and Submittals** - The Engineer shall coordinate with the City for the reviews of the Contractor's shop drawings, samples and other submittals for conformance with the design concept and general compliance with the requirements of the contract for construction. The Engineer will log and track all shop drawings, samples and submittals.

C. **Requests for Information** – The Engineer will review the Contractor's requests for information or clarification of the contract for construction. The Engineer will coordinate and issue responses to requests to the City. The Engineer will log and track the Contractor's requests.

D. **Review of Contractor's Requested Changes** – The Engineer shall review all Contractor-requested changes to the contract for construction. The Engineer will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the

requested change. Upon agreement and approval, the Engineer shall prepare final change order documents.

E. **TDLR Notice of Substantial Compliance** – The Engineer shall complete tasks as specified in Article 3, Section 3.1.4 of the Agreement.

F. **Completion of Record Documents** – The Engineer shall prepare construction Record Documents based on information received from the Construction Contractor within thirty (30) days of substantial completion of construction and provide to the City the items (and quantities as stated) identified in Paragraph V(A)(8).

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING SUMMARY

Agreement by and between the City of Frisco, Texas (City)
and JBI Partners, Inc. (Consultant)
to perform Design, Bid Package Preparation and Construction Administration
for Coit Road and Panther Creek Parkway

I. **COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.**

A. Data Collection	
(Expected Completion Date: July 2, 2012)	
1. Surveying Services.	$ 8,400
2. Geotechnical Investigation.	$12,000
3. ***Subtotal, Data Collection***	***$ 20,400***
B. Conceptual Design	
(Expected Completion Date: July 2, 2012)	
1. Conceptual Design Plans	$ 4,000
2. 48" Water Line Preliminary Alignment Study	$ 5,000
3. ***Subtotal, Preliminary Design Plans***	***$ 9,000***
C. Preliminary Design	
(Expected Completion Date: September 4, 2012)	
1. Preliminary Design Plans	$ 5,000
2. Right of Way Documents	$ 1,500
3. ***Subtotal, Preliminary Design Plans***	***$ 6,500***
D. Final Design/Construction Plans	***$ 40,000***
(Expected Completion Date: November 5, 2012)	
E. Bid Phase Services.	***$ 9,000***
(Expected Completion Date: December 10, 2012)	
F. Construction Administration Services	
(Expected Completion Date: September 3, 2013)	
1. Construction Administration	$ 7,000
2. TDLR Notice of Substantial Compliance.	$ 4,345
3. Completion of Record Documents.	$ 4,345
4. ***Subtotal, Construction Administration***	***$ 15,690***

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING SUMMARY

G. Total Basic Services (Lump Sum, Not-To-Exceed) $ 100,590

H. Total Direct Expenses (Lump Sum, Not-To-Exceed) $ 0.00

I. *Project Budget, Grand Total (Lump Sum, Not-To-Exceed) $ 100,590*

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.

A. 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.

B. 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 Dallas §

I, Thomas K. John, 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 7th day of MAY, 2012.

Thomas K. John / PRESIDENT
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Thomas K. John 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 7th day of May, 2012.

NANCY S. LEE
MY COMMISSION EXPIRES
November 25, 2015

Notary Public in and for the State of Texas
My commission expires: 11-25-2015

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.**

THOMAS K. JUHN

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.**

NONE

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.**

NONE

Amended 8/13/2004

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

5/7/2012
Date

Amended 01/13/2006

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 A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND JBI PARTNERS, INC. FOR DESIGN, BID PACKAGE PREPARATION, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE WEST SIDE OF COIT ROAD FROM BUCKEYE DRIVE TO PANTHER CREEK PARKWAY AND THE SOUTH SIDE OF PANTHER CREEK PARKWAY FROM HONEY GROVE DRIVE TO COIT ROAD.

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, a Professional Services Agreement by and between The City of Frisco and JBI Partners, Inc. for Design, Bid Package Preparation, and Construction Administration Services for the west side of Coit Road from Buckeye Drive to Panther Creek Parkway and the south side of Panther Creek Parkway from Honey Grove Drive to Coit Road, 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_____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AGENDA ITEM #15.

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**

From: **Paul Knippel, Director of Engineering Services**

Date: **May 15, 2012**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Reclaimed Water Use Agreement by and between the City of Frisco and Phillips Creek Ranch Community Association**

Action Requested: Staff requests that City Council consider and act upon adoption of a Resolution authorizing the City Manager to execute a Reclaimed Water Use Agreement by and between the City of Frisco and Phillips Creek Ranch (PCR).

Background Information: Phillips Creek Ranch desires to use City of Frisco wastewater treatment plant effluent (reclaimed water) for landscape irrigation along Stonebrook Parkway, Lone Star Ranch Parkway, and other common areas within the development. Through separate agreement between PCR and the City, PCR is responsible for installation and maintenance of landscaping along portions of Stonebrook Parkway and Lone Star Ranch Parkway.

Main points of the agreement are as follows:

- PCR shall fund and install the infrastructure necessary for the delivery of the water to their site.
- PCR shall pay a minimum of $37,500 for the first 50 million gallons annually. The rate for usage beyond 50 million gallons is $0.75 per 1,000 gallons. The agreement provides for periodic rate increases after the first five years.
- The maximum annual delivery shall not exceed 150 million gallons.

Alternatives: The City Council could consider the following alternatives:

- Approval of Resolution to authorize City Manager to execute the Agreement;
- Input towards the discussion as desired;
- Deny approval of Resolution;

Financial Considerations: Cost of master meters and maintenance of off-site facilities shall be absorbed within city operations budget.

Legal Review: This agreement has been reviewed and approved by the City Attorney's office.

Supporting Documents:

- Agreement
- Resolution

Staff Recommendation: Staff recommends the City Council adopt this Resolution authorizing the City Manager to execute the Reclaimed Water Use Agreement by and between the City of Frisco and PCR Community Association, Inc.

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 PHILLIPS CREEK RANCH COMMUNITY ASSOCIATION, INC. FOR RECLAIMED WATER USE; 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 Phillips Creek Ranch Community Association, Inc. for reclaimed water use ("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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

Exhibit "A"
(Agreement)

RECLAIMED WATER USE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This Agreement, effective as of the _____ day of _____, 2012, is made by and between the City of Frisco, Texas, a home rule city ("City"), and the PCR Community Association, Inc., ("Purchaser").

WITNESSETH:

WHEREAS, the City holds the first right to use all effluent produced from its wastewater for reuse in accordance with the Stewart Creek West Regional Wastewater System Contract; and

WHEREAS, Purchaser desires to purchase from the City, effluent produced from the City's wastewater for reuse in irrigation of Purchaser's open space areas of the Phillips Creek Ranch development; and

WHEREAS, the parties agree that the performance by the parties under this Agreement is authorized by Section 212.071, *et.seq.* of the Texas Local Government.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and the findings above incorporated, the City agrees to sell Reclaimed Water to Purchaser, and Purchaser agrees to pay the City for such delivery of Reclaimed Water, in the amounts and upon the terms and conditions hereinafter set forth:

Section 1. Definition of Terms. The following terms and expressions as used in this Agreement shall have the following meanings:

1.1 "FACILITIES" means all transportation, distribution, and pumping facilities necessary to convey Reclaimed Water from the Stewart Creek West Regional Wastewater System to the Point or Points of Delivery, as identified in **Exhibit "A"**, attached hereto and incorporated herein for all purposes.

1.2 "POINT OF DELIVERY" means the location at which title to the Reclaimed Water passes from the City to the Purchaser which is the reuse water meter, or meters, as located on the property.

1.3 "POLICIES AND PROCEDURES" shall mean the Policies and Procedures for the Use and Sale of Rec1aimed Water by the City as adopted by the City Council in effect on the date of this Agreement attached hereto as **Exhibit "B"** and incorporated herein for all purposes.

1.4. "PROPERTY" means the real property owned by Purchaser and described as Phillips Creek Ranch, more particularly described in **Exhibit "C"** attached hereto and incorporated herein for all purposes, upon which the Reclaimed Water shall be applied for irrigation purposes.

1.5. "RECLAIMED WATER" means the treated effluent produced from the treatment of wastewater by the Stewart Creek West Regional Wastewater Treatment

Facility in accordance with TCEQ Authorization for Reclaimed Water Number R14008-001 dated November 8, 2007.

1.6. "TCEQ" means the Texas Commission on Environmental Quality.

Section 2. Facilities Construction and Operation.

2.1 Facilities to be Constructed. The Purchaser shall construct or cause to be constructed, the Facilities necessary to transport and deliver Reclaimed Water from the Stewart Creek West Regional Wastewater Treatment Facility to the Purchaser at the Point or Points of Delivery in accordance with plans and specifications that have received prior written approval and acceptance by the City. Such Facilities shall be designed to deliver up to One Hundred Fifty Million (150,000,000) gallons of Reclaimed Water per year with a peak day delivery design of Six Hundred Thirty Thousand (630,000) gallons to Purchaser at the Point or Points of Delivery. Four (4) taps and meters will be provided by the City of a size as designated by the Purchaser subject to approval by the City. The Facilities must be completed, finally accepted by the City and conveyed to the City in accordance with the City's applicable ordinances, rules and regulations, as they exist, may be amended or in the future arising, (collectively, "City's Final Acceptance"). The total amount of the actual construction costs for the Facilities, provided, among other requirements for the City's Final Acceptance, the actual construction costs, shall be reviewed and approved by the City Engineer.

It is anticipated that the Phillips Creek Ranch shall be constructed over a period of five (5) years. Purchaser and City agree to the reclaimed water delivery demands as follows:

(a) "Stage 1"—City shall deliver up to Fifty Million (50,000,000) gallons per year of reclaimed water to Purchaser for three (3) years after the date the Facilities are completed by the Purchaser and accepted by the City.
(b) "Stage 2"—City shall deliver up to One Hundred Million (100,000,000) gallons per year of reclaimed water to the Purchaser for the two (2) years after "Stage 1" is complete.
(c) "Stage 3"—City shall deliver up to One Hundred Fifty (150,000,000) gallons per year of reclaimed water to the Purchaser for the life of Phillips Creek Ranch after "Stage 2" is complete.

PCR acknowledges and agrees that PCR's use of the reclaimed water shall be in accordance with the schedule provided in the B.F. Phillips Community Park and Phillips Creek Ranch Reuse Feasibility Analysis, attached hereto as **Exhibit "D"** and incorporated herein for all purposes. In the future, the City, at its sole discretion, may amend the irrigation schedule identified in **Exhibit "D"** to allow Purchaser greater flexibility in the irrigation schedule, and shall provide Purchaser thirty (30) days prior written notice.

2.2 Delivery. The City shall operate and maintain the Facilities as necessary to deliver Reclaimed Water from the Stewart Creek West Regional Wastewater Treatment Facility through the Facilities to the Point or Points of Delivery. It is agreed and understood that the Point or Points of Delivery shall include meters for

the measurement of Reclaimed Water delivered to Purchaser and that all valves and other controls to start, stop and regulate the flow of water to Purchaser under this Agreement which are beyond the Point or Points of Delivery and its related meter or meters, shall belong to Purchaser and be under the sole control of Purchaser. If the quality of the Reclaimed Water should ever be less than that specified in the Authorization for Reclaimed Water No. R14008-001 by TCEQ, then the City shall notify Purchaser in writing within twenty-four (24) hours of the City becoming aware of such deficiency, and Purchaser shall have the right to suspend acceptance of the Reclaimed Water by notifying the City in writing or via telecopy.

2.3 Use of Water. The Reclaimed Water delivered by the City shall be used only for Purchaser's irrigation of the open spaces of the Property.

2.4 Temporary Domestic Irrigation. In the event the Purchaser requires the use of domestic water to irrigate landscaping until the Facilities are completed by Purchaser and accepted by the City, the City agrees to waive any impact fees associated with the temporary connection to the domestic system. However, in no event shall Purchaser's temporary use of domestic water for landscape irrigation exceed six (6) months. The Purchaser agrees to clearly identify the connection points at which the Facilities will be connected into the domestic system so that said connection points may be terminated when the Facilities are completed by Purchaser and accepted by City.

2.5 Bledsoe Elementary. The City agrees to install, if required, any meters, taps or connections necessary to service Bledsoe Elementary School.

Section 3. Quantity and Unit Measurement.

3.1 Quantity. The City agrees to sell and deliver Reclaimed Water to Purchaser at the Point or Points of Delivery pursuant to its Policies and Procedures and this Agreement. Purchaser agrees to take at the Points of Delivery all Reclaimed Water desired for use by Purchaser pursuant to this Agreement and the City's Policies and Procedures during the entire term of this Agreement. The Reclaimed Water will be delivered in accordance with this Agreement.

3.2 Sale by Purchaser. Purchaser may not sell Reclaimed Water purchased from the City to any agency, individual, corporation, or other party.

3.3 Measurements.

a. The Purchaser shall furnish and install the necessary flow meters as approved by the City. The City shall operate, maintain and read meters, which shall record the Reclaimed Water delivered to Purchaser. The principal measurement point or points for water taken by Purchaser under this Agreement shall be located near the designated Point or Points of Delivery. All meters and other related equipment, once installed, shall become the property of the City.

b. The City shall keep accurate records of all measurement of Reclaimed Water required under this Agreement and the measuring devices and such records shall be open to inspection by Purchaser during reasonable business hours. Purchaser shall have access to the metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the City. Purchaser's agents or employees may observe the reading, calibration and adjustment.

c. Should Purchaser have reason to believe that a meter is recording water usage inaccurately; Purchaser may request in writing that the City investigate the meter operations. If it is mutually agreed by the City and Purchaser that the meter is malfunctioning, or should the City discover that a meter is recording water usage inaccurately, the City shall immediately notify Purchaser of same, and replace the faulty meter or meters, at the City's cost, with accurately functioning meters.

d. If, for any reason, a meter is out of service or out for repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out for repair shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed by other meters in the transmission line which can be related to the main delivery meter. If no other meters in the system are operational which will allow determination of delivered quantity, then the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

3.4 Unit of Measurement. The unit of measurement for Reclaimed Water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

Section 4. Quality.

4.1 General. The Reclaimed Water to be delivered by the City shall be treated sewage effluent in compliance with applicable State and Federal Law as specified in this agreement for a Type 1 Reclaimed Water use. This water is not intended for human consumption or domestic purposes and is to be used only for irrigation purposes and for no other purposes. Purchaser has satisfied itself that such water will be suitable for its use; provided that if at any time the quality of water delivered is dangerous to human health when applied by Purchaser’s irrigation system or otherwise less than that required to maintain vigorous, healthy plant growth for the plant material at the Purchaser's facilities, then Purchaser may immediately terminate or suspend this Agreement and may refuse acceptance of the water, and Purchaser will not be liable for any payments for any period of non-acceptance.

4.2 **THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT RELATIVE TO THE QUALITY OF THE RECLAIMED WATER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Section 5. Payments by Purchase for Reclaimed Water Service.

5.1 Commencement of Service. The City shall begin to deliver Reclaimed Water to Purchaser within thirty (30) days after the effective date of this agreement or when Purchaser is capable of receiving the Reclaimed Water, which ever is later. When Purchaser begins receiving water, the provisions of this Agreement shall be in full force and effect.

5.2 Minimum Annual Charge. During the initial year of this Agreement, the City shall charge the Purchaser based upon the actual water usage, as determined by the City, and the Purchaser shall pay based upon the actual water usage identified by the City. On the first January subsequent to the execution of this Agreement, the minimum annual charge shall begin and the City shall charge Purchaser and Purchaser shall pay City a minimum annual payment of Thirty Seven Thousand Five Hundred ($37,500.00) regardless of the amount of Reclaimed Water used by Purchaser.

5.3 Volumetric Rate. If the Purchaser's use exceeds Fifty Millionn (50,000,000) gallons in a given year, then such overage will be charged and billed at a volumetric rate of seventy five cents ($0.75) per one thousand (1,000) gallons on a monthly basis until the next year's payment is made.

5.4 Tap Fee and Meter Setting Charges. The tap fee and the cost of setting the meter must be paid prior to installation of the tap. Any additional work such as boring or cutting and patching of street pavement shall be computed by City and paid by Purchaser before the meter is set. The City shall furnish and install flow meters up to a size of two-inches. Purchaser shall furnish and install any meter larger than two-inches in an appropriate vault as approved by the City.

In the event adjacent property owners make a request to the City to tie in to the Facilities, the City shall enter into a Pro Rata and Reimbursement Agreement (the "Reimbursement Agreement"), in a form provided by the City, with the Purchaser for a portion of cost recovery equal to the cost of the tap fee based upon the value of the cost of the Facilities used by the adjacent property owners, provided however, under no circumstance shall the City's obligation to reimburse the Purchaser, under the Reimbursement Agreement, exceed thirty percent (30%) of the Actual Construction Costs of the Facilities, unless the City requests any oversizing of the Facilities, in which case the City reimbursement obligation shall be one hundred percent (100%) of the actual costs of oversizing.

a. The tap fee for Reclaimed Water Service shall be as follows:
   2-inch .....$ 740.00
   4-inch $3,900.00

6-inch $5,600.00

b. The meter Setting Charge shall be as follows:
2-inch $350.00
4-inch and larger ..At Cost

5.5 Billing. The City shall bill Purchaser for Reclaimed Water sold under this Agreement as follows:

a. Billing will be on an annual basis and pro-rated for service beginning after the first of the year with each annual payment being made by January 10 in advance for the year's usage and each partial annual payment made within ten (10) days of the time of request by Purchaser for service. Once the usage exceeds Fifty Million (50,000,000) gallons, then the overage will be billed on a monthly basis until the next year's payment is made.

b. The City will submit to Purchaser an annual and/or a monthly statement for Rec1aimed Water sold and charges on or before the 15th day of the month following the month in which service was rendered. The monthly statement will be payable on or before 15 (fifteen) days after receipt of the invoice.

c. The City will retain the right to suspend water service, if Purchaser has not paid its annual and/or monthly statement by the 10th day after receiving notice that the invoice is delinquent.

5.6 Limitation. In no event shall the City be required under this Agreement to deliver more than Six Hundred Thirty Thousand (630,000) gallons of Reclaimed Water to Purchaser during any twenty-four (24) hour period.

5.7 Rate Increases. The annual charge and the volumetric rate shall not increase for the first five (5) years of this agreement or until such time that a rate for reclaimed water use is established by ordinance of the City Council. After that time period or after that ordinance is adopted, the annual charge and volumetric rate shall be per ordinance and the City shall have the right to adjust the annual charge and the volumetric rate to reflect the cost of providing the service as called for in this Agreement in accordance with the reclaimed water use ordinance.

Section 6. Failure to Deliver Reclaimed Water.

6.1 Non-Delivery. At any time during the term of this Agreement if the City is unable to deliver Reclaimed Water under the terms of this Agreement due to circumstances beyond the City's control and without its fault, whether such occurrence or circumstance be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then the City shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof, then the City shall not be liable for the breach of this Agreement. The City shall use reasonable and good faith efforts to

correct any impediment preventing delivery of Reclaimed Water and give Purchaser advance notice when possible and to the extent it is reasonable, give such notice of any inability to deliver the water needed so that Purchaser may seek alternative sources. Furthermore, Purchaser shall not be liable for any payments for any period of non-delivery.

However, during an extended period of non-delivery Purchaser will be allowed to take water from the City's potable water supply at a rate of one dollar and fifty ($1.50) per one thousand (1, 000) gallons until the reclaimed water service is restored, provided that if water conservation measures are in place then usage will be subject to the applicable policies contained in the water conservation measures. No direct connection of the potable water system and the irrigation system shall be allowed during this interim time. The Purchaser would be required to provide an interim pumping system with an air gap between the potable water and the irrigation system piping as approved by the City in order to provide potable water for irrigation.

6.2 Repairs and Maintenance. The City may temporarily suspend delivery of Reclaimed Water to Purchaser for the purpose of performing maintenance and repairs to the Facilities. The City shall endeavor to provide Purchaser with written notice prior to suspension of such service and an estimate of when service shall be reestablished. Purchaser shall not be liable for any payments for any period of nondelivery due to maintenance and repairs by the City.

Section 7. General Provisions.

7. 1 Operations and Maintenance. The City will continuously operate and maintain the Facilities in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. Further, the City will implement the Policies and Procedures described in Exhibit "B" and incorporated herein for all purposes.

7.2 Conditions. It is expressly understood and agreed that any obligations on the part of the City to provide Reclaimed Water to Purchaser be (a) conditioned upon the City's ability to maintain all necessary permits, agreements, material, labor, and equipment, provided the City uses its best efforts to maintain said permits, agreements, material, labor and equipment, (b) subject to all present and future valid laws, order, rules, and regulations of the United States of America, the State of Texas, and any government or regulatory body having jurisdiction over the City or its activities, and (c) subject to the right of the City to terminate Reclaimed Water deliveries under this Agreement when the City finds uses of such water to be noncompliant with the provisions of the TCEQ Reclaimed Water use rules located at 30 TAC Section 210.

7.3 Title. Title to all water supplied hereunder shall be the City up to the Point or Points of Delivery, at which point title shall pass to Purchaser. The Point or Points of Delivery are the reclaimed water meter or meters, where the water flowing from the City to Purchaser is measured.

7.4 Obligations of Purchaser.

a. Purchaser shall be responsible to operate and maintain its lines, any pumping or other facilities necessary for the transportation of the Reclaimed Water from the Point or Points of Delivery to the place of use at its sole risk and expense, including the obtaining of any necessary permits or easements therefore. Nothing in this Agreement shall be construed to authorize Purchaser to install any equipment or improvements on property owned by the City without the express written consent of the City and subject to such conditions as the City may impose.

b. By its execution of this Agreement, Purchaser acknowledges its receipt of a copy of the TCEQ Reclaimed Water Use Rules of Chapter 210 of Title 30 of the Texas Administrative Code, and further agrees to comply with all requirements and responsibilities under such rules currently in effect and any subsequent changes thereto.

c. Purchaser shall allow his property to be inspected by the City for possible cross-connections and other potential contamination hazards. The City will notify the User in writing of cross-connections or hazards found during the inspection. The Purchaser shall immediately remove or adequately isolate any cross-connection or potential hazard on the Property. This right of inspection, however, places no duty on the City.

d. Purchaser shall determine irrigation demands based on type of vegetation and land area to be irrigated and in accordance with 30 TAC 210.24.

e. Purchaser shall operate the irrigation system to prevent surface runoff, excessive percolation below the root zone, and irrigation spray reaching outside the irrigation area.

f. Purchaser shall operate the irrigation system to ensure that no nuisance shall result from the distribution, irrigation, or the use of Reclaimed Water.

7.5 Obligations for Reconnection.

a. Reconnection of the City's potable water supply to the irrigation system served by the reclaimed water will be allowed only if the Authorization for Reclaimed Water Use Number R14008-001 is discontinued by TCEQ. Reconnection to the City's potable water supply shall be made only under the following conditions and as provided by the Purchaser:

1.) The City shall disconnect all Points of Delivery from the irrigation system served by the City's reclaimed water line;

2.) The Purchaser shall disinfect the irrigation system in accordance with AWWA C651 and perform testing for confirmation of adequate disinfection to the satisfaction of the City;

3.) The Purchaser shall install a reduced-pressure principle backflow prevention assembly as approved by the City at each Point or Points of

Delivery to the irrigation system. Each assembly shall be tested by a licensed backflow prevention assembly tester as per 30 TAC 290.44. A test report in accordance with TAC 290.44 (h) shall be submitted to the City within 3 days of test on a form as shown in 30 TAC 290.44(f);

4.) The Purchaser shall provide annual testing and certification, by a licensed backflow prevention assembly tester, that the backflow prevention assembly is operating within specifications. Test results and certifications are to be submitted to the City on a form as shown in 30 TAC 290.47(f) within three days of test.

5.) Purchaser shall have gages used in testing of backflow prevention assemblies tested annually for accuracy in accordance with AWWA Manual M14.

Section 8. Term of Agreement; Modification; Notices; State or federal Laws, Rules, Order or Regulations; Insurance Requirements.

8.1 Term of Agreement. This Agreement shall be in force and effect from the date of execution hereon for a term of 20 (twenty) years.

8.2 Option for Renewal. The parties hereby agree that Purchaser shall have option(s) to request renewal and extension of this Agreement to City, which option(s) shall be exercised in advance of the expiration date of this Agreement by Purchaser giving the City written notice one hundred eighty (180) days prior to the expiration date or within thirty (30) days of receipt of written notice from the City notifying Purchaser of its option rights whichever comes later. The terms of the renewal and extension shall be for four (4) additional five (5) year terms (separately exercisable) from said date of expiration of this Agreement and shall be on the same terms as this Agreement.

8.3 Address and Notice. Unless otherwise provided in this Agreement, any notice, communication. request, reply, or advice (herein severally and collectively, for convenience called "Notice") herein provided or permitted to be given, made or accepted by any party must be in writing any may be given or served in any manner reasonably calculated to reach each of the other parties. Notice sent by certified or registered mail, postage prepaid, return receipt requested, shall be deemed to have been received on the second mail delivery day following the day on which it was posted. Notice by any other method shall be effective when received.

For the purpose of Notice, the addresses of the Parties shall be, until changed as hereafter provided, as follows:

Purchaser: PCR Community Association, Inc.
8401 N. Central Expwy. Suite 350
Dallas, TX 75225
Phone: (214) 292-3410

City: City of Frisco
Attention: City Manager
6101 Frisco Square Blvd
Frisco, Texas 75034

Any party may change the address for notice by giving notice of such change in accordance with the provisions of this section.

8.4 State and Federal Laws, Rules, Order or Regulations. This Agreement is subject to all applicable Federal and State Laws and applicable permits, ordinances, rules, orders, and regulations of any local, State or Federal Governmental Authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

8.5 Right of Way. Pursuant to Ordinance No. 02-05-65, as amended, Purchaser agrees that any and all contractors constructing the Facilities shall obtain a Right of Way permit through the City.

Section 9. Indemnification. PURCHASER, INDIVIDUALLY AND COLLECTIVELY, AGREE TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY ARISE OUT OF, OR BE OCCASIONED BY, ANY ACT OR OMISSION OF PURCHASER, ITS DIRECTORS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, INCLUDING BUT NOT LIMITED TO, DAMAGE TO THE FACILITIES. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO, AND THEIR RESPECTIVE AUTHORIZED SUCCESSORS AND ASSIGNS, AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON, ENTITY OR THIRD PARTY.

Section 10. Assignment. This Agreement shall not be assignable by Purchaser in whole or in part without the written consent of the City except that such consent shall not be unreasonably withheld. The City and Purchaser each binds itself and its successors and assigns to the other party with respect to all covenants of this Agreement.

Section 11. Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by the Laws of the State of Texas.

Section 12. Remedies Upon Default.

12.1 Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) working days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement.

12.2 No Additional Waiver Implied. The failure of any party hereto to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this agreement shall not be construed as waiver or relinquishment of the future performance of any term, covenant, or condition by the other parties hereto, but the obligation of such other parties with respect to such future performance shall continue in full force and effect.

12.3 Remedies. The Parties recognize that certain of their respective obligations, if not performed, may be adequately compensated by money damages while others could not be. Accordingly, the Parties agree that in the event of any failure to perform any covenants, conditions, or obligations of this Agreement on the part of any party, the aggrieved party shall:

(a) to the extent, If any, permitted by law, have the remedy of specific performance of this Agreement, in addition to any other remedies otherwise available at law or in equity or under this Agreement; and

(b) either City or Purchaser may terminate this Agreement by written notice, after such party has given notice of a material default to the other party upon the expiration of the thirty (30) days permitted for curing such default and such default not having been cured.

Section 13. Venue. All amounts due under this Agreement including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Collin County, Texas which is the County in which the administrative offices of the City are located. It is specifically agreed by the parties to this Agreement that Collin County, Texas is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Collin County, Texas.

Section 14. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 15. Titles. Titles and subtitled Articles contained herein are for convenience only and have no legal or other effect on the terms of this Agreement.

Section 16. Prior Agreements Superseded. This Agreement constitutes the sole and only Agreement of the parties with respect to the delivery of Reclaimed

Water to Purchaser and cancels and supersedes any prior understandings or oral or written Agreements between the parties respecting the subject matter.

Section 17. **Authority to Execute**. The individuals executing this Agreement on behalf of the respective party 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 is affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

Section 18. **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 counsel

Section 19. **Sovereign Immunity**. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

Section 20. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto acting under the proper authority have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, on this _____ day of _____, 2012, all as of the day and year first written, which is the effective date of this Agreement.

PURCHASER,
PCR COMMUNITY ASSOCIATION, INC.

By: _____
Mark R. Wagner, President

THE CITY OF FRISCO, TEXAS

By: _____
George Purefoy, City Manager

ATTEST:

_____
Jenny Page, City Secretary

STATE OF TEXAS §
§
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Mark R. Wagner, President**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **PCR Community Association, Inc.**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 7th day of May, 2012.

Heather Diane Pauzer
My Commission Expires
08/31/2012

Notary Public in and for the State of Texas
My Commission Expires: 8/31/12

STATE OF TEXAS §
§
COUNTY OF COLLIN §

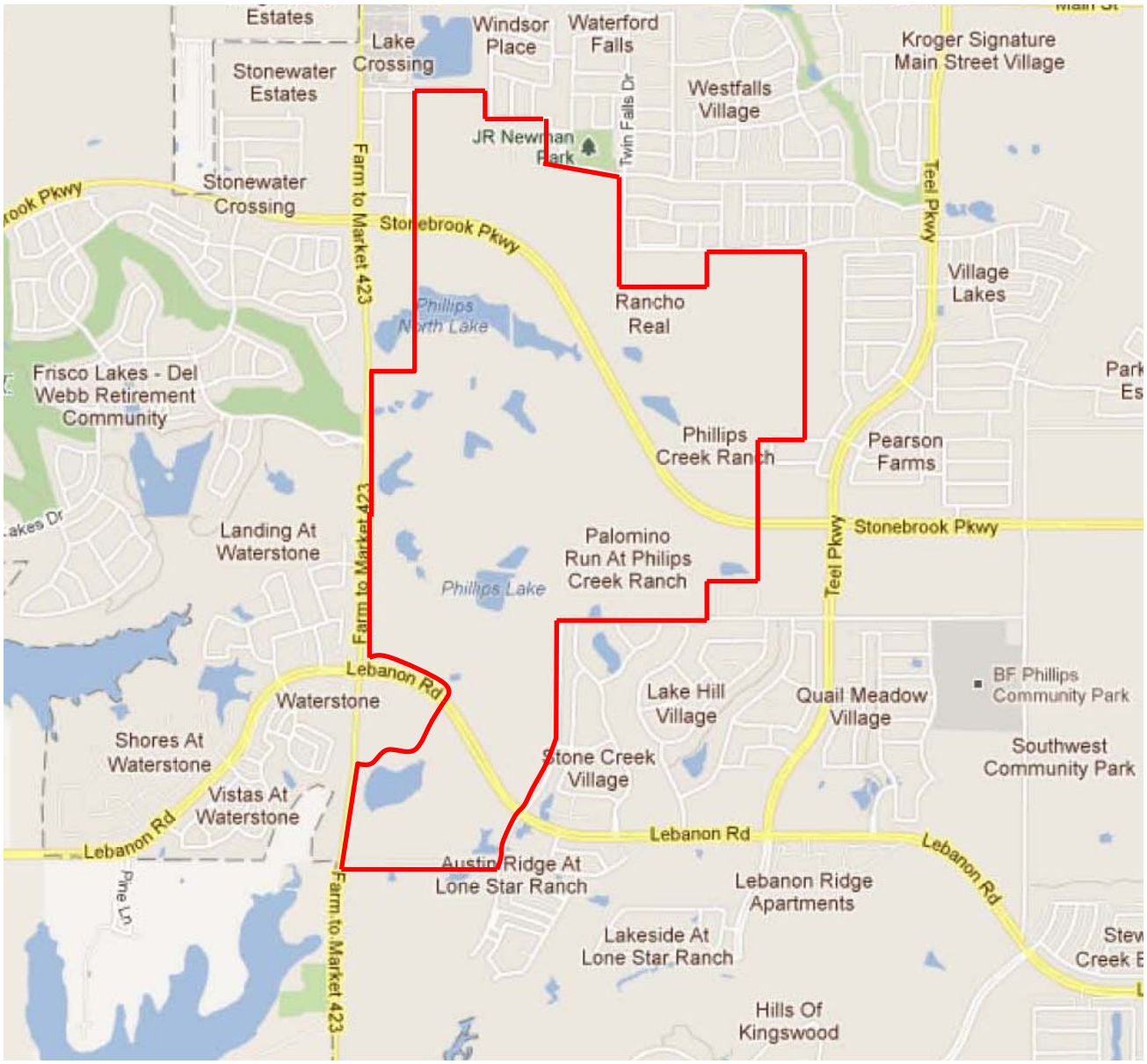
BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **City of Frisco, Texas** and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

Notary Public in and for the State of Texas
My Commission Expires:_____

EXHIBIT "A"

Phillips Creek Ranch Property Map Exhibit



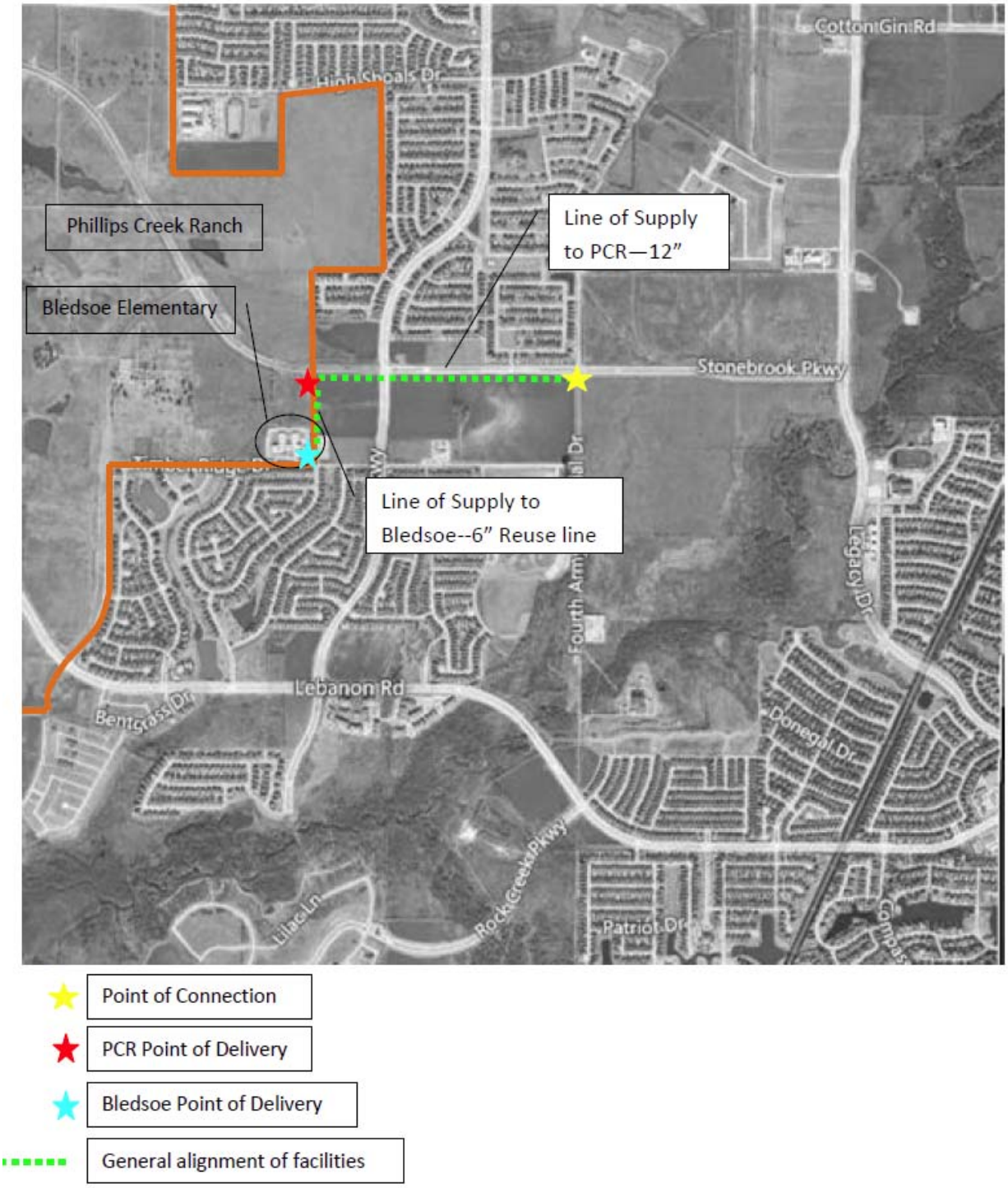

Phillips Creek Ranch
Bledsoe Elementary
Line of Supply to PCR—12"
Line of Supply to Bledsoe--6" Reuse line
Stonebrook Pkwy
Lebanon Rd
Bentgrass Dr
Rock Creek Pkwy
Patriot Dr
Donegal Dr
Fourth Army
Point of Connection
PCR Point of Delivery
Bledsoe Point of Delivery
General alignment of facilities

EXHIBIT "B"
POLICIES AND PROCEDURES
FOR THE USE AND SALE OF RECLAIMED WATER

Any Reclaimed Waterlines shall be constructed with a minimum separation from potable water lines of nine (9) feet whenever possible. When it is not possible to maintain this separation, the Reclaimed Waterlines shall be constructed in accordance with 30 TAC Chapter 290.44 for alternatives to nine feet of separation of potable and non-potable water piping. A nondegradable warning tape shall be placed in the trench above the reclaimed water pipe to reduce the possibility of inadvertent connections. Pipe used for construction of any Reclaimed Waterlines shall be purple, covered with a purple poly-wrap bag or spiral wrapped with purple tape. Construction plans for any additional Reclaimed Waterlines shall be submitted to the appropriate plan review authority for review and approval in accordance with Chapter 210.25.h.

The Purchaser/User shall be responsible for the design of any internal Reclaimed Water distribution piping or irrigation piping. The Purchaser/User shall design all piping in accordance with Chapter 210.25. The Purchaser/User shall be responsible for the design of any additional Reclaimed Water storage ponds. The ponds shall be designed in accordance with Chapter 210.23.

The Purchaser/User shall be responsible for posting signs at all storage areas, hose bibs, faucets, and other points of access to the Reclaimed Water that comply with the requirements of Chapter 210.25.b. The Purchaser/User shall be responsible for designing all hose bibs, faucets, and valves in accordance with Chapter 210.25.a.

The quality of Reclaimed Water will be tested twice per week by City or NTMWD staff. The sampling point will be at the Stewart Creek West Wastewater Treatment Facility. The tests will be conducted to verify that the water quality is in accord with the intended uses identified in the Reclaimed Water Use Agreement. Results of the tests will be reported to TCEQ on a monthly basis and kept at by the City for a period of at least five years.

The quantity of Reclaimed Water delivered by the City shall be monitored by a meter or meters installed at the Point or Points of Delivery. Meter(s) will be read by the City on a monthly basis to maintain an accurate record of Reclaimed Water deliveries. These records will be made available to the TCEQ.

The Purchaser/User shall be responsible for the use of the reclaimed water in accordance with 30 TAC 210 and shall maintain and provide records as required by 30 TAC 210.36(a).

It will be the responsibility of the Purchaser/User to operate the irrigation system in a manner that will not cause any surface or airborne discharge of Reclaimed Water. The irrigation system shall not be operated when the earth is frozen or saturated with water. Operational procedures for the irrigation system should minimize wet grass conditions in unrestricted landscaped areas during the periods the area could be in use.

Golf course users may want to irrigate greens during the day to alleviate the heat stress experienced by bent grass. This process is called "syringing the greens." Syringing will occur in between groups of golfers while the greens are unoccupied and will be accomplished with hand-

held hoses. Wet grass conditions should be minimal since syringing will only be required during the extreme heat of the day during which time evaporation will be rapid.

The Reclaimed Water, transmission mains, valves, and meters up to the Point or Points of Delivery will be maintained regularly by the City. These facilities will be incorporated into the City's routine maintenance programs.

It shall be the responsibility of the Purchaser/User to maintain internal water transmission mains, storage ponds, pumping facilities and the internal irrigation piping. The Purchaser's/User's routine maintenance schedules shall include a routine check of the sprinkler heads, distribution piping, pumps, valves, and other mechanical equipment. Repairs shall be conducted as necessary. Preventive maintenance on all mechanical equipment shall be as specified by the manufacturer.

It shall be the responsibility of the City to adequately train its operations personnel in the safe use of Reclaimed Water as well as the legal requirements for record keeping and reporting. The City will provide training and safety meetings for all of its maintenance personnel. All new workers will be provided this information during new employee orientation.

The City will notify the TCEQ within five (5) days of obtaining knowledge of Reclaimed Water use not specified by the approved Reclaimed Water use plan.

The City will promptly discontinue delivery of Reclaimed Water to any Purchaser/User upon knowledge of misuse of the Reclaimed Water.

The City will promptly notify the TCEQ of any significant changes in the approved Reclaimed Water use plan.

EXHIBIT "C"
(PROPERTY DESCRIPTION)

Being the following 3 Tracts of Land:

PCR TRACT 1

BEING a tract of land situated in the David E. Lawhorn Survey, Abstract No. 727, the John B. Batch Survey, Abstract No. 114, the R.F. Teal Survey, Abstract No. 1264, and the William Powell Survey, Abstract No. 1011, City of Frisco, Denton County, Texas, and being a portion of Tract 1 as described in instrument to Crosswinds at Lone Star Ranch 1000, ltd. as recorded in Document No. 2005-113235 of the Deed Records, Denton County, Texas (D.R.D.C.T.) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess" at the intersection of the easterly right of way line of F.M. Highway No. 423 as defined by instrument recorded in Document No. 2006-47344 (D.R.D.C.T.)and the northerly right-of-way line of Lebanon Road as recorded in Volume 4565, Page 820 (D.R.D.C.T.);

THENCE along the easterly right-of-way line of FM 423, the following;

North 01 degrees 18 minutes 24 seconds East a distance of 8.03 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 43 degrees 41 minutes 57 seconds West a distance of 35.35 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 01 degrees 18 minutes 50 seconds East a distance of 2,209.51 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 46 degrees 09 minutes 47 seconds East a distance of 49.63 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 01 degrees 18 minutes 50 seconds East a distance of 111.48 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 43 degrees 50 minutes 13 seconds West a distance of 49.37 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 01 degrees 18 minutes 50 seconds East a distance of 1,032.35 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 46 degrees 09 minutes 47 seconds East a distance of 49.63 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 01 degrees 18 minutes 50 seconds East a distance of 185.48 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 43 degrees 50 minutes 13 seconds West a distance of 49.37 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess";

North 01 degrees 18 minutes 50 seconds East a distance of 73.51 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess" at the beginning of a curve to the left having a central angle of 04 degrees 35 minutes 34 seconds, a radius of 5799.58 feet and being subtended by a chord which bears North 00 degrees 58 minutes 58 seconds West a distance of 464.76 feet;

Along said curve to the left an arc distance of 464.89 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" on a northerly line of the aforementioned Crosswinds at Lone Star Ranch 1000, Ltd. tract;

THENCE North 89 degrees 38 minutes 58 seconds East, along a northerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 558.04 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

THENCE North 00 degrees 14 minutes 55 seconds West, along a westerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 2012.70 feet to point for corner from which a 5/8 inch iron rod found bears South 55 degrees 24 minutes 46 seconds West a distance of 0.42 feet;

THENCE North 00 degrees 18 minutes 50 seconds West, along a westerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 1770.84 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" on the southerly right-of-way line of Newman Road (a 50’ ROW);

THENCE along the southerly right-of-way line of Newman Road the following;

North 89 degrees 45 minutes 47 seconds East a distance of 679.55 feet to the beginning of a curve to the right having a central angle of 07 degrees 01 minutes 56 seconds, a radius of 351.50 feet and being subtended by a chord which bears South 86 degrees 37 minutes 40 seconds East a distance of 43.11 feet and from which a 5/8 inch iron rod found bears South 81 degrees 41 minutes 58 seconds West a distance of 0.59 feet;

Along said curve to the right an arc distance of 43.14 feet to a point for corner at the end of said curve from which a 5/8 inch iron rod found bears South 85 degrees 20 minutes 06 seconds West a distance of 0.67 feet;

South 83 degrees 06 minutes 42 seconds East a distance of 126.45 feet to the beginning of a curve to the left having a central angle of 06 degrees 58 minutes 28 seconds, a radius of 448.50 feet and being subtended by a chord which bears South 86 degrees 35 minutes 56 seconds East a distance of 54.56 feet and from which a 5/8 inch iron rod found bears South 78 degrees 16 minutes 27 seconds West a distance of 0.65 feet;

Along said curve to the right an arc distance of 54.59 feet to an X cut found at the end of said curve;

THENCE South 00 degrees 23 minutes 42 seconds East, along an easterly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 484.56 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

THENCE North 89 degrees 43 minutes 58 seconds East, along a northerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 465.63 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

THENCE South 00 degrees 12 minutes 48 seconds East, along an easterly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 155.22 feet to a 5/8 inch iron rod found;

THENCE South 89 degrees 21 minutes 02 seconds West, along a southerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 30.00 feet to a 5/8 inch iron rod found on the westerly right-of-way line of Otis Drive, (a 60’ ROW) as shown on the plat of Sparks Elementary School as recorded in Cabinet X, Page 879, Plat Records of Denton county, Texas;

THENCE South 00 degrees 14 minutes 55 seconds East, along the westerly right-of-way line of said Otis Drive, a distance of 360.56 feet to a 5/8 inch iron rod found on the southerly right-of-way line of Angel Falls Drive (a 60’ ROW) as shown on said plat of Sparks Elementary School;

THENCE along the southerly right-of-way line of Angel Falls Drive the following;

South 87 degrees 58 minutes 40 seconds East along a distance of 1094.88 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the beginning of a curve to the right having a central angle of 19 degrees 59 minutes 52 seconds, a radius of 550.00 feet and being subtended by a chord which bears South 77 degrees 58 minutes 57 seconds East a distance of 190.99 feet;

Along said curve to the right an arc distance of 191.96 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the beginning of a reverse curve to the left having a central angle of 22 degrees 18 minutes 40 seconds, a radius of 550.00 feet and being subtended by a chord which bears South 79 degrees 08 minutes 21 seconds East a distance of 212.82 feet;

Along said curve to the left an arc distance of 214.17 feet to a point at the end of said curve from which a 5/8 inch iron rod found with plastic cap stamped "Survcon" bears North 25 degrees 23 minutes 55 seconds West a distance of 0.25 feet;

North 89 degrees 42 minutes 19 seconds East a distance of 104.51 feet to an X cut found;

South 45 degrees 25 minutes 36 seconds East for a distance of 14.05 feet to an X cut found on the westerly right-of-way line of Twin Falls Drive (a variable width ROW) as per the roadway easement recorded in Volume 4117, Page 457 (D.R.D.C.T.) and as shown on the plat of Pioneer Middle School as recorded in Cabinet U, Page 674, Plat Records of Denton county, Texas;

THENCE along the westerly right-of-way line of Twin Falls Drive the following;

South 00 degrees 14 minutes 53 seconds East a distance of 1036.12 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

South 89 degrees 41 minutes 39 West a distance of 27.75 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

South 00 degrees 14 minutes 53 seconds East a distance of 678.22 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" for a corner at the southwest corner of said Pioneer Middle School;

THENCE along the southerly and easterly lines of said Pioneer Middle School, the following;

North 88 degrees 41 minutes 33 seconds East a distance of 1535.46 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

North 00 degrees 16 minutes 29 seconds West a distance of 650.94 feet to a 5/8 inch iron rod found with plastic cap stamped "RPLS 461"on the southerly right-of-way line of High Shoals Drive (a 60’ ROW) as shown on the plat of Heritage Village Phase II as recorded in Cabinet V, Page 199, Plat Records of Denton county, Texas;

THENCE along the southerly right-of-way line of High Shoals Drive the following;

North 89 degrees 41 minutes 44 seconds East a distance of 38.07 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the beginning of a curve to the left having a central angle of 07 degrees 38 minutes 45 seconds, a radius of 1,530.00 feet and being subtended by a chord which bears North 85 degrees 52 minutes 21 seconds East a distance of 204.02 feet;

Along said curve to the left an arc distance of 204.17 feet to a 5/8 inch iron rod found at the end of said curve;

North 82 degrees 03 minutes 03 seconds East a distance of 187.05 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the beginning of a curve to the right having a central angle of 06 degrees 06 minutes 04 seconds, a radius of 1,470.00 feet and being subtended by a chord which bears North 85 degrees 06 minutes 05 seconds East a distance of 156.46 feet;

Along said curve to the right an arc distance of 156.53 feet to a point at the end of said curve from which a 5/8 inch iron rod found with plastic cap stamped "Survcon" bears South 10 degrees 12 minutes 17 seconds East a distance of 0.30 feet;

North 88 degrees 09 minutes 07 seconds East a distance of 305.26 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the beginning of a curve to the left having a central angle of 15 degrees 10 minutes 41 seconds, a radius of 830.00 feet and being subtended by a chord which bears North 80 degrees 33 minutes 46 seconds East a distance of 219.23 feet;

Along said curve to the left an arc distance of 219.87 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the end of said curve;

North 72 degrees 58 minutes 26 seconds East a distance of 130.57 feet to the beginning of a curve to the right having a central angle of 15 degrees 10 minutes 43 seconds, a radius of 770.00 feet and being subtended by a chord which bears North 80 degrees 33 minutes 47 seconds East a distance of 203.39 feet and from which a 5/8 inch iron rod found bears North 05 degrees 09 minutes 56 seconds West a distance of 0.59 feet;

Along said curve to the right an arc distance of 203.99 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" at the end of said curve;

THENCE South 00 degrees 20 minutes 36 seconds East, along an easterly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 2604.28 feet to a ½ inch iron rod found;

THENCE South 88 degrees 46 minutes 46 seconds West, along a southerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 971.49 feet to ½ inch iron rod found with cap;

THENCE South 00 degrees 50 minutes 04 seconds East, along an easterly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 2,101.27 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

THENCE South 89 degrees 09 minutes 07 seconds West, along a southerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 648.84 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars";

THENCE South 01 degrees 00 minutes 48 seconds East, along an easterly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 508.73 feet to a point for a corner on the northerly right-of-way line of Timber Ridge Drive (a 60’ ROW) as shown on the plat of Lake Hill Village Phase 2, recorded in Cabinet U, Page 726, Plat Records of Denton County, Texas and as shown on the plat of Stone Creek Village Phase 2, recorded in Cabinet X, Page 325, Plat Records of Denton County, Texas, from which a 5/8 inch iron rod found with plastic cap stamped "Survcon" bears North 79 degrees 17 minutes 13 seconds East a distance of 0.86 feet and being the beginning of a non-tangent curve to the left having a central angle of 12 degrees 47 minutes 13 seconds, a radius of 1,030.00 feet and being subtended by a chord which bears South 80 degrees 19 minutes 22 seconds West a distance of 229.39 feet;

THENCE along the northerly right-of-way line of Timber Ridge Drive the following;

Along said curve to the left an arc distance of 229.87 feet to a point for corner at the beginning of a reverse curve to the right having a central angle of 17 degrees 11 minutes 13 seconds, a radius of 970.00 feet and being subtended by a chord which bears South 82 degrees 31 minutes 22 seconds West a distance of 289.88 feet and from which a 5/8 inch iron rod found bears North 69 degrees 33 minutes 19 seconds East a distance of 0.24 feet;

Along said curve to the right an arc distance of 290.97 feet to an X cut found at the end of said curve;

North 88 degrees 49 minutes 49 seconds West a distance of 1,671.70 feet to a point for a corner on the westerly right-of-way line of Lone Star Ranch Parkway (a 55' ROW) as shown on the plat of Stone Creek Village Phase 1 & 2, recorded in Cabinet T, Page 245 and Cabinet X, Page 325, Plat Records of Denton County, Texas from which a 5/8 inch iron rod found bears South 82 degrees 31 minutes 22 seconds West a distance of 2.52 feet;

THENCE along the westerly right-of-way line of Lone Star Ranch Parkway the following;

South 01 degrees 05 minutes 40 seconds West a distance of 1,632.44 feet to a point for corner from which a 5/8 inch iron rod found with plastic cap stamped "Survcon" bears South 66 degrees 45 minutes 40 seconds West a distance of 0.24 feet and being the beginning of a curve to the right having a central angle of 35 degrees 43 minutes 11 seconds, a radius of 1,500.00 feet and being subtended by a chord which bears South 18 degrees 57 minutes 16 seconds West a distance of 920.06 feet;

Along said curve to the right an arc distance of 935.13 feet to a 5/8 inch iron rod found with plastic cap stamped "Survcon" at the end of said curve;

South 36 degrees 48 minutes 51 seconds West a distance of 242.85 feet to an X cut found on the northerly right-of-way line of the aforementioned Lebanon Road and being the beginning of a non-tangent curve to the right having a central angle of 21 degrees 17 minutes 10 seconds, a radius of 1,440.00 feet and being subtended by a chord which bears North 41 degrees 27 minutes 12 seconds West a distance of 531.91 feet;

Along said curve to the right an arc distance of 534.98 to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" at the end of said curve;

North 30 degrees 48 minutes 37 seconds West a distance of 912.58 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" at the beginning of curve to the left having a central angle of 30 degrees 19 minutes 45 seconds, a radius of 1,560.00 feet and being subtended by a chord which bears North 45 degrees 58 minutes 29 seconds West a distance of 816.17 feet;

Along said curve to the left an arc distance of 825.78 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" at the beginning of a compound curve to the left having a central angle of 27 degrees 33 minutes 29 seconds, a radius of 1,577.63 feet and being subtended by a chord which bears North 74 degrees 55 minutes 06 seconds West a distance of 751.51 feet;

Along said curve to the left an arc distance of 758.80 feet to a 5/8 inch iron rod set with plastic cap stamped "Huitt-Zollars" at the end of said curve;

North 88 degrees 41 minutes 58 seconds West a distance of 125.52 feet to the POINT OF BEGINNING and containing 850.1 acres of land more or less.

SAVE AND EXCEPT THE FOLLOWING 2 TRACTS OF LAND:

1. SCHOOL A:

BEING a tract of land situated in the William Powell Survey, Abstract No. 1011, Denton County, Texas and being part of an 882.162 acre tract as conveyed to the Crosswinds At Lone Star Ranch 1000, LTD., a Texas limited partnership and recorded in County Clerks No. 2005-113235 of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a capped ½ inch iron rod set for corner at the north end of a proposed corner clip, said iron rod being North 00 degrees 20 minutes 36 seconds West a distance of 1093.03 and South 89 degrees 39 minutes 24 seconds West a distance of 398.36 feet from the most easterly southeast corner of said 882.162 acre tract;

THENCE South 43 degrees 37 minutes 45 seconds West a distance of 14.39 feet to a capped ½ inch iron rod set for corner;

THENCE South 88 degrees 45 minutes 17 seconds West a distance of 565.36 feet to a capped ½ inch iron rod set for corner;

THENCE along a curve to the right having a radius of 166.66 feet, a delta of 21 degrees 51 minutes 48 seconds, an arc length of 63.60 feet, and a chord which bears North 80 degrees 30 minutes 23 seconds West having a chord distance of 63.21 feet to a capped ½ inch iron rod set for corner;

THENCE North 69 degrees 47 minutes 28 seconds West a distance of 179.60 feet to a capped ½ inch iron rod set for corner;

THENCE along said curve to the left having a radius of 230.00 feet, a delta of 20 degrees 53 minutes 48 seconds, an arc length of 83.88 feet, and a chord which bears North 80 degrees 14 minutes 22 seconds West having a chord distance of 83.42 feet to a capped ½ inch iron rod set for corner;

THENCE along a curve to the left having a radius of 857.90 feet, a delta of 01 degrees 38 minutes 22 seconds, an arc length of 24.55 feet, and a chord which bears North 00 degrees 02 minutes 32 seconds East having a chord distance of 24.55 feet to a capped ½ inch iron rod set for corner;

THENCE North 01 degrees 18 minutes 03 seconds West a distance of 61.89 feet to a capped ½ inch iron rod set for corner;

THENCE North 00 degrees 58 minutes 06 seconds West a distance of 337.82 feet to a capped ½ inch iron rod set for corner;

THENCE along a curve to the left having a radius of 4082.04 feet, a delta of 05 degrees 25 minutes 01 seconds, an arc length of 385.93 feet, and a chord which bears North 82 degrees 50 minutes 10 seconds East having a chord distance of 385.79 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the right having a radius of 705.00 feet, a delta of 04 degrees 51 minutes 26 seconds, an arc length of 59.77 feet, and a chord which bears North 85 degrees 43 minutes 27 seconds East having a chord distance of 59.75 feet to a capped ½ inch iron rod set for corner;

THENCE North 88 degrees 09 minutes 07 seconds East a distance of 305.26 feet to a capped ½ inch iron rod set for corner;

THENCE along a curve to the left having a radius of 1,595.01 feet, a delta of 04 degrees 24 minutes 59 seconds, an arc length of 122.94 feet, and a chord which bears North 85 degrees 56 minutes 38 seconds East having a chord distance of 122.91 feet to a capped ½ inch iron rod set for corner;

THENCE North 81 degrees 43 minutes 02 seconds East a distance of 22.13 feet to a capped ½ inch iron rod set for corner;

THENCE South 00 degrees 20 minutes 44 seconds East a distance of 562.40 feet to the POINT OF BEGINNING, and containing 475,195 square feet or 10.909 acres of land.

2. SCHOOL B:

BEING a tract of land situated in the David Lawhorn Survey, Abstract no. 727, Denton County, Texas, and being part of an 882.162 acre tract as conveyed to Crosswinds at Lone Star Ranch 1000, LTD., a Texas limited partnership as recorded in County Clerks No. 2005-113235, Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a capped ½ inch iron rod set for corner, said iron rod being North 63 degrees 07 minutes 11 seconds West a distance of 1163.76 feet to a Survcon capped iron rod found marking the northwest corner of the Stonecreek Village Phase 1, as recorded in Cabinet T, Page 244, Plat Records of Denton County, Texas;

THENCE North 62 degrees 40 minutes 09 seconds West a distance of 721.29 feet to a capped ½ inch iron rod set for corner;

THENCE North 20 degrees 38 minutes 54 seconds West a distance of 20.08 feet to a capped ½ inch iron rod set for corner of curve;

THENCE along a curve to the left having a radius of 680.00 feet, a delta of 09 degrees 15 minutes 59 seconds, an arc length of 109.98 feet, and a chord which bears North 16 degrees 44 minutes 23 seconds East having a chord distance of 109.86 feet to a capped ½ inch iron rod set for corner;

THENCE North 12 degrees 06 minutes 24 seconds East a distance of 174.81 feet to capped ½ inch iron rod set for corner of a curve;

THENCE along a curve to the right having a radius of 1,200.00 feet, a delta of 08 degrees 29 minutes 05 seconds, an arc length of 177.71 feet, and a chord which bears North 16 degrees 20

minutes 56 seconds East having a chord distance of 177.54 feet to a capped ½ inch iron rod set for corner;

THENCE North 20 degrees 35 minutes 52 seconds East a distance of 9.95 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the right having a radius of 270.00 feet, a delta of 11 degrees 45 minutes 20 seconds, an arc length of 55.40 feet, and a chord which bears North 26 degrees 28 minutes 55 seconds East having a chord distance of 55.30 feet to a capped ½ inch iron rod set for corner;

THENCE North 32 degrees 21 minutes 35 seconds East a distance of 176.43 feet to a capped ½ inch iron rod set for corner;

THENCE along a curve to the left having a radius of 1,102.81 feet, a delta of 09 degrees 38 minutes 24 seconds, an arc length of 185.55 feet, and a chord which bears South 64 degrees 01 minutes 09 seconds East having a chord distance of 185.33 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the left having a radius of 1,279.11 feet, a delta of 13 degrees 44 minutes 54 seconds, an arc length of 306.93 feet, and a chord which bears South 76 degrees 29 minutes 39 seconds East having a chord distance of 306.19 feet to a capped ½ inch iron rod set for a corner on a curve;

THENCE along a curve to the right having a radius of 15.00 feet, a delta of 54 degrees 32 minutes 04 seconds, an arc length of 14.28 feet, and a chord which bears South 59 degrees 25 minutes 41 seconds East having a chord distance of 13.74 feet to a capped ½ inch iron rod set for corner of on a curve;

THENCE along a curve to the left having a radius of 65.00 feet, a delta of 27 degrees 18 minutes 56 seconds, an arc length of 30.99 feet, and a chord which bears South 45 degrees 49 minutes 07 seconds East having a chord distance of 30.70 feet to a capped ½ inch iron rod set for corner of a reverse curve;

THENCE along a curve to the right having a radius of 15.00 feet, a delta of 57 degrees 30 minutes 56 seconds, an arc length of 15.06 feet, and a chord which bears South 30 degrees 43 minutes 07 seconds East having a chord distance of 14.43 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the right having a radius of 1,055.09 feet, a delta of 19 degrees 01 minutes 59 seconds, an arc length of 350.49 feet, and a chord which bears South 06 degrees 13 minutes 52 seconds West having a chord distance of 348.88 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the left having a radius of 330.00 feet, a delta of 46 degrees 11 minutes 57 seconds, an arc length of 266.09 feet, and a chord which bears South 07 degrees 29 minutes 56 seconds East having a chord distance of 258.94 feet to a capped ½ inch iron rod set for corner;

THENCE South 30 degrees 35 minutes 54 seconds East a distance of 92.26 feet to a capped ½ inch iron rod set for corner;

THENCE South 30 degrees 35 minutes 54 seconds East a distance of 92.26 feet to a capped ½ inch iron rod set for corner;

THENCE South 13 degrees 22 minutes 20 seconds West a distance of 14.42 feet to a capped ½ inch iron rod set for corner on a curve;

THENCE along a curve to the left having a radius of 524.24 feet, a delta of 18 degrees 09 minutes 11 seconds, an arc length of 166.10 feet, and a chord which bears South 48 degrees 02 minutes 54 seconds West having a chord distance of 165.40 feet to a capped ½ inch iron rod set for corner;

THENCE South 77 degrees 52 minutes 41 seconds West a distance of 15.44 feet to the POINT OF BEGINNING, and containing 513,241 square feet or 11.782 acres of land.

PCR TRACT 2

BEING a tract of land situated in the David E. Lawhorn Survey, Abstract No. 727, City of Frisco, Denton County, Texas and being a portion of Tract 2 as described in instrument to Crosswinds at Lone Star Ranch 1000, Ltd. as recorded in Document No. 2005-113235 of the Deed Records, Denton County, Texas (D.R.D.C.T.) and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found on the easterly right of way line of F.M. Highway No. 423 (a variable width right-of-way) as recorded in Volume 447, Page 312, (D.R.D.C.T.) and also being the southwest corner of said Crosswinds at Lone Star Ranch 1000, Ltd. tract;

THENCE North 00 degrees 55 minutes 00 seconds West along said easterly right-of-way line of F.M. Highway No. 423 for a distance of 96.76 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 00 degrees 33 minutes 47 seconds, a radius of 2,819.79 feet and being subtended by a chord which bears North 00 degrees 28 minutes 38 seconds West a distance of 27.71 feet;

THENCE along said curve to the right an arc distance of 27.71 feet to a 5/ 8 inch iron rod found with plastic cap stamped “Carter & Burgess” on the easterly right-of-way line of FM 423 as described in instrument recorded in Document No. 2006, Page 47345 (D.R.D.C.T.);

THENCE along the easterly right-of-way line of FM 423 the following;

North 07 degrees 27 minutes 16 seconds East a distance of 735.98 feet to a point for corner;

North 53 degrees 32 minutes 37 seconds East a distance of 48.58 feet to a 5/8 inch iron rod found with plastic cap stamped “Carter & Burgess”;

North 07 degrees 27 minutes 16 seconds East a distance of 56.32 feet to a 5/8 inch iron rod found with plastic cap stamped “Carter & Burgess” at the beginning of a curve to the

left having a central angle of 00 degrees 22 minutes 12 seconds, a radius of 5,834.58 feet and being subtended by a chord which bears North 07 degrees 16 minutes 10 seconds East a distance of 37.68 feet;

Along said curve to the left an arc distance of 37.68 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess" at the end of said curve;

North 36 degrees 27 minutes 23 seconds West a distance of 50.98 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess" at the beginning of a non-tangent curve to the left having a central angle of 03 degrees 00 minutes 59 seconds, a radius of 5,799.58 feet and being subtended by a chord which bears North 05 degrees 12 minutes 39 seconds East a distance of 305.29 feet;

Along said curve to the left an arc distance of 305.33 feet to a 5/8 inch iron rod found with plastic cap stamped "Carter & Burgess" at the intersection of the easterly right-of-way line of FM 423 and the southerly line of a tract of land described in instrument to Field Street Dev. 1, Ltd. as recorded in Document No. 2005-120564 (D.R.D.C.T.);

THENCE along the southerly lines of said Field Street Dev. 1, Ltd. tract the following;

North 71 degrees 12 minutes 42 seconds East a distance of 189.21 feet to a 5/8 inch iron rod found with yellow plastic cap;

South 82 degrees 38 minutes 46 seconds East a distance of 271.71 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 79 degrees 14 minutes 57 seconds East a distance of 101.30 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 64 degrees 36 minutes 55 seconds East a distance of 91.31 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 47 degrees 58 minutes 23 seconds East a distance of 139.42 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 23 degrees 27 minutes 44 seconds East a distance of 132.65 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 05 degrees 57 minutes 57 seconds East a distance of 221.02 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 24 degrees 22 minutes 38 seconds East a distance of 187.86 feet to a 5/8 inch iron rod found with yellow plastic cap;

North 43 degrees 36 minutes 00 seconds East a distance of 300.47 feet to a point for a corner on the southerly right-of-way line of Lebanon Road (a 120' ROW) as described in instrument to City of Frisco, Texas recorded in Document No. 2008-65799 (D.R.D.C.T.), and being the beginning of a non-tangent curve to the right having a central angle of 18 degrees 44

minutes 45 seconds, a radius of 1,440.00 feet and being subtended by a chord which bears South 40 degrees 10 minutes 48 seconds East a distance of 469.04 feet;

THENCE along the southerly right-of-way line of Lebanon Road the following;

Along said curve to the right an arc distance of 471.14 feet to a point at the end of said curve from which a ½ inch iron rod found with plastic cap bears North 58 degrees 03 minutes 35 seconds East a distance of 60.00 feet;

South 30 degrees 48 minutes 25 seconds East a distance of 912.58 feet to a point at the beginning of curve to the left having a central angle of 06 degrees 00 minutes 09 seconds, a radius of 1,560.00 feet and being subtended by a chord which bears South 33 degrees 48 minutes 30 seconds East a distance of 163.36 feet from which a 5/8 inch iron rod found with plastic cap stamped "Survcon" bears North 58 degrees 08 minutes 40 seconds East a distance of 60.08 feet;

Along said curve to the left an arc distance of 163.43 feet to a point at the end of said curve;

South 35 degrees 46 minutes 05 seconds East a distance of 150.75 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 06 degrees 23 minutes 35 seconds, a radius of 1,570.00 feet and being subtended by a chord which bears South 45 degrees 30 minutes 55 seconds East a distance of 175.09 feet;

Along said curve to the left an arc distance of 175.18 feet to a point at the end of said curve;

South 06 degrees 19 minutes 56 seconds East a distance of 36.67 feet to point for a corner;

South 52 degrees 10 minutes 49 seconds East a distance of 69.53 feet to point for a corner on the westerly line of a tract of land described in instrument to Frisco ISD as recorded in Document No. 2007-38944 (D.R.D.C.T.) and being the beginning of a non-tangent curve to the left having a central angle of 25 degrees 11 minutes 58 seconds, a radius of 1,500.00 feet and being subtended by a chord which bears South 23 degrees 12 minutes 56 seconds West a distance of 654.41 feet;

THENCE along the westerly line of said Frisco ISD tract and along said curve to the left an arc distance of 659.72 feet to point on the southerly line of the aforementioned Crosswinds at Lone Star Ranch 1000, Ltd. tract from which a 5/8 inch iron rod found with plastic cap bears South 13 degrees 05 minutes 10 seconds West a distance of 0.97 feet;

THENCE South 89 degrees 18 minutes 13 seconds West, along the southerly line of said Crosswinds at Lone Star Ranch 1000, Ltd. tract, a distance of 2,112.09 feet to the POINT OF BEGINNING and containing 75.97 acres of land, more or less.

PCR TRACT 3

BEING a tract of land situated in the D. Lawhorn Survey, Abstract No. 727, and being a portion of those certain tracts of described to Highway 423-Lebanon, LTD., recorded under County Clerk's File Nos. 96-R0069961 and 96-R0085903, Denton County, Texas, and being further described as follows:

COMMENCING at a 5/8" capped iron rod found at the intersection of the east right of way line of F.M. 423 and the approximate centerline of Stewart Creek Road (no record found), same being the northwest corner of a tract of land conveyed to 423 Storage Company, as evidenced in deed recorded in Volume 2745, Page 870 of the Deed Records of Denton County, Texas;

THENCE N 89° 44' 10" E, along said Stewart Creek Road and along the south line of a tract of land conveyed to PCR Land Company, LLC, as evidenced in a deed recorded in Document No. 2008-119029 of the Deed Records of Denton County, Texas, a distance of 304.30 feet to the POINT OF BEGINNING at which a ¼" iron rod found being S 13° 18' W, 0.5 feet;

THENCE N 89° 44' 10" E, continuing along said Stewart Creek road and aforesaid PCR Land Company LLC tract, a distance of 1394.37 feet to a 5/8" capped iron rod found for corner;

THENCE S 00° 15' 50" E, departing said Stewart Creek Road and along the west line of a tract of land conveyed to Pulte Homes of Texas LP, as evidenced in a deed recorded in Document No. 2011-48835 of the Deed Records of Denton County, Texas, a distance of 186.62 feet to a point located in water;

THENCE S 61° 07' 13" W, along the northerly line of aforesaid Pulte Homes of Texas LP tract, passing at a distance of 597.90 feet, a brass monument found for the most northerly northeast corner of U.S.A. Tract G-619-A (Lewisville Lake), continuing for a total distance of 926.90 feet to a brass monument found for corner;

THENCE departing aforesaid Highway 423-Lebanon, LTD. and along the common line of said U.S.A. Tract G-619-A (Lewisville Lake) the following:

N 68° 57' 47" W, a distance of 274.54 feet to a brass monument found for corner;

S 57° 48' 47" W, a distance of 236.37 feet to a brass monument found for corner;

N 82° 29' 47" W, a distance of 123.15 feet to a 5/8" capped iron rod found for corner, same being the southeast corner of a tract of land conveyed to Benjamin L. Smith, as evidenced in a deed recorded in Volume 4559, Page 562 of the Deed Records of Denton County, Texas;

THENCE N 00° 28' 39" W, departing aforesaid U.S.A. Tract G-619-A (Lewisville Lake) and along the east line of said Benjamin L. Smith tract and the east line of a tract of land conveyed to 423 Storage Company, Inc. as evidenced in a deed recorded in Volume 2745, Page 870 of the Deed Records of Denton County, Texas, a distance of 499.76 feet to a point located along the face of a building;

THENCE N 00° 25’ 43” W, along the east line of said 423 Storage Company, Inc. tract, a distance of 139.40 feet to the POINT OF BEGINNING and containing a calculated area of 15.605 acres or 679,770 square feet of land.

Exhibit "D"
(FEASIBLITYANALYSIS)

TECHNICAL MEMO

FREESE AND NICHOLS

Innovative approaches
Practical results
Outstanding service

4055 International Plaza, Suite 200 • Fort Worth, Texas 76109 • 817-735-7300 • fax 817-735-7491

TO: Paul Knippel P.E., City of Frisco

Cc: Liz Metting P.E., City of Frisco
Gary Hartwell P.E., City of Frisco

FROM Jessica Brown P.E., Freese and Nichols, Inc.
Mazen Kawasmi P.E., Freese and Nichols, Inc.
Steven Rhodes E.I.T., Freese and Nichols, Inc.

SUBJECT: B.F. Phillips Community Park and Phillips Creek Ranch Reuse Feasibility Analysis

DATE: February 3, 2012



FREESE AND NICHOLS, INC.
TEXAS REGISTERED
ENGINEERING FIRM
F-2144

1.0 INTRODUCTION

Freese and Nichols, Inc. (FNI) analyzed the feasibility of serving two potential reuse water customers for the City of Frisco, the existing B.F. Phillips Community Park and the proposed Phillips Creek Ranch development, with the City's existing reuse system. B.F. Phillips Community Park is operated and maintained by the City's Parks and Recreation Department which currently uses potable water to irrigate the park. The park is located along 4th Army Memorial Road and Timber Ridge Drive and is in close proximity to the existing 24-inch reuse water main running north along 4th Army Memorial Road. The proposed Phillips Creek Ranch development is located west of Teel Parkway between Lebanon Road and Stonebrook Parkway. The development could potentially receive reuse water through upsizing and realignment of the proposed 6-inch reuse water line that would serve Bledsoe Elementary. FNI utilized the City's existing reuse hydraulic model to determine if the existing B.F. Phillips Community Park and the proposed Phillips Creek Ranch development could be served with the existing reuse system for the near term.

2.0 REVISED REUSE SCHEDULE

North Texas Municipal Water District (NTMWD) provided FNI with daily wastewater treatment plant effluent flows through October 2011 and hourly flow data for selected low flow days. The most recent data reflects a higher diversion rate of 2.2 MGD from the Stewart Creek West WWTP to the Panther

Creek WWTP as opposed to the diversion rate of approximately 1.3 MGD of 2010. FNI used the data to determine the minimum daily effluent flow at the Stewart Creek West WWTP and develop a revised dry weather hourly effluent flow. This diurnal pattern was used to verify that the City could serve the existing and potential reuse water customers under similar extreme dry weather conditions experienced during Summer 2011. The revised dry weather flow curve was used to determine if any modifications to the previously recommended hourly irrigation schedule for the reuse system were needed due to low hourly effluent flows. The revised dry weather effluent flows were also used to determine the irrigation schedule for the new customers and the maximum supply available to the new customers.

Modifications to some existing reuse customers' schedules, developed in the *Short Term Reuse Evaluation Study* from June 2011, were made due to the revised hourly effluent flows. The Trails Golf Course previously was scheduled to take 2 MGD of reuse water daily from 6 a.m. to 6 p.m. **Figure 1** shows the reuse water demands with the revised reuse schedule. From **Figure 1**, effluent flows are less than 2 MGD from 6 a.m. to 8 a.m. causing the Trails Golf Course reuse water schedule to be revised to take reuse water from 8 a.m. to 6 p.m. The Trails Golf Course can still take reuse water from 6 a.m. to 8 a.m. but will have to take an increased amount as shown in **Figure 1** from 8 a.m. to 6 p.m. to ensure it receives the required daily amount of reuse water. The Trails Golf Course is scheduled to take reuse water during the day since it stores the reuse water in ponds and uses it for irrigation purposes at night. **Table 1** shows the revised irrigation schedule for the existing reuse customers.

Table 1: Revised Existing Reuse Water Customer Schedule

Reuse Water Customer	Average Demand (MGD)	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Trails Golf Course	2.4	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM
Stewart Creek West Greenbelt	0.58	12:00 AM to 3:00 AM; 8:00 PM to 10:00 PM	11:00 PM to12:00 AM	12:00 AM to 6:00 AM; 8:00 PM to 12:00 AM	12:00 AM to 3:00 AM; 11:00 PM to 12:00 AM	12:00 AM to 6:00 AM; 8:00 PM to 12:00 AM	12:00 AM to 3:00 AM 11:00 PM to 12:00 AM	12:00 AM to 6:00 AM 8:00 PM to 12:00 AM
Pearson Farms	0.26	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	
Bledsoe Elementary	0.17	12:00 PM to 6:00 AM	12:00 PM to 6:00 AM		12:00 PM to 6:00 AM		12:00 PM to 6:00 AM	
Cobb Middle School	0.38	12:00 PM to 6:00 AM	12:00 PM to 6:00 AM		12:00 PM to 6:00 AM		12:00 PM to 6:00 AM	

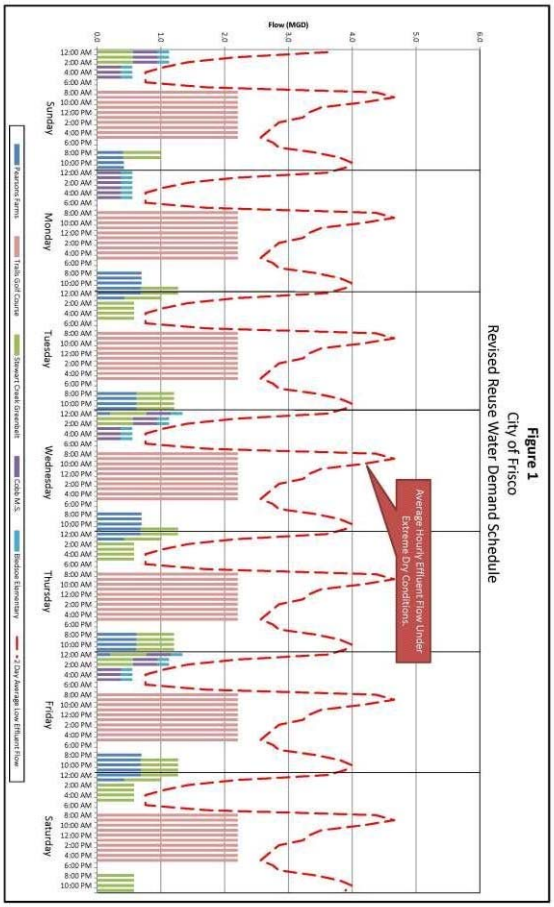


Figure 1
City of Frisco
Revised Reuse Water Demand Schedule

3.0 REVISED REUSE WATER MODEL

In addition to the hourly wastewater treatment plant flow data, the City also provided FNI with weekly irrigation volumes for B.F. Phillips Community Park and average daily irrigation volumes the City received from the developer for the Phillips Creek Ranch development. The developer of the Philips Creek Ranch development calculated average daily landscape irrigation demands each year to landscape buildout which is expected to occur in 2021. FNI met with the developer to verify these demands as well as a potential watering window using reuse water. The estimated 2015 daily irrigation volume for Phillips Creek Ranch development was used to determine if the City could serve the development in the near term with its existing reuse system. The irrigation volumes were used to determine hourly flow requirements and develop the irrigation schedule for both proposed reuse water customers. The calculated hourly demand and duration developed for each of the potential reuse water customers were added to the City's reuse hydraulic model. The model was used to verify that the City could provide a minimum pressure of 60 psi to the potential reuse customers for irrigation purposes. The model was also used to verify that the additional demands of the proposed reuse water customers would not affect the pressures provided to the existing customers. **Figure 2** shows the modeled pressures at each reuse water customer's delivery point over a seven day period.

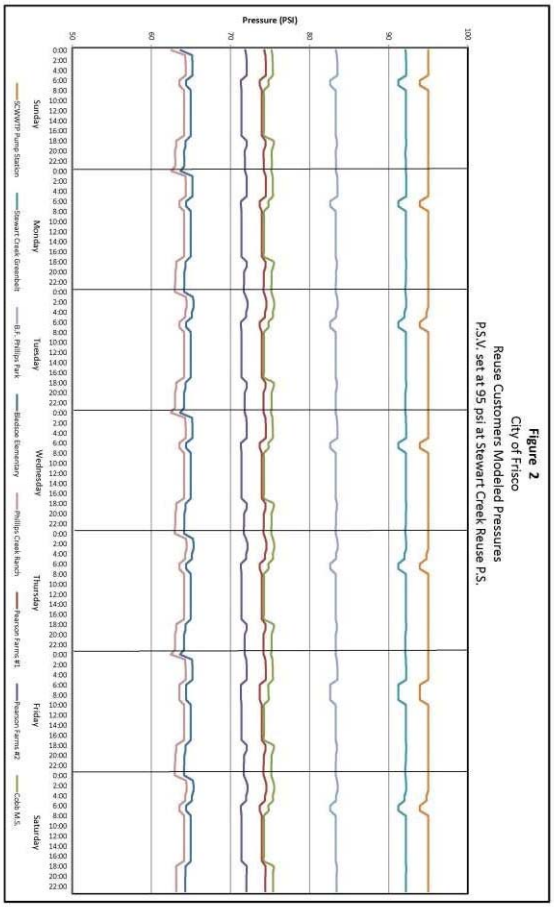


Figure 2
City of Frisco
Reuse Customers Modeled Pressures
P.S.V. set at 95 psi at Stewart Creek Reuse P.S.

4.0 RECOMMENDED SCHEDULE

Once it was determined that the reuse water customers' pressure and demands could be served in the near term with the existing reuse water system, a recommended schedule for the reuse water customers was developed. This recommended schedule enables the City to meet the reuse water demands and pressure requirements of the reuse water customers. **Table 2** shows the recommended reuse water schedule for each customer over a seven day period. **Figure 3** shows the reuse water customers and the revised dry weather hourly effluent flows for a seven day period.

Table 2: Recommended Reuse Water Schedule

Reuse Water Customer	Average Demand (MGD)	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Trails Golf Course	2.4	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM
Stewart Creek West Greenbelt	0.58	12:00 AM to 3:00 AM; 8:00 PM to 10:00 PM	11:00 PM to12:00 AM	12:00 AM to 6:00 AM; 8:00 PM to 12:00 AM	12:00 AM to 3:00 AM; 11:00 PM to 12:00 AM	12:00 AM to 6:00 AM; 8:00 PM to 12:00 AM	12:00 AM to 3:00 AM 11:00 PM to 12:00 AM	12:00 AM to 6:00 AM 8:00 PM to 12:00 AM
Pearson Farms	0.26	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	8:00 PM to 1:00 AM	8:00 PM to 2:00 AM	
Bledsoe Elementary	0.17	12:00 PM to 6:00 AM	12:00 PM to 6:00 AM		12:00 PM to 6:00 AM		12:00 PM to 6:00 AM	
Cobb Middle School	0.38	12:00 PM to 6:00 AM	12:00 PM to 6:00 AM		12:00 PM to 6:00 AM		12:00 PM to 6:00 AM	
B. F. Phillips Park	0.23	12:00 AM to 2:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 2:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 4:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 2:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 4:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 2:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 2:00 AM; 6:00 PM to 12:00 PM
Phillips Creek Ranch	0.63	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM	12:00 AM to 1:00 AM; 6:00 PM to 12:00 PM

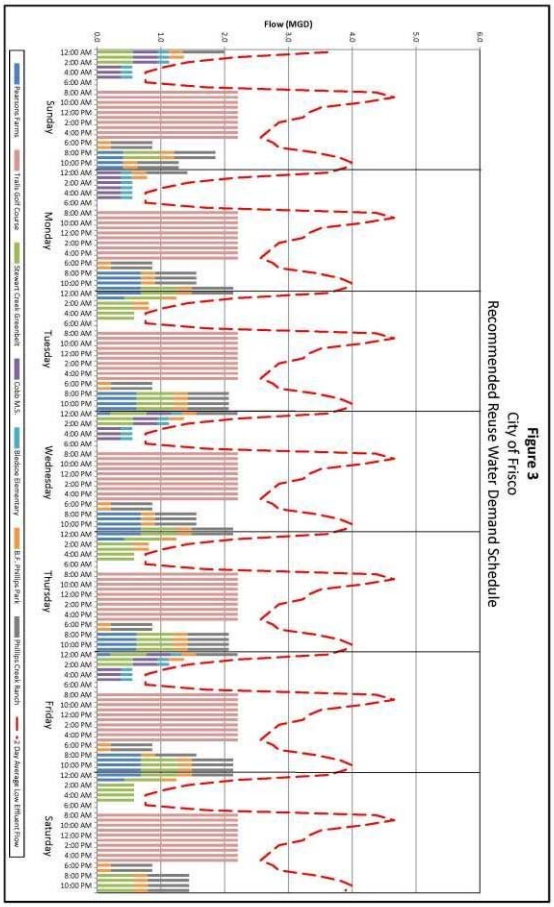


Figure 3
City of Frisco
Recommended Reuse Water Demand Schedule

5.0 PROPOSED REUSE WATER SYSTEM IMPROVEMENTS

5.1 Required Improvements for Reuse Service to B.F. Phillips Park

B.F. Phillips Community Park is located at 4th Army Memorial Drive and Timber Ridge and has two existing irrigation meters on the north and south ends of the park. The park can be served reuse water through the construction of a 6-inch reuse water lines from the 24-inch reuse water main along 4th Army Memorial Drive to the existing irrigation meters at an estimated cost of **$6,630**. **Figure 4** shows the recommended 6-inch reuse water lines that would serve B.F. Phillips Community Park. **Table 3** shows the probable opinion of construction cost of the 6-inch reuse water lines that would need to be constructed to provide reuse water to B.F. Phillips Community Park.

5.2 Required Improvements for Reuse Service to Phillips Creek Ranch

The Phillips Creek Ranch development delivery point was assumed to be located north of Bledsoe Elementary along Stonebrook Parkway. This delivery point would be served through the construction of a 12-inch reuse water line from the 24-inch reuse water main at 4th Army Memorial Drive along Stonebrook Parkway. A 6-inch reuse water line would connect to the proposed 12-inch reuse water line to serve Bledsoe Elementary south of Stonebrook Parkway. The construction of the 12-inch/ 6-inch reuse water line to serve the Phillips Creek Ranch development and Bledsoe Elementary will have an estimated cost of **$616,040**. **Figure 4** shows the recommended 12-inch/ 6-inch reuse water line to serve both Bledsoe Elementary and the Phillips Creek Ranch development. Buildout irrigation demands for the Phillips Creek Ranch development were used to determine the reuse water line sizing to serve the development and Bledsoe Elementary. **Table 3** shows the probable opinion of construction cost of the6-inch and 12-inch reuse water line that would need to be constructed to provide reuse water to the Phillips Creek Ranch development and Bledsoe Elementary for irrigation purposes.


Phillips Creek Ranch North
Bledsoe Elementary School
B.F. Phillips Community Park
Phillips Creek Ranch South
FIGURE 4
CITY OF FRISCO
PROPOSED REUSE WATER SYSTEM IMPROVEMENTS
LEGEND
Phase 1 Reuse Line
Phase 2 Reuse Line
Existing Reuse Line
10-ft Contour
Stream
Parcel
Potential Reuse Customer
FRISCO
FREESE NICHOLS

City of Frisco
Short Term Reuse Evaluation

FREESE NICHOLS

FRISCO

Table 3: OPINION OF PROBABLE CONSTRUCTION COST — February 3, 2012

Project 1

Project Description

6 - inch Reuse Water Main to B.F. Phillips Community Park

Detailed Description

This project consists of a 6-inch reuse water main from the park's existing irrigation meters to the existing 24-inch reuse transmission main located along 4th Army Memorial Drive.

Purpose

This project will provide B.F. Phillips Community Park with reuse water for irrigation purposes and take demand off of the potable water system.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	6" Pipe & Appurtenances	100	LF	$48	$4,800
	SUBTOTAL:				$4,800
	CONTINGENCY			20%	$960
	SUBTOTAL:				$5,760
	ENG/SURVEY			15%	$870
	SUBTOTAL:				$6,630
PROJECT TOTAL					**$6,630**

Project 2

Project Description

6-inch/12-inch Reuse Water Main to Bledsoe Elementary and Phillips Creek Ranch

Detailed Description

This project consists of a 12-inch reuse water main from the existng 24-inch reuse transmission main along 4th Army Memorial to the Phillips Creek Ranch development irrigation meter at Stonebrook Parkway. This project also consist of a 6-inch reuse water main from the proposed 12-inch reuse water line south to the Bledsoe Elementary irrigation meter located at Timber Ridge Dr. and Teel parkway.

Purpose

This project will provide Bledsoe Elementary and the Phillips Creek Ranch Development with reuse water for irrigation purposes and take demand off of the potable water system.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	6" Pipe & Appurtenances	1,300	LF	$48	$62,400
2	12" Pipe & Appurtenances	4,000	LF	$96	$384,000
	SUBTOTAL:				$446,400
	CONTINGENCY			20%	$89,280
	SUBTOTAL:				$535,680
	ENG/SURVEY			15%	$80,360
	SUBTOTAL:				$616,040
PROJECT TOTAL					**$616,040**

6.0 CONCLUSION

Both B.F. Phillips Community Park and the Phillips Creek Ranch development can be served by the existing reuse system in the near term. **Figure 3** shows that there is reuse water supply of approximately one million gallons an hour available for a six hour timeframe from 6 p.m. to 12 p.m. in the near term. As the Phillips Creek Ranch development approaches buildout more reuse water will be required to irrigate addition green space within the development. Once the reuse water main connecting the Panther Creek WWTP to the existing reuse system, currently under design is complete, addition reuse water supply will become available. A new low effluent flow pattern that takes into account both Stewart Creek West and Panther Creek WWTPs will need to be developed to determine the available reuse water supply of both wastewater treatment plants. The proposed changes to the operation of the reuse water system recommended in the Short Term Reuse Evaluation study, performed by FNI in June of 2011, will maintain a minimum pressure of 60 psi throughout the reuse water system. The revised reuse water customer schedule shown in **Table 2** will help ensure the City of Frisco can continue to provide reuse water and reduce the demand placed on the potable water system under extreme dry weather conditions.

AGENDA ITEM #16.

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: **Arthur Hartle, P.E., Senior Civil Engineer**

Date: **May 15, 2012**

Subject: **Consider and act upon adoption of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and Garver, LLC for design and preparation of construction documents for 5th Street Reconstruction and Trail Improvements.**

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and Garver, LLC of Frisco, Texas, in the amount of $249,780, for 5th Street Reconstruction and Trail Improvements.

Background Information: This contract for engineering services will provide construction plans for the removal and replacement of the existing asphalt roadway from Main Street to Hickory Street and a new sidewalk and trail from Main Street to Stonebrook Parkway.

The existing asphalt pavement will be replaced with concrete. The street will have parking on both sides of the street. The sidewalk/trail will continue south from Hickory Street along the east side of Parkwood Boulevard to Stonebrook Parkway and have a variable width of 5-foot to 8-foot.

The following is a summary of the work tasks for this engineering services contract:

Task 1 Surveying
Task 2 Geotechnical
Task 3 Preliminary Plans
Task 4 Construction Documents
Task 5 Bid Phase Services

Task 6 Construction Administration
Task 7 TDLR
Task 8 Record Documents
Task 9 Subsurface Utility Engineering
Task 10 Water and Sanitary Sewer design

The cost for engineering services takes the following items into account:

- Location in urban setting
- Numerous side streets, alleys, and driveway tie-ins
- Resolve conflicting objectives to best match street and property elevations
- Numerous underground utilities
- Street lighting
- Retaining walls

Design is anticipated to be complete by November 2012. Construction could begin in early 2013 and would take approximately six months.

Alternatives: City Council could consider the following alternatives:

- Approval of a Resolution
- Deny approval of the Resolution

Financial Considerations: Staff recommends that funding the design for this project come from General Obligation Bonds.

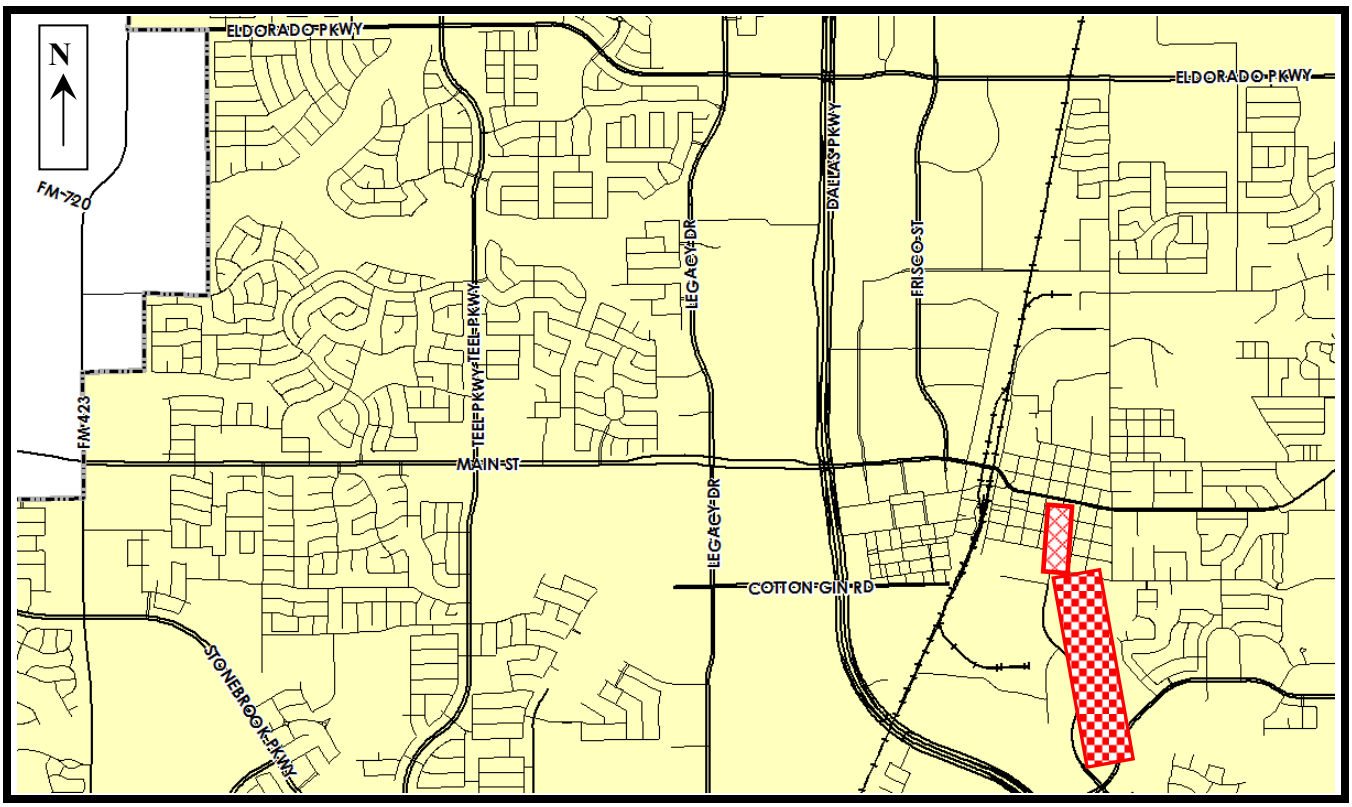
Legal Review: The Professional Services Agreement has been reviewed and approved by the City Attorney.

Supporting Documents: Supporting documents include the following items:

- Project Location Map
- Resolution
- Professional Services Agreement

Staff Recommendation: Staff recommends approval of the resolution.

Professional Services Agreement
Garver, LLC
5th Street Reconstruction and Trail Improvements
May 15, 2012



Street and Sidewalk Location

Sidewalk Location

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 PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND GARVER, LLC, TO PERFORM ENGINEERING SERVICES FOR 5TH STREET RECONSTRUCTION AND TRAIL IMPROVEMENTS; PROVIDING FOR 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 of the City of Frisco, Texas, a Professional Services Agreement by and between the City of Frisco, Texas and Garver, LLC, to perform engineering services for 5th Street Reconstruction and Trail Improvements, 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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

GARVER, LLC (CONSULTANT)

FOR

PROFESSIONAL SERVICES

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

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: **Garver, LLC**
3010 Gaylord Parkway, Suite 190
Frisco,Texas 75034
Telephone: 972-377-7480
Facsimile: 972-377-8380

for the following Project: **Frisco 5th Street Reconstruction and Trail Improvements**

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 **Garver, LLC**, 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 perform professional services for 5th Street Reconstruction and Trail Improvements for the City, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional engineering 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 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.

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 as follows: Basic & Special Services to be performed on a Lump Sum Basis, for an amount not to exceed **Two Hundred Forty Nine Thousand, Seven Hundred Eighty and 00/100 Dollars ($249,780.00)**, 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 for Basic Services. 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 five percent (5%) of Consultant's Fee for Basic Services 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*
	Engineers/Architects E1-E6	$88.00-$215.00
	Planners P1 – P2	$106.00-$124.00
	Designers D1-D2	$83.00-$111.00
	Technicians T1-T2	$71.00-$94.00
	Surveyors S1-S5	$42.00-$127.00
	2 Man Crew (Survey)	$160.00
	3 Man Crew (Survey)	$200.00
	2 Man Crew (GPS Survey)	$180.00
	3 Man Crew (GPS Survey)	$220.00
	Construction Observation C1-C3	$80.00-$144.00
	Administration	$49.00-$109.00

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 (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:

Paul Knippel, P.E.
Director of Engineering Services
City of Frisco
6101 Frisco Square Boulevard
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:

Frank McIllwain, P.E.
Senior Project Manager
Garver, LLC
3010 Gaylord Parkway, Suite 190
Frisco, Texas 75034

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 Professional Services 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 2011-2012 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 2011-2012 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
Garver, LLC

By: _____
Frank McIlwain, P.E.

Title: PRINCIPAL

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 _____, 2012.

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

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 Frank McIlwain 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 1st DAY OF May, 2012.

Camille E. Keene
_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 09/01/14

CAMILLE E. KEENE
Notary Public, State of Texas
My Commission Expires
September 01, 2014

EXHIBIT "A"
SCOPE OF SERVICES

Agreement by and between the City of Frisco, Texas (City) and Garver, LLC (Consultant) for 5th Street Reconstruction and Trail Improvements

---

I. PROJECT DESCRIPTION.

Provide engineering design services for the street reconstruction of 5th Street from Main Street to Hickory Street and a 3,600 L.F. trail extension. These improvements are more particularly described as follows:

A. Reconstruction of 5th Street in accordance with Alternate #1A as described in the 5th Street Feasibility Study. Improvements will include removal of the existing street and sidewalks, subgrade stabilization, construction of two travel lanes, parallel parking on both sides of the street, 5-foot sidewalk on the west side of the street, and appurtenances.

B. Construction of a 5-foot to 8-foot wide trail approximately 3,600 L.F. in length as described in the 5th Street Feasibility Study.

C. Drainage improvements at the west edge of Teel Parkway at the southern driveway of 10411 Teel Parkway.

II. GENERAL REQUIREMENTS.

A. Specific design requirements shall be obtained from the City of Frisco Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.

B. Consultant shall coordinate with the utility companies, including, but not limited to franchised utilities, City of Frisco, pipeline companies, or any other entity which has facilities within or adjacent to the Project, any and all exposure, removal, and/or relocation work necessary for implementation of Project. This does not include the preparation of additional plans and paperwork necessary to obtain any permits required by any of these entities.

C. Consultant shall coordinate with City Fire Department and US Postal Service for consideration of their access and development of construction phasing.

D. Each time the Consultant submits plans and/or specifications to City, eight (8) copies of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultants for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

E. The Consultant shall submit a weekly report outlining, at a minimum, the work on the project which occurred the previous week, the work expected to be completed the following week, the next major project milestone, and any information needed from the City.

III. TASK SUMMARY, BASIC SERVICES.

A. **Task One, Survey Services** – Survey data will be collected within the limits of the limits of construction including streets, driveways, buildings, and location of underground utilities. This field information shall be based on NAD-83 datum.

1.1 Field Survey – Consultant will subcontract with a survey firm to perform the following:

1.1.1 Establish control using City primary control and benchmarks. Permanent control points will be set in concrete and will define the X, Y and Z coordinates for the Project. The permanent control points shall be set outside the limits of construction (if possible) and shall be a 5/8" iron rod set with a plastic cap. The control points shall be tied to the City benchmarks via a differential level.

1.1.2 Obtain cross-sections every fifty feet (50') along the Right-of-Way, and all grade breaks will be surveyed. Collect spot elevations as required to facilitate the generation of one-foot (1') contours.

1.1.3 Topographic surveys shall include all existing features above ground level that are believed to affect proposed construction. These features shall include, but are not limited to, above-ground utility appurtenances, manholes (including invert elevations), structures, culverts, retaining walls, trees, landscaping, curbs, pavement, existing street centerline, sidewalks, fences, property corners, block corners. Surveys shall also include all buildings, steps, and other topographical features which would be of interest to the property owner in discussing the plans with the City.

1.1.4 Locate underground utilities or structures that may be within the limits of the Project. Such utilities include but are not limited to wastewater, water, gas, electric, storm sewer, telephone and television cable. Consultant will contract 1-800-DIG-TESS or individual utility companies to mark existing underground utilities

EXHIBIT "A"
SCOPE OF SERVICES

in the field and shall show such utilities on the base map either based upon field locations or available construction as-builts.

1.2 Ownership Data – Research property ownership of the affected parcels and obtain copies of deeds, subdivision plats, Right-of-way maps and ownership addresses along the project.

1.2.1 Ownership Map – Locate property corners of parcels that are affected by the project. Calculate property lines and Right-of-way lines of 5th Street and side streets and utilities.

B. Task Two, Geotechnical Investigation – Geotechnical data was collected in the scope of the 5th Street Feasibility Study. That information and the resulting report will be used for design of 5th Street improvements.

C. Task Three, 60% Design Plans

3.1 Design – Consultant shall prepare and submit eight (8) sets of 60% Design Plans for review on 11" x 17" sheets. At the time of submittal of the 60% Design Plans, any supporting studies and/or calculations (i.e. drainage calculations, structural calculations) shall be submitted for review by the City. 60% Design Plans must be approved by the City prior to the Consultant commencing with the preparation of Construction Plans. Upon approval of the 60% Design Plans, the Consultant will provide the City with the approved plans in pdf format and revised schedule for completion of the project. 60% Design Plans shall include, at a minimum, the following information:

3.1.1 Title Sheet
3.1.2 Project Layout
3.1.3 Existing and Proposed Typical Sections
3.1.4 Preliminary Traffic Control Plan
3.1.5 Paving Plan/Profile
3.1.6 Drainage Improvement Plan
3.1.7 Signing and Pavement Markings
3.1.8 Lighting Layout Plan
3.1.9 Irrigation/Planting Plan
3.1.10 Cross Sections – Prepare detailed cross section in sufficient detail for construction at a maximum of 100' intervals and include at a minimum the following information:
3.1.10.1 Existing and Proposed Conditions.
3.1.10.2 Baseline and Right-of-Way Designations.

3.1.10.3 Plot existing utilities that will remain in place.

3.1.10.4 Side slope ratios.

3.2 Construction Estimate – At the time of submittal of the 60% Design Plans, the Consultant shall prepare an estimate of construction quantities and develop a preliminary statement of probable construction cost.

3.3 Right of Way Documents – Acquisition of right-of-way and easements are not anticipated for this project and are not included in the scope of this contract.

3.4 Utility Coordination – Upon approval of the 60% Design Plans, the Consultant shall supply 60% Design Plans, in both hard copy and pdf format, for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Consultant shall also provide a Utility exhibit showing the alignment of franchise utilities within the project limits and potential conflict points. The Consultant shall also attend any utility coordination meetings for the Project, if requested by the City.

3.5 General Notes – Construction General Notes shall be compiled and inserted in the plans after the Typical Sections.

3.6 Quantity Summary Sheets – Quantities shall be compiled and summarized in a tabular format with the description of the items matching that of the bid documents. Quantity Summary Sheets shall be located in the plans following the General Notes.

3.7 Details and Standards – Appropriate details and standards shall be compiled and inserted into the plans following the section in which the detail or standard is applicable.

D. **Task Four, Construction Plans (100% Plans)** – At such time as the Consultant is directed by the City, Consultant shall prepare Construction Plans based upon City review comments of the 60% Design Plans and, in addition, shall include the following:

4.1 Construction Estimate – The Consultant shall revise the preliminary statement of probable costs based on comments received from the City during the 60% Design Plan phase.

4.2 Project Manual

4.3 Special Specifications, if applicable

4.4 Utility Coordination – Upon completion of the Construction Plans, the Consultant shall distribute Plans for the Project to all utility companies or other entities that have facilities within the limits of the Project. The Consultant shall also attend any utility coordination meetings for the Project, if requested by the City.

E. **Task Five, Bid Phase Services** – The Consultant shall provide services to assist the City in selection of a Contractor for the construction of the Project. These services shall consist of the following:

5.1 **Preparation and Delivery of Bid Documents** – The Consultant shall assist the City in the delivery of the Bid Documents to prospective bidders. The Consultant shall maintain a list of prospective bidders receiving the Bid Documents. The Consultant may sell sets of Bid Documents to contractors, suppliers, subcontractors, etc. The purchase price paid should offset the reproduction and distribution costs. In addition, the Consultant will send Construction Documents to appropriate contractor plan rooms and three (3) sets to the City.

5.2 **Bid Period Requests for Information (RFI)** – The Consultant shall develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders questions and requests and the response thereto. The Consultant shall provide technical interpretation of the Bid Documents and shall prepare proposed responses to all contractors' questions and requests to be approved by the City. The responses may be in the form of addenda.

5.3 **Addenda** – The Consultant shall assist the City in issuing Addenda to the Bid Documents and shall distribute Addenda to the bidders. All Addenda shall be approved by the City.

5.4 **Bid Opening** – The Consultant shall assist the City in opening of bids. The Consultant shall review all bids and evaluate them for responsiveness and bid amount and prepare bid tabulation for all responsive bidders. The bid

tabulation shall be delivered to the City in Excel format. The Consultant will also verify through reasonable investigation the financial and performance history documentation submitted by the low bidder and second low bidder. The Consultant shall prepare a report of its review and evaluation and include recommendations for award of the contract for construction, or other action as may be appropriate. The City shall make the final decision on the award of the contract for construction and the acceptance or rejection of all bids.

5.5 **Recommendation of Contract Award** – The Consultant shall assist the City in preparing the notice of award; assembly, delivery and execution of the contract documents for construction; and preparation of the notice to proceed.

5.6 **Conformed Document Preparation** – The Consultant shall incorporate all addenda into contract documents and issue conformed sets. Eight (8) conformed sets of original contract documents will be distributed to the City and the successful contractor.

F. **Task Six, Construction Administration** – These services are intended to assist the City in administering the contract for construction, monitoring the performance of the construction Contractor, verifying that the Contractor's work is in substantial compliance with the contract documents, and assisting the City in responding to the events that occur during construction. The Consultant shall provide Construction Administration Services as defined below.

6.1 **Pre-Construction Conference** – The Consultant shall coordinate and attend the preconstruction conference with the Contractor to review the Project communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the Project. The Consultant will take minutes or otherwise record the results of this conference. Meeting minutes from the Conference will be returned to the City within a seventy-two (72) hour period after the conference is held.

6.2 **Requests for Information** – The Consultant will review the Contractor's requests for information or clarification of the contract for construction. The Consultant will coordinate and issue responses to requests to the City. The Consultant will log and track the Contractor's requests.

EXHIBIT "A"
SCOPE OF SERVICES

6.3 **Review of Contractor's Requested Changes** – The Consultant shall review all Contractor-requested changes to the contract for construction. The Consultant will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, the Consultant shall prepare final change order documents.

6.4 **Monthly Site visit** – The Consultant shall visit the site once per month during construction to review construction progress and respond to questions from the Contractor or City.

G. **Task Seven, TDLR Notice of Substantial Completion** – Consultant shall verify project conforms to TDLR standards and Notice of Substantial Completion has been issued to City.

H. **Task Eight, Record Documents** – The Consultant shall prepare construction Record Documents based on information received from the Construction Contractor within thirty (30) days of substantial completion of construction and provide to the City the items (and quantities as stated).

IV. TASK SUMMARY, SPECIAL SERVICES.

A. **Task Nine, Subsurface Utility Engineering (SUE)** –

9.1 Consultant's survey firm will subcontract with a SUE firm to provide the following SUE services.

9.1.1 SUE Quality Level "D, C, and B" on all known utilities by obtaining as-built utility plans from owners of name marked utilities, municipalities, and other government agencies; visible above ground appurtenances obtained through traditional survey methods; and non-destructive surface geophysical and horizontal designation of subsurface utilities with an accuracy of approximately one foot with pipe and cable locators, metal detectors, probing, and/or other non-destructive surface methods.

9.1.2 SUE Quality Level "A" (QLA) – Provide information for twenty (20) test hole locations as defined by the Consultant along the project. SUE services will be in accordance with the American Society of Consulting

Engineers (ASCE) Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). SUE firm will excavate test holes by means of non-destructive vacuum excavation methods and produce a summary sheet containing the coordinates and elevation to top of the utility at each test hole location with test holes incorporated into the surveyor's topographic survey file. The elevations of the test holes and the horizontal locations shall be tied to the same control as the project survey which will be tied to the City primary control and benchmarks.

B. **Task Ten, Water and Sanitary Sewer Design** –

10.1 Consultant shall design up to one thousand feet (1,000') of waterline and sanitary sewer line replacement in conjunctions with street improvements. This design effort shall be in accordance with the tasks set forth in the preliminary plans and construction plans tasks.

V. 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:

1. Redesign for the City's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Environmental Handling and Documentation, including Stormwater Pollution Prevention Plans, wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
3. Preparation of right-of-way documents and exhibits.
4. Geotechnical Services.
5. Conceptual Design Services.
6. Traffic Studies.
7. Lighting calculations. City to provide lighting pole placement or maximum pole spacing.
8. Landscaping design. City to provide tree type and locations.
9. Hydraulic Modeling of existing storm pipe and open conveyance systems.

EXHIBIT "A"
SCOPE OF SERVICES

10. Construction Administration services not listed in Section III, such as but not limited to review of shop drawings, review of contractors payment requests, change order administration, on-site observation, construction materials testing, final notice of acceptability of the work, and services after construction such as warranty follow-up.
11. Construction Inspection.

VI. DELIVERABLES.

A. **Required Deliverables** – At the completion of Tasks One Through Ten, Consultant shall ensure the delivery of the following products to the City:

1. **Deliverable #1** – Eight (8) sets of Design Plans (60%)

2. **Deliverable #2** – Three (3) sets of Construction Plans (100%) and Draft Project Manual

3. **Deliverable #3** – Eight (8) sets of Conformed Plans and Four (4) sets of the Project Manual (this incorporates any addenda)
    a. Seven (7) Full Size Plans
    b. One (1) Half Size Plans

4. **Deliverable #4** – Record Drawings
    a. Two (2) sets of prints
    b. One (1) CD of pdf. Formatted plans
    c. One (1) CD of AutoCad formatted plans

EXHIBIT "A"
SCOPE OF SERVICES

VII. PROJECT LABOR ALLOCATION

Task	Task Description	Labor Hours
TASK 1	Survey	Sub-Consultant
TASK 2	Geotechnical Investigation	n/a
TASK 3	Preliminary Design Plans (60%)	555.0
TASK 4	Construction Plans (100%)	653.0
TASK 5	Bid Phase Services	33.0
TASK 6	Construction Administration	61.0
TASK 7	TDLR Notice of Substantial Completion	93.0
TASK 8	Record Documents	98.0
TASK 9	Subsurface Utility Engineering (SUE)	Sub-Consultant
TASK 10	Water and Sanitary Sewer Design	138.0
GRAND TOTAL, LABOR HOURS		1631.0

VIII. ATTACHMENTS (IF APPLICABLE)

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

Agreement by and between the City of Frisco, Texas (City) and Garver, LLC (Consultant) for 5th Street Reconstruction and Trail Improvements

I. COMPENSATION SCHEDULE

MONTH, YEAR	DOLLAR AMOUNT	TASK COMPLETED
May, 2012	--	City Council approval of a Resolution authorizing the City Manager to execute the Agreement; City issues Notice to Proceed to Consultant.
May, 2012	--	Consultant's receipt of fully executed Agreement.
June, 2012	$26,800.00	**Survey** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
June, 2012	$49,250.00	**SUE** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
	--	**Geotechnical Investigation** (Utilize geotechnical information collected in the scope of the 5th Street Feasibility Study).
August, 2012	$55,800.00	**Preliminary Design Plans** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
November, 2012	$65,100.00	**Construction Plans** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
November, 2012	$14,200.00	**Water and Sanitary Sewer Design** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

MONTH, YEAR	DOLLAR AMOUNT	TASK COMPLETED
December, 2012	$4,650.00	**Bid Phase Services** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
January, 2012	$9,000.00	**Construction Administration Services** (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
May, 2013	$12,490.00 (5% of Consultant's Fee)	**TDLR Notice of Substantial Compliance.**
May, 2013	$12,490.00 (Final 5% of Consultant's Fee)	**Completion of Record Documents.**
TOTAL CONSULTANT'S FEE (LUMP SUM, NOT-TO-EXCEED)	**$249,780.00**	

EXHIBIT "B"
COMPENSATION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

II. PROJECT BUDGET SUMMARY.

A. Basic Services.

1. Description of Basic Services

a.	**Survey**	$26,800.00
b.	**Preliminary Design Plans (60%)**	$55,800.00
d.	**Construction Plans (100%)**	$65,100.00
e.	**Bid Phase Services**	$4,650.00
f.	**Construction Administration**	$9,000.00
g.	**TDLR Notice of Substantial Compliance** *(5% of Consultant's Fee Allocated for Road Design)*	$12,490.00
h.	**Completion of Record Documents** *(5% of Consultant's Fee)*	$12,490.00

2. Total of Basic Services (Not-To-Exceed) ***$186,330.00***

B. Special Services.

1. Descriptions of Special Services

a)	**Subsurface Utility Engineering (SUE)**	$49,250.00
b.	**Water and Sanitary Sewer Design**	$14,200.00

2. Total of Special Services (Not-To-Exceed) ***$63,450.00***

C. Total Direct Expenses (Lump Sum, Not-To-Exceed) ***$0.00***

D. Project Budget, Grand Total (Lump Sum, Not-To-Exceed) $249,780.00

EXHIBIT "C"
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 PROFESSIONAL SERVICES 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 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 PROFESSIONAL SERVICES 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 Collin §

I, Frank McIlwain, 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 1ST day of May, 2012.

_____
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Frank McIlwain 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 1st day of May, 2012.

_____
Notary Public in and for the State of Texas
My commission expires: 09/01/14

CAMILLE E. KEENE
Notary Public, State of Texas
My Commission Expires
September 01, 2014

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.**

FRANK MCILWAIN / GARVEA, LLC

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.**

NONE

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.**

NONE

Amended 01/13/2006

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.**

NONE

7

[signature]

Signature of person doing business with the governmental entity

5/1/12

Date

Amended 01/13/2006

AGENDA ITEM #17.

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**
From: **Greg Ward, Deputy Chief Services Bureau**
CC: **Ron Patterson, Assistant City Manager**
Todd Renshaw, Police Chief
Date: **5/9/2012**
Re: **Grant application to the Texas Department of Transportation for the 'Click It or Ticket' program.**

Action Requested:
Consider and act upon a Resolution approving a grant agreement with the State of Texas, acting by and through the Texas Department of Transportation for the 2012 Click It or Ticket program and authorizing the submission of the grant application by the City Manager or his designee.

Background Information:
The grant proposal is for the 2012 Click It or Ticket grant through the Texas Department of Transportation. The grant period for the Click It or Ticket Program is for May 21, 2012 through June 3, 2012 and is associated with the Memorial Day Holiday. The total grant amount for this wave is $6,960. There is no cash match required by the City of Frisco. The funded amount will result in a total of 130 enforcement hours (2 weeks).

Alternatives:
The Council could choose to deny this request or request additional information.

Financial Considerations:
There is no cash match required.

Staff Recommendation:
Staff requests that the council authorize the City Manager or his designee to accept this grant.

Thank you for your consideration of this item, if I can be of any support, please contact me at 972-292-6150 or by email at gward@friscotexas.gov.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS APPROVING THE TERMS AND CONDITIONS OF A GRANT APPLICATION TO THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE 'CLICK IT OR TICKET' PROGRAM; AUTHORIZING THE GRANT APPLICATION BY THE CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Frisco finds it in the best interest of the citizens of Frisco that the Texas Department of Transportation 'Click It or Ticket' program be operated for the 2012 Fiscal Year; and

WHEREAS, City of Frisco agrees to provide any required matching funds for the said project as required by the Texas Department of Transportation; and

WHEREAS, The City of Frisco agrees that in the event of loss or misuse of the Texas Department of Transportation funds, The City of Frisco assures that the funds will be returned to the Texas Department of Transportation in full.

WHEREAS, The City of Frisco designates the City Manager or their designee as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

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

The City of Frisco approves the application to the Texas Department of Transportation.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, COLLIN COUNTY, TEXAS ON THIS THE ____ DAY OF _____ 2012.

_____
Maher M. Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

Grant Application Confirmation Number _____

Grant Application Title: TXDOT-2012 Click It or Ticket Program

Texas Traffic Safety eGrants

Fiscal Year 2012

Organization Name: City of Frisco

Legal Name: City of Frisco

Payee Identification Number: 17560005310007

Project Title:

ID: 2012-FriscoPD-CIOT-00020

Period: 05/12/2012 to 06/26/2012

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **City of Frisco** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2011.

Name of the Federal Agency: National Highway Traffic Safety Administration

CFDA Number: **20.602**

CFDA Title: **Occupant Protection**

Funding Source: Section **405**

DUNS: **190075143**

Project Title:**STEP - Click It Or Ticket**

Grant Period: This Grant becomes effective on **05/12/2012** or on the date of final signature of both parties, whichever is later, and ends on **06/26/2012** unless terminated or otherwise modified.

Total Awarded: **$6,960.00**

Amount Eligible for Reimbursement: **$6,960.00**

Match Amount: **$0**

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization.

THE SUBGRANTEE	THE STATE OF TEXAS
City of Frisco	Executed for the Executive Director and Approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out orders, established policies or work programs approved and authorized by the Texas Transportation Commission
By: _____	By: _____
[Authorized Signature]	[District Engineer Texas Department of Transportation]
_____	_____
[Name]	[Name]
_____	_____
[Title]	[Title]
Date: _____	Date: _____
Under the authority of Ordinance or Resolution Number (for local government): (If Applicable)	By: _____
	Director, Traffic OperationsDivision Texas Department of Transportation (Not required for local project grants under $100,000.00)
_____	
[Resolution Number]	Date: _____

General Information

Project Title: STEP - Click It Or Ticket

Project Description: To increase occupant restraint use in all passenger vehicles and trucks by conducting an intense occupant protection enforcement and public information and education effort during the Enforcement period.

How many years has your organization received funding for this project?

This will be our third year.

Texas Traffic Safety Program

GRANT AGREEMENT GENERAL TERMS AND CONDITIONS

ARTICLE 1. COMPLIANCE WITH LAWS

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of its compliance therewith.

ARTICLE 2. STANDARD ASSURANCES

The Subgrantee hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR (Code of Federal Regulations), Part 18; 49 CFR, Part 19 (OMB [Office of Management and Budget] Circular A-110); OMB Circular A-87; OMB Circular A-102; OMB Circular A-21; OMB Circular A-122; OMB Circular A-133; and the Department's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.
C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
D. It will comply with the provisions of the Hatch Political Activity Act, which limits the political activity of employees. (See also Article 25, Lobbying Certification.)
E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.
F. It will establish safeguards to prohibit employees from using their positions for a

purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.

H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.

I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulation, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any such federal requirements as the federal government may now or in the future promulgate.

J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.

K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).

L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person described in Section 573.062 of the Texas Government Code.

M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code,

unless otherwise expressly provided by law.

N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

ARTICLE 3. COMPENSATION

A. The method of payment for this Agreement will be based on actual costs incurred up to and not to exceed the limits specified in the Project Budget. The amount included in the Project Budget will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B hereunder. If the Project Budget specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.

B. All payments will be made in accordance with the Project Budget.

The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent per year of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.

If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department, through the TxDOT Electronic Grants Management System (eGrants) messaging system, prior to the Request for Reimbursement being approved. The notification must indicate the amount, the percent over, and the specific reason(s) for the overrun.

Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.

The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this Agreement.

For Selective Traffic Enforcement Program (STEP) grants *only*: In the Project Budget, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the 5 percent flexibility, with

underrun funds from Budget Categories II or III.

C. To be eligible for reimbursement under this Agreement, a cost must be incurred in accordance with the Project Budget, within the time frame specified in the Grant Period of this Grant Agreement, attributable to work covered by this Agreement, and which has been completed in a manner satisfactory and acceptable to the Department.
D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.
E. Payment of costs incurred under this Agreement is further governed by one of the following cost principles, as appropriate, outlined in the Federal Office of Management and Budget (OMB) Circulars:
    - A-21, Cost Principles for Educational Institutions;
    - A-87, Cost Principles for State, Local, and Indian Tribal Governments; or,
    - A-122, Cost Principles for Nonprofit Organizations.
F. The Subgrantee agrees to submit monthly or quarterly Requests for Reimbursement, as designated in this Grant Agreement, within thirty (30) days after the end of the billing period. The Request for Reimbursement and appropriate supporting documentation must be submitted through eGrants.
G. The Subgrantee agrees to submit the final Request for Reimbursement under this Agreement within forty-five (45) days of the end of the grant period.
H. Payments are contingent upon the availability of appropriated funds.
I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period specified in this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial Agreement period. Preference for funding will be given to those projects for which the Subgrantee has assumed some cost sharing, those which propose to assume the largest percentage of subsequent project costs, and those which have demonstrated performance that is acceptable to the Department.

ARTICLE 4. LIMITATION OF LIABILITY

Payment of costs incurred hereunder is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall so notify the Subgrantee, giving notice of intent to terminate this Agreement, as specified in Article 11 of this Agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may so notify the Subgrantee to continue this agreement.

ARTICLE 5. AMENDMENTS

This Agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment in eGrants. Any amendment must be executed by the parties within the Grant Period, as specified in this Grant Agreement.

ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK

If the Subgrantee is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing through eGrants system messaging. If the Department finds that such work does constitute additional work, the Department shall so advise the Subgrantee and a written amendment to this Agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.
If the Subgrantee has submitted work in accordance with the terms of this Agreement but the Department requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under this Agreement, the Subgrantee shall make such revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.
If the Subgrantee submits work that does not comply with the terms of this Agreement, the Department shall instruct the Subgrantee to make such revisions as are necessary to bring the work into compliance with this Agreement. No additional compensation shall be paid for this work.

The Subgrantee shall make revisions to the work authorized in this Agreement, which are necessary to correct errors or omissions appearing therein, when required to do so by the Department. No additional compensation shall be paid for this work.

The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

ARTICLE 7. REPORTING AND MONITORING

Not later than twenty (20) days after the end of each reporting period, the Subgrantee shall submit a performance report through eGrants. For short-term projects, only one report submitted by the Subgrantee at the end of the project may be required. For longer projects, the Subgrantee will submit reports at least quarterly and preferably monthly. The frequency of the performance reports is established through negotiation between the Subgrantee and the program or project manager.

For Selective Traffic Enforcement Programs (STEPs), performance reports must be submitted monthly.

The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns,

overruns, or high unit costs.

The Subgrantee shall submit the Final Performance Report through eGrants within twenty (20) days after completion of the grant.

The Subgrantee shall promptly advise the Department in writing, through eGrants messaging, of events that will have a significant impact upon this Agreement, including:

A. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.
B. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

ARTICLE 8. RECORDS

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed hereunder, (hereinafter called the records), and shall make such records available at its office for the time period authorized within the Grant Period, as specified in this Grant Agreement. The Subgrantee further agrees to retain said records for four (4) years from the date of final payment under this Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.
Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the records. This right of access is not limited to the four (4) year period but shall last as long as the records are retained.

ARTICLE 9. INDEMNIFICATION

To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.

Further, to the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all

claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.

If the Subgrantee is a government entity, both parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

ARTICLE 10. DISPUTES AND REMEDIES

This Agreement supercedes any prior oral or written agreements. If a conflict arises between this Agreement and the Traffic Safety Program Manual, this Agreement shall govern.
The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of Agreement work. Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

ARTICLE 11. TERMINATION

This Agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described herein and these have been accepted by the Department, unless:

- This Agreement is terminated in writing with the mutual consent of both parties; or
- There is a written thirty (30) day notice by either party; or
- The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.

The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified in this Grant Agreement which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

ARTICLE 12. INSPECTION OF WORK

The Department and, when federal funds are involved, the US DOT, or any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

ARTICLE 13. AUDIT

The Subgrantee shall comply with the requirements of the Single Audit Act of 1984, Public Law (PL) 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Organizations."

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

ARTICLE 14. SUBCONTRACTS

A subcontract in excess of $25,000 may not be executed by the Subgrantee without prior written concurrence by the Department. Subcontracts in excess of $25,000 shall contain all applicable terms and conditions of this Agreement. No subcontract will relieve the Subgrantee of its responsibility under this Agreement.

ARTICLE 15. GRATUITIES

Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the Department under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.
Any person doing business with or who reasonably speaking may do business with the Department under this Agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this Agreement.

ARTICLE 16. NONCOLLUSION

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a

bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

ARTICLE 17. CONFLICT OF INTEREST

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

ARTICLE 18. SUBGRANTEE'S RESOURCES

The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than the Department.

All employees of the Subgrantee shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT

The Subgrantee shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this Agreement in accordance with its own property management procedures, provided that the procedures are not in conflict with the Department's property management procedures or property management standards and federal standards, as appropriate, in:

- 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or
- 49 CFR, Part 19 (OMB Circular A-110), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
B. *All rights to Department.* The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.
C. *All rights to Subgrantee.* Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

ARTICLE 21. SUCCESSORS AND ASSIGNS

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of the Department through eGrants messaging.

ARTICLE 22. CIVIL RIGHTS COMPLIANCE

A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT: 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Parts 60-74, as they may be amended periodically (hereinafter referred to as the Regulations). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).
B. Nondiscrimination: The Subgrantee, with regard to the work performed during the period of this Agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified

by the Subgrantee of the Subgrantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.

D. Information and reports: The Subgrantee shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall so certify to the Department or the US DOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.

E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this Agreement, the Department shall impose such sanctions as it or the US DOT may determine to be appropriate.

F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take such action with respect to any subcontract or procurement as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the Department and the USDOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, apply to this Agreement as follows:

- The Subgrantee agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, have the opportunity to participate in the performance of agreements and subcontracts financed in whole or in part with federal funds. In this regard, the Subgrantee shall make good faith efforts in accordance with 49 CFR Part 26, to insure that Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements and subcontracts.
- The Subgrantee and any subcontractor shall not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of agreements funded in whole or in part with federal funds.

These requirements shall be included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of this Agreement and, after the notification of the Department, may result in termination of this Agreement by the Department, or other such remedy as the Department deems appropriate.

ARTICLE 24. DEBARMENT/SUSPENSION

A. The Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public 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;

3. Are not presently indicted or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph A. 2. of this Article; and

4. Have not, within a three (3) year period preceding this Agreement, had one or more federal, state, or local public transactions terminated for cause or default.

B. Where the Subgrantee is unable to certify to any of the statements in this Article, such Subgrantee shall attach an explanation to this Agreement.

C. The Subgrantee is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.

D. The Subgrantee shall require any party to a subcontract or purchase order awarded under this Grant Agreement to certify its eligibility to receive federal grant funds, and, when requested by the Department, to furnish a copy of the certification.

ARTICLE 25. LOBBYING CERTIFICATION

The Subgrantee certifies to the best of his or her knowledge and belief that:

A. No federally appropriated funds have been paid or will be paid by or on behalf of the

Subgrantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other 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 federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the party to this Agreement shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ARTICLE 26. CHILD SUPPORT STATEMENT

Unless the Subgrantee is a governmental or non-profit entity, the Subgrantee certifies that it either will go to the Department's website noted below and complete the Child Support Statement or already has a Child Support Statement on file with the Department . The Subgrantee is responsible for keeping the Child Support Statement current and on file with that office for the duration of this Agreement period. The Subgrantee further certifies that the Child Support Statement on file contains the child support information for the individuals or business entities named in this grant. Under Section 231.006, Family Code, the Subgrantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

The form for the Child Support Statement is available on the Internet at: http://www.dot.state.tx.us/cso/default.htm.

RESPONSIBILITIES OF THE SUBGRANTEE:

A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.

B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).

C. Attend Department-approved grant management training.

D. Attend meetings according to the following:

1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.

2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.

E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.

F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.

G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement. For Department district-managed grants, the Subgrantee must have obtained written Department district approval, through eGrants system messaging, for travel and related expenses if outside of the district boundaries.

H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.

I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.

J. Ensure that each officer working on the STEP project will complete an officer's daily

report form. The form should include at a minimum: name, date, badge or identification number, type of grant worked, grant site number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures.

K. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department, through eGrants system messaging, prior to incurring costs.

L. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.

M. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.

N. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.

O. Prior to conducting speed enforcement, the Subgrantee must select and survey enforcement sites that comply with existing state mandated speed limits in accordance with the Texas Transportation Code, Sections 545.352 through 545.356.

P. Officers assigned to speed sites should be trained in the use of radar or laser speed measurement devices.

Q. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.

R. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.

S. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.

T. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at www.buckleuptexas.com.

RESPONSIBILITIES OF THE DEPARTMENT:

A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:

- review of periodic reports
- physical inspection of project records and supporting documentation
- telephone conversations
- e-mails and letters
- quarterly review meetings
- eGrants system messaging

B. Provide program management and technical assistance.

C. Attend appropriate meetings.

D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.

E. Perform an administrative review of the project at the close of the grant period to:

- Ascertain whether or not the project objectives were met
- Review project accomplishments (performance measures completed, targets achieved)
- Document any progress towards self-sufficiency
- Account for any approved Program Income earned and expended
- Identify exemplary performance or best practices

Goals & Strategies

Goal: To increase effective enforcement and adjudication of traffic safety-related laws to reduce fatal and serious injury crashes

Strategies: Increase enforcement of traffic safety-related laws.

Increase public education and information campaigns.

Goal: To increase occupant restraint use in all passenger vehicles and trucks

Strategy: Increase enforcement of occupant protection laws.

X I agree to the above goals and strategies.

Law Enforcement Objective/Performance Measure

1. Number and type of citations/arrests to be issued during the CIOT Operation	
a. Safety Belt Citations	235
b. Child Safety Seat Citations	25
c. Increase the safety belt usage rate among drivers and front seat passengers, between pre & post survey results, by at least the following percentage points	5%
2. Total Number of Enforcement Hours	130
Step Indicator	3

Note:
Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder.

In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting.

PI&E Objective/Performance Measure

1. Support Grant efforts with a public information and education (PI&E) program	
a. Conduct a minimum of one (1) presentations	1
b. Conduct a minimum of two (2) media exposures (e.g. news conferences, news releases, and interviews)	2
c. Conduct a minimum of one (1) community events (e.g. health fairs, booths)	1
d. Distribute the following number of public information and education materials (if applicable)	200

Budget Summary

Budget Category		TxDOT	Match	Total
Category I - Labor Costs				
(100)	Salaries	$6,960.00	$0	$6,960.00
(200)	Fringe Benefits	$0	$0	$0
	Category I Sub-Total	$6,960.00	$0	
Category II - Other Direct Costs				
(300)	Travel$6,960.00	$0	$0	$0
(400)	Equipment	$0	$0	$0
(500)	Supplies	$0	$0	$0
(600)	Contractual Services	$0	$0	$0
(700)	Other Miscellaneous	$0	$0	$0
	Category II Sub-Total	$0	$0	$0
Total Direct Costs		$6,960.00	$0	$6,960.00
Category III - Indirect Costs				
(800)	Indirect Cost Rate	$0	$0	$0
Summary				
	Total Labor Costs	$6,960.00	$0	$6,960.00
	Total Direct Costs	$0	$0	$0
	Total Indirect Costs	$0	$0	$0
	Grand Total	$6,960.00	$0	$0.00
	Fund Sources (Percent Share)	100.00%	0.00%	

CIOT Operational Plan

x I agree to the following

Comments:

Site Description	Occupant Protection Jurisdiction Wide
Pre Surveys	May 12, 2012 - May 14, 2012
Pre-Media Efforts Before Enforcement period	May 15, 2012 - May 17, 2012
"Enforcement Period (Minimum # of enforcement days: 4) (day or nighttime)"	May 21, 2012 - June 3, 2012
Post Surveys	June 4, 2012- June 6, 2012
Post-Media Efforts After Enforcement period	June 7, 2012- June 9, 2012
Reporting Period	June 11, 2012- June 26, 2012

	Description of Activities
"Pre-Surveys"	• Prior to conducting any wave enforcement activity, agencies must conduct pre-observational surveys to establish safety belt usage rates. • The cities of Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Garland, Houston, Lubbock, and San Antonio are scheduled to have their surveys conducted by the Texas Transportation Institute (TTI). • All other agencies must conduct their own pre-observational surveys using the Texas Department of Transportation's (TxDOT) survey protocol and instructions that can be found at www.buckleuptexas.com. Click on the "Survey Tools" link.
Pre-Media Campaign	• Conduct local media events immediately before the enforcement effort to maximize the visibility of enforcement to the public. These media events tell the public when, where, how and why the safety belt laws are being enforced.
Enforcement Period	• Intensify enforcement through an overtime STEP that places primary emphasis on

	increasing the number of citations for non-use of occupant restraints during the peak holiday traffic.
Post-surveys	• Conduct post-observational surveys to determine safety belt usage. Measure the impact of the media/enforcement effort. The cities of Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Garland, Houston, Lubbock, and San Antonio are scheduled to have their surveys conducted by the Texas Transportation Institute (TTI). • All other agencies must conduct their own post-observational surveys using the Texas Department of Transportation's (TxDOT) survey protocol and instructions that can be found at www.buckleuptexas.com. Click on the "Survey Tools" link.
Post-media Campaign	• Conduct local media events to tell the public why the safety belt laws are important and the results of the wave.
Reporting Period	• Agencies will submit a performance report for the CIOT enforcement period (May 21 - June 3, 2012) during this time period.
Note:	• The Survey and Media dates above are to be used as a guide. Late grant execution may result in a subgrantee conducting pre-survey and pre-media activities at a later date. • These activities must occur prior to enforcement activities beginning. • The Post-media Campaign may begin immediately after the post observational surveys are conducted.

City of Frisco

City of Frisco

2012-FriscoPD-CIOT-00020	Printed On: 4/25/2012
2012-FriscoPD-CIOT-00020	Printed On: 4/25/2012

AGENDA ITEM #18.

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**
From: **Deputy Chief Greg Ward, Police Department**
CC: **Ron Patterson, Assistant City Manager**
Todd Renshaw, Chief of Police
Date: **5/10/2012**
Re: **Grant application to support the Police Department in the purchase of Surveillance Equipment.**

Action Requested:
Consider and Act on a Resolution approving the submission of a grant application to the CoServ Charitable Foundation to fund the purchase of wireless surveillance equipment and authorizing the submission of the grant application by the City Manager or his designee.

Background Information:
The Frisco Police Department is responsible for intelligence gathering, vice, and offender apprehension. The grant supports the purchase of wireless surveillance equipment to enhance and replace existing equipment. This purchase would include: key fob audio video recorder, transmitter-receiver, wireless video system and various spotting scopes and rangefinders. The Frisco Police Department seeks a grant in the amount of $18,707.34.

Alternatives:
The Council could choose to deny this request or request additional information.

Financial Considerations:
There is no cash match for this grant.

Staff Recommendation:
Staff requests that the council authorize the City Manager or his designee to submit the applications for this grant.

Thank you for your consideration of this item, if I can be of any support, please contact me at 972-292-6150 or by email at gward@friscotexas.gov.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS APPROVING THE TERMS AND CONDITIONS OF A GRANT APPLICATION TO THE COSERV CHARITABLE FOUNDATION FOR THE FUNDING OF WIRELESS SURVEILLANCE EQUIPMENT; AUTHORIZING THE SUBMISSION OF THE GRANT APPLICATION BY THE CITY MANAGER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Frisco finds it in the best interest of the citizens of Frisco that the Wireless Surveillance Equipment grant be operated for the 2012–2013 Fiscal Year; and

WHEREAS, City of Frisco agrees to provide the required matching funds for the said project as required by the CoServ Charitable Foundation Grant application; and

WHEREAS, The City of Frisco agrees that in the event of loss or misuse of the CoServ Charitable Foundation funds, The City of Frisco assures that the funds will be returned to the CoServ Charitable Foundation in full.

WHEREAS, The City of Frisco designates the City Manager or their designee as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter, or terminate the grant on behalf of the applicant agency.

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

The City of Frisco approves submission of the grant application for the Police Wireless Surveillance Equipment to the CoServ Charitable Foundation.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, COLLIN COUNTY, TEXAS ON THIS THE _____ DAY OF _____, 2012.

_____
Maher M. Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

Grant Application Confirmation Number _____

Grant Application Title: Wireless Surveillance Equipment _____

CoServ Charitable Foundation

GRANT APPLICATION

Date of Application: 04/30/2012 **Website Address:** www.friscotexas.gov

Legal Name of Organization: Frisco Police Department

Employer Identification Number (EIN):

Mailing Address: 7200 Stonebrook Pkwy. Frisco, Tx 75034

Name/Title/Address of Project Contact: Jason Shearer, Lieutenant
7200 Stonebrook Pkwy. Frisco, Tx 75034

Contact Phone #: 972-292-6225 **E-mail:** jshearer@friscotexas.gov

Amount of Request: $18,707.34 **Project Name:** Frisco Police Department Surveillance Equipment Upgrade

Counties in which Project Services are Provided: Collin and Denton

The following typed narrative MUST accompany this application:

- **Organization's Statement of Purpose**
- **Project Description** ***(1 page maximum)***
- **Project Goals/Objectives** ***(1 page maximum)***
- **Explanation of how funds will be used** ***(1 page maximum)***
- **Identification and status of other funding requests for this project** ***(if applicable)***

If applicable or available, the following documents MUST accompany this application:

- **IRS tax-exempt documentation**
- **Current year's budget/cash flow statements**
- **Most recent Form 990 submitted to the IRS**
- **List of board of directors and their addresses**
- **Last annual report**
- **Last 2 audit reports**
- **3 letters of recommendation**

The information contained in this application is for the purpose of obtaining funding from the CoServ Charitable Foundation on behalf of the undersigned. Each undersigned represents and warrants that the information is true and complete and that the CoServ Charitable Foundation may consider this information is true and correct until a written notice of a change is provided. The CoServ Charitable Foundation is authorized to make all inquiries deemed necessary to verify the accuracy of the information.

President/Chairman's Signature

4-30-12
Date

Secretary/Treasurer's Signature

Date

Mail completed application and documentation to: CoServ Charitable Foundation, 7701 South Stemmons, Corinth, TX 76210-1842

9/13/10

FPD Organizational Values

We are committed to these values for ourselves and the community we serve.

Teamwork by pulling together to: ✓ Build participation and involvement ✓ Cooperate with each other ✓ Develop a partnership of community, council and employee ✓ Implement needed changes in services ✓ Build consensus on common direction	**Effective Communication** which means: ✓ Listening to others with an open mind ✓ Understanding different points of view ✓ Seeking and providing clarification ✓ Sharing ideas and information ✓ Availability of quality training
High Morale based on: ✓ Fairness ✓ Consistent direction and discipline ✓ Flexibility ✓ Elimination of favoritism ✓ Positive reinforcement	**Personal Development** based on: ✓ Willingness to learn and teach ✓ Encouragement to improve ✓ Desire to do better and be the best at whatever we do ✓ Helping and supporting others
Professionalism which is: ✓ Projecting a positive image ✓ Developing a high level of skill and confidence ✓ Helping people with a human touch ✓ Taking action to provide quality service to the community	**Personal Integrity** which involves: ✓ Honesty ✓ High degree of ethical conduct ✓ Fairness and equity ✓ Being responsible for our own actions
Leadership which provides: ✓ Positive direction ✓ Obtainable goals with clearly-defined objectives ✓ Confidence and Trust ✓ Standards for which we are equally responsible	**People** who: ✓ Respect others and look for the good ✓ View individuality as strength

Working Together In A Spirit That Achieves Results

Project Description

The Frisco Police Department Special Investigation Unit has their overall basic needs met by the City of Frisco's annual budget. There are however different tools available that would be considered an upgrade to some of our current equipment and would work seamlessly with what we currently have while allowing us enhanced recording and distance viewing. We were able to get a federal grant for a surveillance vehicle recently and the equipment currently owned is at times difficult to use with the vehicle.

We're requesting equipment to enhance range as well as "wire" equipment to be disguised as current technology that would be less likely to be out dated in the near future. The below requested equipment is perfect for our needs because it uses different channels than some of the future technology. If we don't upgrade our equipment soon, there is a strong possibility we'll need to dispose of our current equipment due to phase outs. Considering this, we received 2 bids and really only one of which is available due to compatibility issues. Therefore you'll find a "sole source" letter from LEA included in the paperwork, but you'll also find a higher priced competitor who is only partially able to fill our order and that is at a higher price.

There are also some bids for surveillance equipment designed for distance viewing (scopes). Although these will be utilized for surveillance needs, the advantage to the scopes is obviously dual purpose use. In a pinch, if our guys needed to equip department rifles with range equipment, we'd have these to utilize as well. These scopes would be advantageous because our current surveillance equipment requires the setup of cameras with zoom capability, but we're not always attempting to record what we see. Often times, the field use of magnification is needed, but the use of a surveillance vehicle isn't warranted and the ramp up time isn't as immediate as pulling these from our go bags (equipment bags).

We are therefore requesting the following equipment:

1. Key Fob Audio Video Recorder
2. 1 Watt Transmitter/Digital Recorder
3. 6 Channel Receiver
4. Digital Noise Filter
5. Wireless/Wired Video System
6. Stealth Antenna
7. Mini 1 Watt Transmitter
8. 2 Leupold 12-40x60 Golden Ring Spotting Scopes
9. 2 Leopold BX-3 Mojave Series Binoculars
10. 2 Leupold RX-1000i Compact W/DNA Rangefinders

Project Goals/Objectives

Special Investigations is responsible for intelligence gathering, vice, and offender apprehension. Although the definition seems simple in nature, this actually covers all initiatives that are proactive in nature. This includes narcotics, prostitution, high risk wanted persons, surveillance in support of CID on investigations (manpower supplement), etc. At one point I had counted up over 30 objectives for SIU when broken down individually. It is therefore very important that the unit has access to the latest technologies in order to streamline their processes, safely complete tasks, and do all this with an eye on prosecution through enhanced record keeping (video/audio). The overall goal of this grant is to improve upon those stated objectives by providing the most cutting edge technological upgrades.

Use of Funds

The use of funds for the project will be using the same processes as all purchasing is done within the police department. This means we also did a bid process to ensure that we're utilizing the most cost effective means for the equipment requested. Below is the exact breakdown on prices and vendors utilized:

Law Enforcement Associates:

1. Key Fob Audio Video Recorder ($475.20)
2. 1 Watt Transmitter/Digital Recorder ($2,299.20)
3. 6 Channel Receiver ($4,795.20)
4. Digital Noise Filter ($475.20)
5. Wireless/Wired Video System ($4,795.20)
6. 3 Stealth Antennas ($283.20 x 3)
7. Mini 1 Watt Transmitter ($1,339.20)

Total: $15,127.40

Cabela's:

1. 2 Leupold 12-40x60 Golden Ring Spotting Scopes (1,999.98)
2. 2 Leopold BX-3 Mojave Series Binoculars (879.98)
3. 2 Leupold RX-1000i Compact W/DNA Rangefinders (699.98)

Total: $3,579.94

Combined total requested in grant: $18,707.34

Other Funding

Currently there are no other funds being sought to fund this project. Although that is possible in the future, this is the only grant being sought for this purpose at this time.

Documents to be included

- IRS tax –exempt documentation (included in packet)
- Current year's budget/cash flow statement (345 pages)
    - http://www.friscoisatreasure.com/budget_2012.pdf
- Most recent Form 990 submitted to IRS (not applicable)
- List of board of directors and their address
    - Todd Renshaw, Chief of Police, 7200 Stonebrook Pkwy., Frisco, Tx 75034
- Last annual report (not applicable)
- Last 2 audit reports (not applicable)
- 3 letters of recommendation (not applicable)

In an effort to be environmentally friendly, I have provided a disk in lieu of a paper copy of the budget. It can also be viewed at the link above if you prefer to look online.

Documents to be included

- IRS tax –exempt documentation (included in packet)
- Current year's budget/cash flow statement (345 pages, see attached disk)
    - http://www.friscoisatreasure.com/budget_2012.pdf
- Most recent Form 990 submitted to IRS (not applicable)
- List of board of directors and their address
    - Todd Renshaw, Chief of Police, 7200 Stonebrook Pkwy., Frisco, Tx 75034
- Last annual report (not applicable)
- Last 2 audit reports (not applicable)
- 3 letters of recommendation (not applicable)

In an effort to be environmentally friendly, I have provided a disk in lieu of a paper copy of the budget. It can also be viewed at the link above if you prefer to look online.

AGENDA ITEM #19.

FRISCO
PROGRESS IN MOTION

Department of Parks and Recreation
City of Frisco, Texas

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: May 7, 2012

Subject: **Consider and act upon awarding a bid and approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and California Construction, LLP, for construction of a parking lot at Warren Sports Complex. (Parks / JED)**

Action Requested: Award a bid and approve a resolution authorizing the City Manger to execute an agreement with California Construction, LLP, for the construction of a parking lot at Warren Sports Complex in the amount of $435,960.90.

Background Information: Parking has been an issue at Warren Sports Complex for a number of years. The Community Development Corporation asked Staff to explore adding parking to Warren Sports Complex in an attempt to reduce the unsightliness of the temporary parking, to provide a safer situation with people crossing the drive and to provide a convenient parking lot for patrons.

This parking lot will be in the place of the area used for temporary parking currently. A structured parking arrangement will allow a more efficient use of the space and it will take a smaller foot print. By separating the parking lot from the drive it will allow better visibility by both motorist and those wanting to cross the street. This parking lot will be used by those who are going to games as well as the practice area near the lake.

There were (7) bidders for this project. California Construction, LLP, was the lowest responsive bidder for this project. Staff has reviewed qualification statements and

called references from past work of similar nature, many of which were other neighboring cities. Staff is unaware of any reason not to accept the bid and move forward with California Construction, LLP.

Construction should begin the latter part of May and be completed by the end of August, 2012, in time for the fall sporting events.

Board Review/Citizen Input: The Community Development Corporation Board has initiated the project and the Parks and Recreation Board is aware of the project.

Alternatives:

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

Financial Considerations: Funding for this project will be from the Community Development Corporation.

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

Supporting Documents:

- Agreement
- Insurance
- Bonds
- Resolution
- Bid Tab

Staff Recommendation: Approve agreement for the construction of a parking lot at Warren Sports Complex.

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 CALIFORNIA CONSTRUCTION, LLC, FOR CONSTRUCTION OF A PARKING LOT FACILITY AT WARREN SPORTS COMPLEX.

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 California Construction, LLP for construction of a parking lot facility at Warren Sports Complex, 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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

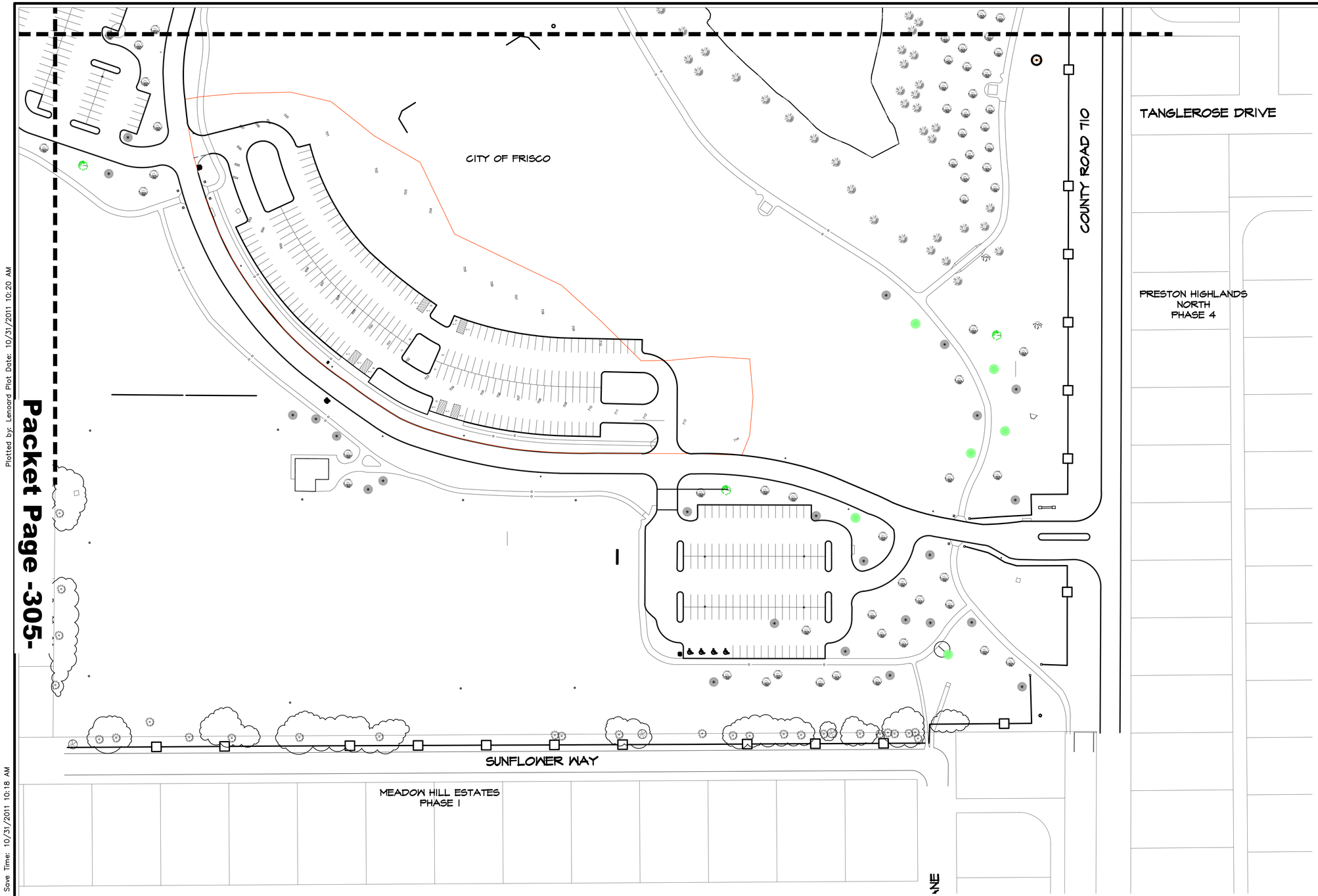
_____
Jenny Page
City Secretary

Packet Page -305-

AGENDA ITEM #19.

Plotted by: Lenoard Plot Date: 10/31/2011 10:20 AM

Drawing: C:\temp\Park.dwg Saved By: Lenoard Save Time: 10/31/2011 10:18 AM



TRACT 1: SITE INFORMATION

ZONING:	SF-10/ S-128
CURRENT USE:	SPORTS COMPLEX
LAND AREA:	
TRACT 1	95.58 ACRES
	4,163,464.8 SF
TRACT 2	9.21 ACRES
	401,187.6 SF
BUILDING AREA:	
QUAD CONCESSION	1,784 SF
PAVILLION	1,650 SF
PLAY PAVILION	2,360 SF
FOOTBALL PAVILION	1,525 SF
BUILDING HEIGHTS:	25' (1 STORY)
FLOOR TO AREA:	0.0423:1 [1440/34,028]
LOT COVERAGE:	4.23%

PROPOSED WITH THIS SUBMITTAL
PARKING REQUIRED: 200
PARKING PROVIDED: 205 (w/ 10 H/C)

PARKING TOTAL EXISTING ON SITE:
869 (WITH 33 H/C)

TOTAL IMPERVIOUS SURFACE:	605,810
% IMPERVIOUS AREA:	13.27%

SITE PLAN
WARREN SPORTS COMPLEX

TRACT 1 – 95.58 ACRES & TRACT 2 – 9.209 OUT OF THE CLAYTON ROGERS SURVEY ABSTRACT 766

CITY OF FRISCO
6101 FRISCO SQUARE BLVD.
FRISCO, TEXAS 75034–3253

OWNER:
CITY OF FRISCO
PARKS AND RECREATION DEPARTMENT
6101 FRISCO SQUARE BLVD.
FRISCO, TEXAS 75034
(972) 292-XXXX

LANDSCAPE ARCHITECT/APPLICANT:
STUDIO 13 DESIGN GROUP, PLLC.
519 BENNETT LANE, SUITE 203
LEWISVILLE, TEXAS 75057
(469) 635-1900
CONTACT: LEONARD W. REEVES, ASLA, RLA
lreeves@studio13.bz

Final Submittal 10/28/10

CITY OF FRISCO BID TABULATION
OPENED 4-12-2012
BID. NO. 1203-044
Warren Sports Complex Parking Facility

PROGRESS IN MOTION

			California Construction		Redder Concrete Inc.		Wall Enterprises		Northstar Construction	
Description	Units	Budgeted Qty.	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost
Inlet Protection (Erosion Control) per plans and City of Frisco Standards	LS	1	$100.00	$100.00	$500.00	$500.00	$1,300.00	$1,300.00	$200.00	$200.00
Silt Fence with Wire Mesh Backing (Erosion Control) per plans and City of Frisco Standards	LF	1,300	$1.25	$1,625.00	$3.46	$4,500.00	$1.35	$1,755.00	$1.50	$1,950.00
Fire Hydrant Relocation	LS	1	$2,625.00	$2,625.00	$2,500.00	$2,500.00	$3,460.00	$3,460.00	$2,500.00	$2,500.00
Remove and Dispose of Existing Wye Inlet	LS	1	$800.00	$800.00	$1,000.00	$1,000.00	$375.00	$375.00	$300.00	$300.00
Sawcut and Dispose of Existing Curb	LF	160	$5.25	$840.00	$17.50	$2,800.00	$2.90	$464.00	$5.00	$800.00
Final Grading per plans and specifications	LS	1	$35,500.00	$35,500.00	$35,000.00	$35,000.00	$1,600.00	$1,600.00	$40,000.00	$40,000.00
4” Sch. 40 PVC Sleeves as shown on irrigation plans	LS	1	$2,000.00	$2,000.00	$1,000.00	$1,000.00	$2,200.00	$2,200.00	$3,100.00	$3,100.00
7” -3,500 psi Concrete Paving for Firelane, (5.5 sacks cement per CY) with 6’-0” integral curb per plans, details, and City of Frisco Standards	SY	3,950	$32.00	$126,400.00	$34.25	$135,287.50	$40.20	$158,790.00	$38.60	$152,470.00
6” -3,500 psi Concrete Paving for Parking Stalls, (5.5 sacks cement per CY) with 6’-0” integral curb per plans, details, and City of Frisco Standards	SY	3,996	$31.00	$123,876.00	$30.01	$119,919.96	$36.70	$146,653.20	$35.00	$139,860.00
12’-0” Curb Inlet per plans and City of Frisco Standards	LS	1	$3,000.00	$3,000.00	$7,500.00	$7,500.00	$4,200.00	$4,200.00	$3,500.00	$3,500.00
24” RCP per plans and City of Frisco Standards	LF	110	$140.00	$15,400.00	$136.36	$15,000.00	$116.00	$12,760.00	$68.00	$7,480.00
4’-0” Wye Inlet per plans and City of Frisco Standards	LS	1	$2,425.00	$2,425.00	$4,000.00	$4,000.00	$2,200.00	$2,200.00	$2,200.00	$2,200.00
5’-0” Width, 4” Depth Concrete Sidewalk per plans and City of Frisco Standards	SF	4,800	$2.90	$13,920.00	$3.50	$16,800.00	$3.55	$17,040.00	$3.20	$15,360.00
Barrier Free Ramp per ADA Requirements, plans, details, and City of Frisco Standards	EA	6	$750.00	$4,500.00	$350.00	$2,100.00	$1,170.00	$7,020.00	$550.00	$3,300.00
ADA Compliant Signage as Required	LS	1	$1,000.00	$1,000.00	$500.00	$500.00	$1,350.00	$1,350.00	$1,400.00	$1,400.00

CITY OF FRISCO BID TABULATION
OPENED 4-12-2012
BID. NO. 1203-044
Warren Sports Complex Parking Facility

PROGRESS IN MOTION

			California Construction		Redder Concrete Inc.		Wall Enterprises		Northstar Construction	
Concrete Wheel Stop	LS	1	$100.00	$100.00	$500.00	$500.00	$600.00	$600.00	$60.00	$60.00
Parking Lot Striping per plans and City of Frisco Standards	LS	1	$1,560.00	$1,560.00	$2,000.00	$2,000.00	$3,000.00	$3,000.00	$2,200.00	$2,200.00
Electrical Lighting as shown on sheets E1-E4, including applicable permit and specifications per City of Frisco Standards	LS	1	$33,342.50	$33,342.50	$35,000.00	$35,000.00	$27,570.00	$27,570.00	$25,000.00	$25,000.00
Common Bermuda Solid Sod as shown on landscape plan and specifications	SF	52,490	$0.26	$13,647.40	$0.27	$14,000.00	$0.42	$22,045.80	$0.30	$15,747.00
Irrigation System as specified on plans and details	LS	1	$6,500.00	$6,500.00	$8,000.00	$8,000.00	$16,500.00	$16,500.00	$20,000.00	$20,000.00
Applicable Testing per specifications and City of Frisco Standards	LS	1	$8,800.00	$8,800.00	$5,500.00	$5,500.00	$8,200.00	$8,200.00	$6,000.00	$6,000.00
Bond Fees (performance, maintenance, payment) as shown in contract and bid documents	LS	1	$13,000.00	$13,000.00	$7,000.00	$7,000.00	$8,200.00	$8,200.00	$12,000.00	$12,000.00
City of Frisco Contingency Fee	LS	1	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00
GRAND TOTAL ---				**$435,960.90**		**$445,407.46**		**$472,283.00**		**$480,427.00**

CITY OF FRISCO BID TABULATION
OPENED 4-12-2012
BID. NO. 1203-044
Warren Sports Complex Parking Facility

PROGRESS IN MOTION

			SFCC, Inc.		Irricon Construction		JDC Construction		CF Jordan Construction	
Description	Units	Budgeted Qty.	Unit Cost	Extended Cost	Unit Cost	Extended Cost	Unit Cost	Extended Cost	NON RESPONSIVE NOT CONSIDERED	
Inlet Protection (Erosion Control) per plans and City of Frisco Standards	LS	1	$3,600.00	$3,600.00	$200.00	$200.00	$100.00	$100.00		
Silt Fence with Wire Mesh Backing (Erosion Control) per plans and City of Frisco Standards	LF	1,300	$2.08	$2,704.00	$2.00	$2,600.00	$2.00	$2,600.00		
Fire Hydrant Relocation	LS	1	$6,400.00	$6,400.00	$2,000.00	$2,000.00	$3,500.00	$3,500.00		
Remove and Dispose of Existing Wye Inlet	LS	1	$2,900.00	$2,900.00	$500.00	$500.00	$1,000.00	$1,000.00		
Sawcut and Dispose of Existing Curb	LF	160	$18.75	$3,000.00	$14.00	$2,240.00	$10.00	$1,600.00		
Final Grading per plans and specifications	LS	1	$32,800.00	$32,800.00	$25,000.00	$25,000.00	$31,000.00	$31,000.00		
4" Sch. 40 PVC Sleeves as shown on irrigation plans	LS	1	$2,100.00	$2,100.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00		
7" -3,500 psi Concrete Paving for Firelane, (5.5 sacks cement per CY) with 6'-0" integral curb per plans, details, and City of Frisco Standards	SY	3,950	$32.20	$127,190.00	$39.85	$157,407.50	$36.00	$142,200.00		
6" -3,500 psi Concrete Paving for Parking Stalls, (5.5 sacks cement per CY) with 6'-0" integral curb per plans, details, and City of Frisco Standards	SY	3,996	$28.60	$114,285.60	$38.85	$155,244.60	$38.00	$151,848.00		
12'-0" Curb Inlet per plans and City of Frisco Standards	LS	1	$4,600.00	$4,600.00	$3,000.00	$3,000.00	$5,000.00	$5,000.00		
24" RCP per plans and City of Frisco Standards	LF	110	$320.00	$35,200.00	$60.00	$6,600.00	$90.00	$9,900.00		
4'-0" Wye Inlet per plans and City of Frisco Standards	LS	1	$3,500.00	$3,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00		
5'-0" Width, 4" Depth Concrete Sidewalk per plans and City of Frisco Standards	SF	4,800	$4.80	$23,040.00	$4.00	$19,200.00	$4.00	$19,200.00		
Barrier Free Ramp per ADA Requirements, plans, details, and City of Frisco Standards	EA	6	$900.00	$5,400.00	$900.00	$5,400.00	$1,000.00	$6,000.00		
ADA Compliant Signage as Required	LS	1	$2,900.00	$2,900.00	$2,250.00	$2,250.00	$750.50	$750.50		
Concrete Wheel Stop	LS	1	$4,900.00	$4,900.00	$2,134.00	$2,134.00	$50.00	$50.00		
Parking Lot Striping per plans and City of Frisco Standards	LS	1	$5,800.00	$5,800.00	$1,500.00	$1,500.00	$4,629.00	$4,629.00		

CITY OF FRISCO BID TABULATION
OPENED 4-12-2012
BID. NO. 1203-044
Warren Sports Complex Parking Facility

PROGRESS IN MOTION

			SFCC, Inc.		Irricon Construction		JDC Construction		CF Jordan Construction	
Electrical Lighting as shown on sheets E1-E4, including applicable permit and specifications per City of Frisco Standards	LS	1	$23,000.00	$23,000.00	$29,200.00	$29,200.00	$27,000.00	$27,000.00		
Common Bermuda Solid Sod as shown on landscape plan and specifications	SF	52,490	$0.31	$16,271.90	$0.33	$17,321.70	$0.25	$13,122.50		
Irrigation System as specified on plans and details	LS	1	$16,100.00	$16,100.00	$19,000.00	$19,000.00	$16,000.00	$16,000.00		
Applicable Testing per specifications and City of Frisco Standards	LS	1	$11,500.00	$11,500.00	$0.00	$0.00	$5,000.00	$5,000.00		
Bond Fees (performance, maintenance, payment) as shown in contract and bid documents	LS	1	$15,252.00	$15,252.00	$14,400.00	$14,400.00	$29,500.00	$29,500.00		
City of Frisco Contingency Fee	LS	1	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00		
GRAND TOTAL ---				**$487,443.50**		**$494,697.80**		**$499,500.00**		

BID TABULATION STATEMENT

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE THE REFLECTED ON THIS BID TAB SHEET. HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE.

THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS. CITY OF FRISCO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BY NOT LIMITED TO THE PROJECT.

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 Twelve
(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)

California Construction, LLC
44 Tranquil Pond Drive
Frisco, TX 75034
214- 618-1041

for the following Project:
(Name, location and detailed description)

ARBJ File: Frisco 870008 0472 Parks Contracts (Warren Sports Complex Parking Facility)
Frisco, Texas
Warren Sports Complex Parking Facility

The Architect:
(Name, address and other information)

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

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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AIA Document A101™ – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 11:59:50 on 04/26/2012 under Order No.7045488178_1 which expires on 06/11/2012, and is not for resale.
User Notes: (1215984210)

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS
2 THE WORK OF THIS CONTRACT
3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4 CONTRACT SUM
5 PAYMENTS
6 DISPUTE RESOLUTION
7 TERMINATION OR SUSPENSION
8 MISCELLANEOUS PROVISIONS
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.)

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User Notes: (1215984210)

Init. /

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:2.1 (5-21-09) City, 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 Total Contract Sum shall be Four Hundred Thirty-Five Thousand Nine Hundred Sixty and 90/100 Dollars ($ 435,960.90), 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.)

None.

§ 4.3 Unit prices, if any: Those unit prices as shown on the bid sheet attached hereto as Exhibit A and incorporated herein for all purposes.
(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: None
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

§ 4.5 The Owner's Contingency is Twenty-Five Thousand and No/100 Dollars ($25,000.00).

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.)

Init. /

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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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ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Owner 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 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)

John E. Doshier
Parks Project Manager
6726 Walnut Street
Frisco, TX 75034
(972) 292-6514
jdoshier@friscotexas.gov

§ 8.4 The Contractor's representative:

Init.
/

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(Name, address and other information)

California Construction, LLC
44 Tranquil Pond Drive
Frisco, TX 75034
Attn: Robert Bounds
(214) 618-1041
bobby@cancontex.com

§ 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.

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§ 9.1.2 The General Conditions are AIA Document A201–2007 v:2.1 (5-21-09) City, General Conditions of the Contract for Construction provided by Owner.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications: Those Specifications shown in the "Contract and Bid Documents – Warren Sports Complex Parking Facility," prepared by Studio 13 Design Group, dated March 16, 2012, referenced in Exhibit B, attached hereto and fully incorporated herein for all purposes.

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit B

(Table deleted)

§ 9.1.5 The Drawings: Those Drawings shown in the "Contract and Bid Documents – Warren Sports Complex Parking Facility," prepared by Studio 13 Design Group, dated March 16, 2012, referenced in Exhibit B, attached hereto and fully 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: Those Addenda shown in Exhibit C attached hereto and incorporated herein for all purposes.

Number	Date	Pages
Addendum #1	3/27/2012	1
Addendum #2	4/2/2012	1
Addendum #3	4/4/2012	1

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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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, TEXAS	CALIFORNIA CONSTRUCTION, LLC
By:	By:
OWNER *(Signature)*	CONTRACTOR *(Signature)*
(Printed name and title)	Robert Bounds - President *(Printed name and title)*
Frisco, TX 75034	Robert Bounds44 Tranquil Pond Drive Robert Bounds

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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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:59:50 on 04/26/2012.

PAGE 1

A101-2007 v:1.1 (4-20-09) City

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Twelve
(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)

California Construction, LLC
44 Tranquil Pond Drive
Frisco, TX 75034
214- 618-1041

...

ARBJ File: Frisco 870008 0472 Parks Contracts (Warren Sports Complex Parking Facility)
Frisco, Texas
Warren Sports Complex Parking Facility

...

(Name, ~~legal status,~~ address and other information)

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

PAGE 2

The commencement date will be fixed in a notice to proceed.

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...

§ 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:2.1 (5-21-09) City, 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 Total Contract Sum shall be Four Hundred Thirty-Five Thousand Nine Hundred Sixty and 90/100 Dollars ($ 435,960.90), subject to additions and deductions as provided in the Contract Documents.

...

None.

§ 4.3 Unit prices, if any: Those unit prices as shown on the bid sheet attached hereto as Exhibit A and incorporated herein for all purposes.

...

Item	Units and Limitations	Price Per Unit($0.00)

§ 4.4 Allowances included in the Contract Sum, if any: None

...

§ 4.5 The Owner's Contingency is Twenty-Five Thousand and No/100 Dollars ($25,000.00).

...

§ 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%);

...

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None.

PAGE 5

The ~~Architect~~ Owner 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 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.

...

John E. Doshier
Parks Project Manager
6726 Walnut Street
Frisco, TX 75034
(972) 292-6514
jdoshier@friscotexas.gov

PAGE 6

California Construction, LLC
44 Tranquil Pond Drive
Frisco, TX 75034
Attn: Robert Bounds
(214) 618-1041
bobby@cancontex.com

...

§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.

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§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.

PAGE 7

§ 9.1.2 The General Conditions are AIA Document ~~A201–2007,~~ A201–2007 v:2.1 (5-21-09) City, General Conditions of the Contract for ~~Construction.~~Construction provided by Owner.

...

§ 9.1.4 The Specifications: Those Specifications shown in the "Contract and Bid Documents – Warren Sports Complex Parking Facility," prepared by Studio 13 Design Group, dated March 16, 2012, referenced in Exhibit B, attached hereto and fully incorporated herein for all purposes.

...

Title of Specifications exhibit: Exhibit B

~~Section~~	~~Title~~	~~Date~~	~~Pages~~

§ 9.1.5 The Drawings: Those Drawings shown in the "Contract and Bid Documents – Warren Sports Complex Parking Facility," prepared by Studio 13 Design Group, dated March 16, 2012, referenced in Exhibit B, attached hereto and fully incorporated herein for all purposes.

...

Title of Drawings exhibit: Exhibit B

~~Number~~	~~Title~~	~~Date~~

§ 9.1.6 The Addenda, if any: Those Addenda shown in Exhibit C attached hereto and incorporated herein for all purposes.

...

Addendum #1	3/27/2012	1
Addendum #2	4/2/2012	1
Addendum #3	4/4/2012	1

...

1. Owner's Request for Proposal
2. Contractor's Response to Request for Proposal

...

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~~*(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, TEXAS	CALIFORNIA CONSTRUCTION, LLC
By:	By:

PAGE 8

Robert Bounds44 Tranquil Pond Drive
Frisco, TX 75034 Robert Bounds

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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 11:59:50 on 04/26/2012 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 A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, 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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EXHIBIT A

CITY OF FRISCO PURCHASING DIVISION
REVISED BID FORM

CITY OF FRISCO PROJECT NUMBER # SP12-0001
Bid Number #1203-044
Warren Sports Complex Parking Facility

Description	Units	Budgeted Qty.	Unit Cost	Extended Cost	Delivery (in days)
Inlet Protection (Erosion Control) per plans and City of Frisco Standards	1	LS	100.00	100.00	-
Silt Fence with Wire Mesh Backing (Erosion Control) per plans and City of Frisco Standards	1,300	LF	1.25	1,625.00	1
Fire Hydrant Relocation	1	LS	2,625.00	2,625.00	1
Remove and Dispose of Existing Wye Inlet	1	LS	800.00	800.00	1
Sawcut and Dispose of Existing Curb	160	LF	5.25	840.00	0
Final Grading per plans and specifications	1	LS	35,500.00	35,500.00	6
4" Sch. 40 PVC Sleeves as shown on Irrigation plans	1	LS	2000.00	2000.00	1
7" -3,600 psi Concrete Paving for Firelane, (5.5 sacks cement per CY) with 6'-0" integral curb per plans, details, and City of Frisco Standards	3,950	SY	32.00	126,400.00	7
6" -3,500 psi Concrete Paving for Parking Stalls, (5.5 sacks cement per CY) with 6'-0" Integral curb per plans, details, and City of Frisco Standards	3,996	SY	31.00	123,876.00	7
12'-0" Curb Inlet per plans and City of Frisco Standards	1	LS	3000.00	3000.00	4
24" RCP per plans and City of Frisco Standards	110	LF	140.00	15,400.00	2
4'-0" Wye Inlet per plans and City of Frisco Standards	1	LS	2425.00	2425.00	2
6'-0" Width, 4" Depth Concrete Sidewalk per plans and City of Frisco Standards	4,800	SF	2.90	13,920.00	3
Barrier Free Ramp per ADA	6	EA	750.00	4,500.00	2

Requirements, plans, details, and City of Frisco Standards					
ADA Compliant Signage as Required	1	LS	1000.00	1000.00	—
Concrete Wheel Stop	1	LS	100.00	100.00	—
Parking Lot Striping per plans and City of Frisco Standards	1	LS	1,560.00	1,560.00	2
Electrical Lighting as shown on sheets E1-E4, including applicable permit and specifications per City of Frisco Standards	1	LS	33,342.50	33,342.50	10
Common Bermuda Solid Sod as shown on landscape plan and specifications	52,490	SF	.26	13,647.40	5
Irrigation System as specified on plans and details	1	LS	6,500.00	6,500.00	5
Applicable Testing per specifications and City of Frisco Standards	1	LS	8,900.00	8,800.00	—
Bond Fees (performance, maintenance, payment) as shown in contract and bid documents	1	LS	13,000	13,000.00	—
City of Frisco Contingency Fee	1	LS	$25,000.00	$25,000.00	N/A
Grand Total				$435,960.90	59

Measurement and payment for the various bid items will be made in accordance with the item as set up in the Bid. Quantities stated in the Bid are approximate and are to be used only as a basis for estimating the probable cost of work. The Contractor will only be paid for the actual amount of work done and the material furnished. The Contractor will make no claim for damages, restocking or anticipated profits caused by any differences found between the quantities of work actually done and the estimated quantities in the Bid. The Owner also reserves the right to delete portions of this project. If a position of work is deleted, no claim can be filed for damages, restocking or anticipated profits. Any quantities added to this project will be paid for at the unit price bid for that item.

The undersigned certifies that the bid prices contained in this bid have been carefully reviewed and are submitted as correct and final. Bidder further certifies and agrees to furnish any and/or all product/service upon which prices are extended at the price offered, and upon the conditions in the specifications of the Invitation for Bid.

I hereby certify that the foregoing bid has not been prepared in collusion with any other bidder or other person or persons engaged in the same line of business prior to the official opening of this bid. Further, I certify that the bidder is not now, nor has been for the past six (6) months, directly or indirectly concerned in any pool or agreement or combination to control the price of product/service bid on, or to influence any person or persons to bid or not to bid thereon."

Name of Bidder: CALIFORNIA CONSTRUCTION LLC

Address of Bidder: 44 Tranquil Pond Drive, Frisco, TX 75034

Telephone Number: 972 670 0368 Fax: 214-618-1041

E-mail address: bobby@calcontex.com

By: Robert Bounds (print name) Cash Discount Terms:

Title: President Federal ID #/SSN #: 26-0421890

Signature:

Acknowledgement of Addenda: #1 RB #2 RB #3 RB #4 ____ #5 ____

EXHIBIT B

CONTRACT AND BID DOCUMENTS

WARREN SPORTS COMPLEX PARKING FACILITY

CITY OF FRISCO, TEXAS

March 16, 2012

OWNER: City of Frisco
6726 Walnut Street
Frisco, Texas 75034
972-292-6514
Attention: John Doshier

LANDSCAPE ARCHITECT: Studio 13 Design Group
519 Bennett Lane, Suite 203
Lewisville, Texas 75057
(469) 635-1900
Attention: Cody Johnson

STUDIO 13
DESIGN GROUP

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

STUDIO 13 Project No. FRI007

EXHIBIT B

TABLE OF CONTENTS
Warren Sports Complex Parking Facility
City of Frisco, Texas

Section		No. of Pages
Title Page		
Project Directory		
DIVISION – City of Frisco		
• Advertisement for Bid		1 Page
• Bonding Requirements		1 Page
• General Conditions of Bidding		7 Pages
• City of Frisco Contractor Insurance Requirements		3 Pages
• Supplemental Information		7 Pages
• Scope of Work		1 Page
• Working Standards		1 Page
• Equal Employment Opportunity		2 Pages
• Labor Classification and Prevailing Wages		3 Pages
• Performance Bond		1 Page
• Maintenance Bond		1 Page
• Payment Bond		1 Page
• City of Frisco Bid Form		3 Pages
DIVISION 0		
Section 00100	Instructions to Bidders	3 Pages
Section 00320	Geotechnical Data	1 Page
Section 00485	Warranty	1 Page
Section 00500	Standard Forms	1 Page
Section 00600	Bonds	1 Page
Section 00700	General Conditions	1 Page
Section 00710	Supplementary Conditions	3 Pages
Section 00800	Supplementary Conditions of Contract	7 Pages
DIVISION 1		
Section 01010	Summary of Work	1 Page
Section 01025	Measurement and Payment	3 Pages

Section 01200	Project Meetings	3 Pages
Section 01340	Shop Drawings, Product Data and Samples	6 Pages
Section 01400	Testing Laboratory Services for Sitework	2 Pages
Section 01580	Facilities Project Notification Sign Specification	1 Page
Section 01700	Contract Closeout	4 Pages
Section 01710	Cleaning	2 Pages
Section 01720	Project Record Documents	3 Pages
Section 01740	Project Closeout	4 Pages

DIVISION 2

Section 02050	Demolition	2 Pages
Section 02200	Site Grading	5 Pages
Section 02245	Finish Grading	3 Pages
Section 02370	Erosion Control Mat	2 Pages
Section 02515	Concrete for Paving & Vertical Surfaces	18 Pages
Section 02810	Automatic Landscape Irrigation System	9 Pages
Section 02515	Turfgrass Planting	4 Pages

DIVISION 3

Section 03100	Concrete Formwork	7 Pages
Section 03200	Concrete Reinforcement	3 Pages
Section 03250	Concrete Accessories	4 Pages

SHEET INDEX

SP1	OVERALL SITE PLAN
SP2	SITE PLAN
SP3	SITE PLAN
SP4	SITE PLAN
SP5	SITE PLAN
L1 of 6	LAYOUT AND PAVING PLAN
L2 of 6	GRADING PLAN
L3 of 6	EROSION CONTROL PLAN
L4 of 6	SITE DETAILS
L5 of 6	SITE DETAILS
L6 of 6	LANDSCAPE PLAN
IR1 of 2	IRRIGATION PLAN
IR2 of 2	IRRIGATION DETAILS
C1 of 3	DRAINAGE AREA MAP
C2 of 3	SD LINE 'B' PLAN & PROFILE
C3 of 3	UTILITY PLAN
N1 of 2	CITY OF FRISCO NOTES
N2 of 2	CITY OF FRISCO NOTES
E1 of 4	ELECTRICAL LIGHTING PLAN
E2 of 4	ELECTRICAL LIGHTING DETAILS
E3 of 4	ELECTRICAL LIGHTING DETAILS
E4 of 4	ELECTRICAL LIGHTING NOTES

EXHIBIT C

FRISCO
PROGRESS IN MOTION

CITY OF FRISCO PURCHASING DIVISION

March 27, 2012
Addendum #1
CHANGE TO OPENING DATE
Bid#1203-044 - Warren Sports Complex Parking Facility

Change opening date from April 5, 2012 at 2:00PM Central Standard Time to April 12, 2012 at 2:00PM Central Standard Time.

Vendors who may have already submitted a bid and feel this addendum may change their bid price, may pick up their bid, and return it by the closing date. If picking up the bid is not feasible, any new bid submitted by your firm will supersede one previously submitted. Acknowledge receipt of this addendum by initialing in the appropriate space on the bid document.

Sincerely,

Jean Stellatella, CPIM, CPPB
Buyer
City of Frisco

FRISCO
PROGRESS IN MOTION

CITY OF FRISCO PURCHASING DIVISION

April 2, 2012
Addendum #2
BID TAB, IRRIGATION PLANS, AND GEOTECH REPORT
Bid#1203-044 - Warren Sports Complex Parking Facility

This addendum does not change the opening date from April 12, 2012 at 2:00PM Central Standard Time.

Items addressed with this addendum are the following:

- Bid Form changed; see attached REVISED BID FORM. 10-ML polyethylene barrier has been removed from scope of work. Vendors must submit their bid on the Revised Bid Form. If the Revised Bid Form is not used, the bid will be deemed non responsive and not considered.
- A note stating "THE IRRIGATION CONTRACTOR SHALL INSTALL ALL SYSTEM COMPONENTS AND PIPING TO REFLECT A NON-POTABLE WATER SYSTEM" has been added to the irrigation sheets as attached.
- A full Geotechnical Report has been added to the bid documents as attached.

Vendors who may have already submitted a bid and feel this addendum may change their bid price, may pick up their bid, and return it by the closing date. If picking up the bid is not feasible, any new bid submitted by your firm will supersede one previously submitted. Acknowledge receipt of this addendum by initialing in the appropriate space on the bid document.

Sincerely,

Cody Johnson, ASLA, LI
Studio 13 Design Group

FRISCO
PROGRESS IN MOTION

CITY OF FRISCO PURCHASING DIVISION

April 4, 2012
Addendum #3
BID TAB, AND ELECTRICAL PLAN E1
Bid#1203-044 - Warren Sports Complex Parking Facility

This addendum does not change the opening date from April 12, 2012 at 2:00PM Central Standard Time.

Items addressed with this addendum are the following:

- Bid Form changed; see attached REVISED BID FORM. Vendors must submit their bid on the Revised Bid Form. If the Revised Bid Form is not used, the bid will be deemed non responsive and not considered. Items changed on the bid form include the following:
  - 4" sch. 40 PVC Sleeves line item has been updated to only reflect irrigation sleeves. No 4" sleeves will be required for electrical work.
  - 7"-3500 psi concrete paving changed to 7"-3500 psi paving with no lime stabilization for fire lane.
  - 6"-3500 psi concrete added as a line item to include areas not in the firelane.
  - 8" lime stabilized subgrade line item has been removed from scope of work.
  - Hydrated lime material (63#/SY) has been removed from scope of work.
- Sheet E1, Electrical Plan, has been updated to reflect no 4" sleeves shall be required in the pavement for electrical use.

Vendors who may have already submitted a bid and feel this addendum may change their bid price, may pick up their bid, and return it by the closing date. If picking up the bid is not feasible, any new bid submitted by your firm will supersede one previously submitted. Acknowledge receipt of this addendum by initialing in the appropriate space on the bid document.

Sincerely,

Cody Johnson, ASLA, LI
Studio 13 Design Group

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

A201-2007 v:2.1 (5-21-09) City

for the following PROJECT:
(Name and location or address)
ARBJ File: Frisco 870008 0472 Parks Contracts (Warren Sports Complex Parking Facility)
Frisco, Texas

THE OWNER:
(Name, legal status and address)
City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

THE ARCHITECT:
(Name, legal status and address)
Studio 13 Design Group
519 Bennett Lane
Suite 203
Lewisville, TX 75057

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.

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.

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INDEX
(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7.1, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.5**
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect's Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5.1, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

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User Notes:

Building Permit
3.7.1
Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3
Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**
Claims for Additional Time
3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, The
1.1.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

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User Notes:

Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2
Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Defective Work, Definition of
3.5.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3.1, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4

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User Notes:

Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17.1, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2, 11.4.1.4
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1, 11.4.1.5
Insurance Companies, Settlement with
11.4.10
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

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Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Loss of Use Insurance
11.3.3
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

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Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**
Permits, Fees, Notices and Compliance with Laws
2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of the
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.3**
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Rejection of Work
3.5.1, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of the
1.1.6
Specifications, The
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

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User Notes:

Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.4.5, **11.3.7**
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5.1, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 11.4.9, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 11.4.7, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.4.5, **11.3.7**

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User Notes:

Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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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 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.

§ 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.

§ 1.1.8 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.

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§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.

§ 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.

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§ 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 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,

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etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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

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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. 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

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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.

§ 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

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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 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

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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 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 7.3.6.1 through 7.3.6.5;
- **.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 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.

§10.2.9 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.

§10.2.10 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.

§ 10.2.11 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)

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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.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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.

§ 10.3 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) Broad Form Property Damage Coverage shall include Completed Operations.
   - (e) Coverage to be extended to include the interests of the Architect and his consultants.
   - (f) No total pollution exclusion should be included.
3. Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
4. Umbrella Excess Liability:
   - (a) Over Primary Insurance: $1,000,000 Each Occurrence
5. Occurrence Policy: $1,000,000 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.

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§ 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 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

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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.

§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.

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§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.

§ 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

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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 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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§ 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.

§ 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.

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§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at ten percent (10%) 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 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

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(A133-CMc), 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.

§ 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

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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.

§ 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

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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.

(Paragraphs 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 within sixty (60) days thereafter (the "Substantial Completion Date").

§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.

(Paragraph deleted)

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PAGE 1

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Frisco, Texas

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City of Frisco
6101 Frisco Square Blvd.
5th Floor
Frisco, TX 75034

(Name, legal status and address)
Studio 13 Design Group
519 Bennett Lane
Suite 203
Lewisville, TX 75057

PAGE 3

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3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, ~~13.7,~~ 13.7.1, 14.1, 15.2

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4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, ~~9.7,~~ 9.7.1, 9.10, 11.1.3

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2.4.1, 3.12.7, 4.1, 4.2, 5.2, ~~6.3,~~ 6.3.1, 7.1.2, 7.3.7, 7.4, ~~9.2,~~ 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

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2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, ~~7.4,~~ 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

...

2.4.1, 3.1.3, ~~3.5,~~ 3.5.1, 3.10.2, 4.2.7

...

~~3.5,~~ 3.5.1, 4.2.6, 12.1.2, 12.2.1

...

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, ~~6.3,~~ 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2,~~ 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

...

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5,~~ 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

...

~~9.7,~~ 9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

PAGE 4

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7,~~ 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

...

2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

...

3.2.4, 6.1.1, ~~6.3,~~ 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

...

Contract Documents, The
1.1.1
Contract Documents, Copies Furnished and Use of

...

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, ~~9.7,~~ 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

PAGE 5

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, ~~14.2.1.1~~14.2.1.1,

...

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, ~~3.5,~~ 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

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...

3.2.1, 3.2.2, ~~3.5,~~ 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

...

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, ~~9.2,~~ 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

...

2.3.1, 2.4.1, ~~3.5,~~ 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Defective Work, Definition of
3.5.1

...

1.1, 2.1.1, 3.1.1, ~~3.5,~~ 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

...

~~3.2,~~ 3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4,~~ 7.4.1, **8.3**, 9.5.1, ~~9.7,~~ 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

...

~~6.3,~~ 6.3.1, 7.3.9, 15.1, 15.2

PAGE 6

1.1.3, 1.1.6, 3.4, ~~3.5,~~ 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

...

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, ~~3.5,~~ 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

...

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, ~~7.4, 9.5.1, 9.7,~~ 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

...

~~3.17,~~ 3.17.1, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

...

~~9.3.2~~9.3.2, 11.4.1.4

...

Insurance Companies, Consent to Partial Occupancy
9.9.1, 11.4.1.5
~~9.9.1~~Insurance Companies, Settlement with
11.4.10

...

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1.1.3, 1.1.6, **3.4**, ~~3.5,~~ 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

...

2.3.1, 3.2.2, ~~3.5, 3.12.10, 3.17,~~ 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

PAGE 7

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, ~~9.2,~~ 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, ~~9.7,~~ 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

...

1.1.3, 1.1.6, 1.5.1, 3.4.1, ~~3.5,~~ 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

...

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, ~~9.7,~~ 9.7.1, 10.3.2, 11.3.1

...

2.3.1, 2.4.1, ~~3.5,~~ 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

...

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, ~~9.7,~~ 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

...

2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, ~~9.7,~~ 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

...

3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

...

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, ~~6.3,~~ 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

...

11.2
Owner's Loss of Use Insurance
11.3.3

...

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, ~~3.17,~~ 3.17.1, 4.2.12, 5.3.1

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4.2.5, 7.3.9, ~~9.2,~~ 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, ~~9.7,~~ 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

...

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, ~~9.7,~~ 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

PAGE 8

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

...

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

...

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

...

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

...

Project, Definition of the

...

~~3.5,~~ 3.5.1, 4.2.6, 12.2.1

...

3.2.1, ~~3.5,~~ 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

...

1.1.2, 2.3, 2.4, ~~3.5,~~ 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

...

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

...

Specifications, Definition of the

...

~~**Specifications**~~**Specifications, The**

...

6.2.1, 9.3.2, 10.2.1.2, ~~10.2.4~~10.2.4, 11.4.1.4

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User Notes:

PAGE 9

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

...

6.1.1, 11.4.5, **11.3.7**

...

3.4.2, ~~3.5,~~ 3.5.1, 7.3.8

...

5.4.1.1, 11.4.9, 14

...

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, ~~7.4,~~ 7.4.1, **8.3**, 9.5.1, ~~9.7,~~ 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

...

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

...

9.10.5, 11.4.7, 13.4.2, 15.1.6

...

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

...

6.1.1, 11.4.5, **11.3.7**

PAGE 10

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, ~~13.7~~13.7.1

...

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

...

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

PAGE 11

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~~

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~~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 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.

PAGE 12

§ 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.

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§ 1.1.8 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.

PAGE 13

~~**§ 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.~~

§ 1.5.1 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.~~

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§ 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.

PAGE 14

§ 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.

...

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

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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.

PAGE 15

§ 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 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

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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.

PAGE 16

§ 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.~~

§ 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.

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§ 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. 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.

PAGE 17

§ 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

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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.

PAGE 18

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.

...

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.

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§ 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.

PAGE 19

.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, 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.~~

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§ 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 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;

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§ 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 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

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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.

PAGE 22

§ 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.

PAGE 23

~~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; 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.

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§ 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.

PAGE 24

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.

§ 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.

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(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.

PAGE 25

§ 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.

PAGE 26

§ 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.

PAGE 27

§ 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.

...

§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.

PAGE 28

§ 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~~

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~~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.

PAGE 30

§ 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:

PAGE 31

§ 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 7.3.6.1 through 7.3.6.5;

.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.

...

§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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PAGE 32

§ 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, 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.

PAGE 33

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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.

PAGE 34

§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.

...

.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.

PAGE 35

§ 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.

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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 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.

PAGE 36

§ 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~~

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~~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 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

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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.

PAGE 37

§ 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.

PAGE 38

§ 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.

...

§10.2.8 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.

§10.2.9 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.

§10.2.10 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.

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§ 10.2.11 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.

PAGE 39

§ 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.

PAGE 40

§ 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

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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; 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) Broad Form Property Damage Coverage shall include Completed Operations.	
	(e) Coverage to be extended to include the interests of the Architect and his consultants.	
	(f) No total pollution exclusion should be included.	
3.	Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.	
4.	Umbrella Excess Liability:	
	(a) Over Primary Insurance:	$1,000,000 Each Occurrence
5.	Occurrence Policy:	$1,000,000 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

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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 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.

PAGE 42

~~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

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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.

...

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

~~**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.**~~Paragraph Intentionally Deleted.

§ 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.

PAGE 43

§ 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~~

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~~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.

§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.

PAGE 44

§ 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.~~

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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.

PAGE 45

§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.

§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.

PAGE 47

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.~~ten percent (10%) 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

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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 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-CMc), the term "Contractor" as used herein shall mean and refer to Construction Manager.

PAGE 48

.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~~

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~~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.

...

.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.~~

PAGE 49

§ 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.

...

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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.

...

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.

PAGE 50

§ 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.

...

The Contractor ~~and Owner waive Claims against each other~~ 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.~~

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~~**§ 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.~~

~~**§ 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~~

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~~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 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 within sixty (60) days thereafter (the "Substantial Completion Date").

§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

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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.

~~**§ 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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_____

(Signed)

_____

(Title)

_____

(Dated)

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AGENDA ITEM #20.

PROGRESS IN MOTION

Parks and 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: **Wes Hicks, Parks Project Coordinator**

Date: **05/15/12**

Agenda Caption: Consider and act upon a resolution ratifying the signature of the Deputy City Manager on a contract between Russell Madden, Inc. and the City of Frisco for electrical services on the Community Park Water Well Project.

Action Requested: Consider and act upon a resolution ratifying the signature of the Deputy City Manager to execute an agreement by and between the City of Frisco and Russell Madden, Inc. in the amount of $29,023.

Background Information: As part of the Community Water Well Projects, Staff had to coordinate with Coserve to provide power for the well at Frisco Commons. Staff had coordinated to have Coserve pull the power and set the transformer.

During the process, Staff learned that the City could save considerable amount of time by having a private contractor install the primary power lines. Staff contacted a vendor who is on the City's price agreement; however did not realize it was going to be over $25,000 and had asked the vendor to start the work to keep the project on schedule. We are asking that Council ratify the Deputy City Manager's signature on the contract for services.

The reason for the compressed timeline is in an effort to have the line installed prior to the Splash Park opening on Memorial Day Weekend. We are also trying to have the power ready for the well once it comes online.

Board Review/Citizen Input: The Community Development Corporation and 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 the Community Development Corporation in the amount of $29,023.

Legal Review: Not Applicable.

Supporting Documents:

- Copy of the Contract
- Resolution

Staff Recommendation: Approve a resolution ratifying the Deputy City Manager's signature to execute a contract for construction with Russell Madden Inc.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY RATIFYING THE SIGNATURE OF THE DEPUTY CITY MANAGER AND AUTHORIZING AN AGREEMENT BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND RUSSELL MADDEN INC. FOR ELECTRICAL SERVICES ON THE COMMUNITY PARK WATER WELL PROJECT.

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

SECTION 1: The Deputy 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 Russell Madden Inc. for Electrical Services on the Community Park Water Well Project, 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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

RMI
RUSSELL MADDEN, INC.
6400 GREEN VALLEY RD
AUBREY, TX 76227
Phone 940-383-3939 Fax 940-566-6419

April 19, 2012

The Commons Well Project
8000 McKinney Rd
Frisco, TX 75034

We propose to furnish electrical material, labor, supervision, and tools for this facility based upon our interpretation of the site visit.

BID ITEMS

A. Base Bid – Electrical: $28,369.25

1) Add Alternate Price for Panel Rack: $653.75

B. Scope of Work

This will include all trenching, conduit, wire, concrete pads, and removal of spoils, cleanup, and connection of transformers. Mounting of all Panels, terminations, backfill, mobilization and demobilization. Also including:

1. New 200 amp 3 phase 480v service distribution panel
2. New 75kva 480v/120/240v transformer and associated grounding
3. New 200 amp 3 phase 120/240v distribution panel
4. All associated conduit, cable and terminations
5. 400 feet of trenching, schedule 40 3” PVC, and backfill from utility transformer to 480v distribution

6. 200 foot of trenching and associated boring under the road for the Primary feed from the utility pole. All conduit and backfill.

C. Alternates:
1. Fabrication and Installation of Panel Rack for Electrical Panels

D. We have specifically EXCLUDED the following items:

1. Performance and payment bonds.
2. Overtime or premium time. This proposal assumes all work will be performed during normal working hours (7:00 AM – 3:30 PM Monday thru Friday).
3. Shift work
4. Utility company charges- permanent or temporary.
5. Modifications needed to any equipment other than our own to fit our needs.

We appreciate this opportunity to be of service, and look forward to working with you on this project. Please call if you have any questions regarding this proposal.

Respectfully submitted,

Leo Lucero
Leo@rmi-inc.org
Project Manager

RMI
Russell Madden, Inc.
TECL # 21670

AGENDA ITEM #21.

PROGRESS IN MOTION

Parks and 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: **Wes Hicks, Parks Project Coordinator**

Date: **4/18/2012**

Agenda Caption: Consider and act upon a resolution authorizing the City Manager to execute an amendment to an agreement by and between Estrada Concrete Co., LLC for additional work needed along Wade Blvd Hike and Bike Trail Infill.

Action Requested: Consider and act upon a resolution authorizing the City Manager to execute an amendment to an agreement by and between Estrada Concrete Co, LLC in the amount of $780.

Background Information: As part of the Wade Blvd Hike and Bike Trail Infill project, staff determined that an additional 13 feet of handrail was needed in order to protect users from the drop off over the culvert along Wade. The rail has been installed and the contractor is completing punch list items. This amendment will bring the total contract amount to $35,642.

Board Review/Citizen Input: The Parks and Recreation Board has approved this project 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 amendment will be from the GO bonds or the Park Development Fund in the amount of $780.

Legal Review: The City Attorney has reviewed and approved the contract.

Supporting Documents:

- Copy of the Contract amendment
- Resolution

Staff Recommendation: Approve the resolution authorizing the City Manager to execute an amendment to the contract with Estrada Concrete Co., LLC for construction work along Wade Blvd Hike and Bike Trail Infill.

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 AMENDMENT TO AN AGREEMENT BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND ESTRADA CONCRETE CO., LLC FOR TRAIL IMPROVEMENTS ALONG WADE BLVD HIKE AND BIKE TRAIL INFILL.

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 amendment to an agreement by and between the City of Frisco and Estrada Concrete Co., LLC for Trail Improvements along Wade Blvd Hike and Bike Trail Infill, 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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

AIA® Document G701™ – 2001

Change Order

PROJECT *(Name and address)*:
Wade Blvd. Hike & Bike Trail Inf.
Bid # 1211 - 019

TO CONTRACTOR *(Name and address)*:
Estrada Concrete Co LLC
1623 Garza Ave Dallas, TX 75216

CHANGE ORDER NUMBER: 001
DATE: 4/4/12
ARCHITECT'S PROJECT NUMBER: 1211-019
CONTRACT DATE: 3/6/2012
CONTRACT FOR: General Construction

OWNER: ☐
ARCHITECT: ☐
CONTRACTOR: ☑
FIELD: ☐
OTHER: ☐

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

13 LF of Hand Rail at $60.00 LF Total $ 780.00

The original Contract Sum was	$ 34,862.00
The net change by previously authorized Change Orders	$ 0
The Contract Sum prior to this Change Order was	$ 34,862.00
The Contract Sum will be increased by this Change Order in the amount of	$ 780.00
The new Contract Sum including this Change Order will be	$ 35,642.00

The Contract Time will be increased by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive..

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Firm name)*	CONTRACTOR *(Firm name)*	OWNER *(Firm name)*
	Estrada Concrete Co LLC	City of Frisco
ADDRESS	ADDRESS 1623 Garza Ave Dallas TX 75216	ADDRESS 6101 Frisco Square Blvd
BY *(Signature)*	BY *(Signature)*	BY *(Signature)*
(Typed name)	Francisco Estrada Co LLC	Wes Hicks
DATE	DATE 4/4/12	DATE 4/27/12

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User Notes: (1466858039)

AGENDA ITEM #22.

Frisco Fire Department
City of Frisco, Texas

PROGRESS IN MOTION

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

From: **Cameron Kraemer, Division Chief**

Date: **May 15, 2012**

Subject: **Consider and Act upon adoption of a Resolution authorizing the City Manager to submit an application for the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Fire Prevention and Safety Grant Program**

Action Requested: City Council consideration and approval of a Resolution authorizing the City Manager to submit an application for the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Fire Prevention and Safety Grant Program (FP&S) in the amount of $52,000.

Background Information: The FP&S Grant is a program of the Assistance to Firefighters Grant (AFG) Program administered by the DHS, FEMA Grant Programs Directorate. The purpose of the AFG is to enhance the safety of the public and firefighters with respect to fire and fire-related hazards. The Grant Program Directorate administers the Fire Prevention and Safety Grants in order to support activities in two (2) categories:

- ***Fire Prevention and Safety Activity*** - Activities designed to reach high-risk target groups, to mitigate incidences of death and injuries caused by fire and fire-related hazards; and

- ***Firefighter Safety Research and Development Activity*** - Research and development activities aimed at improving firefighter safety.

The FP&S grants are awarded on a competitive basis, and the primary goal is to target high-risk populations.

As a part of the Frisco Fire Safety Town mission, the Frisco Fire Department demonstrates the dangers of fire and ways to prevent fire-related hazards. Funding will be requested for the production of four (4) Frisco Fire Safety Town - Core Construction / Farmers Insurance Theatre home fire safety videos; each video targets a specific age group.

We have applied for the FP&S Grant in order to meet the May 3 application deadline. This application represents the third year that we have pursued a grant award under this program. Should City Council not approve the Resolution for this grant application, staff will not accept the grant should it be awarded.

Alternatives: City Council could consider the following alternatives:

- Approval of the Resolution;
- Input towards the discussion as desired;
- Deny approval of the Resolution and send back to staff with direction.

Financial Considerations: The total grant request is $52,000 for the production of four (4) Frisco Fire Safety Town – Core Construction / Farmers Insurance Theatre home fire safety videos. The grant program includes a 20% local cash matching requirement; the City's local cash match would be $10,400. Staff recommends that the City matching requirements be funded through Frisco Fire Department Training Funds (13536000-69550). The total Federal funding contribution would be $41,600.

Legal Review: The Resolution has been reviewed and approved as to form and legality.

Supporting Documents: Supporting Documents include the following items:

- Copy of the Resolution;
- Copy of the Grant Application.

Staff Recommendation: Staff recommends placement of this item on the May 15, 2012 City Council meeting agenda to consider and approve a Resolution authorizing the City Manager to submit an application for the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Fire Prevention and Safety Grant Program in the amount of $52,000. Staff will be available at the meeting to address the City Council's questions relating to this agenda item.

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 SUBMIT AN APPLICATION FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FIRE PREVENTION AND SAFETY GRANT PROGRAM; 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 Council of the City of Frisco, Texas is hereby authorized to submit, on behalf of the City Council, the Federal Emergency Management Agency (FEMA) Fire Prevention and Safety Grant Application in the amount of $52,000 ("Application"), and a copy of said Application 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 _____, 2012.

_____
MAHER MASO, Mayor

ATTEST TO:

_____
JENNY PAGE, City Secretary

Exhibit "A"
(Grant Application)

 Fire Prevention and Safety Grant 2011

Preparer Information

	Preparer Information
Prefix or Title	Mrs.
*First Name	Jennifer
Middle Initial	
*Last Name	Tramel
Organization Name	Frisco Fire Dept.
*Address 1	8601 Gary Burns Drive
*City	Frisco
*State	Texas
*Zip	75034 -
*Primary Phone	972-292-6300 Ext. 6353 work
*Secondary Phone	214-683-4477 Ext. cell
Optional Phone	Ext. Select
*Email	jtramel@friscofire.com

* Is there a grant-writing fee associated with the preparation of this request?	No
If you answered yes above, what is the fee?	$

* **Are you the person to be contacted on matters involving this application?** Yes

If no, please specify who should be contacted: Primary Contact

Contact Information

	Primary Contact Information
* Title	Safety Educator
Prefix	Mrs.
* First Name	Jennifer
Middle Initial	
* Last Name	Tramel
* Primary Phone	972-292-6300 Ext. 6353 work
*Secondary Phone	214-683-4477 Ext. cell
Optional Phone	Ext. Select
Fax	
*Email	jtramel@friscofire.com

	Alternate Contact Information
* Title	Emergency Management Spec.
Prefix	Mrs.
* First Name	Jean
Middle Initial	
* Last Name	May
* Primary Phone	972-292-6300 Ext. 6342 work
*Secondary Phone	817-917-9768 Ext. cell
Optional Phone	Ext. Select
Fax	
*Email	jmay@friscofire.com

Applicant Information

EMW-2011-FP-00539
Originally submitted on 05/03/2012 by Jennifer Tramel (Userid: jenntramel)

Contact Information:

Address: 8601 Gary Burns Dr.
City: Frisco
State: Texas
Zip: 75034
Day Phone: 9722926300
Evening Phone: 9723355370
Cell Phone: 2146834477
Email: jtramel@friscofire.com

Application number is EMW-2011-FP-00539

* Organization Name	Frisco Fire Department
* Type of Applicant	Fire Department
If other, please enter the type of Applicant	
* Are you a Fire Department?	Yes No
If yes, what type of department do you represent?	Combination
If you answered combination, above, what is the percentage of career members in your organization?	81
* Are you a non-fire based EMS?	No
* Type of community served?	Suburban
* Please describe your organization and/or community that you serve	The Frisco Fire Dept. serves a suburban community of approximately 126,000 residents.
* What is the permanent resident population of your Primary/First-Due Response Area or jurisdiction served?	126000 Note: If you are **not** a fire department or EMS organization, you may enter a zero.

* Please describe your organization's need for Federal financial assistance.

Due to budgets cuts and waning sponsorship offers, the one of the kind Frisco Fire Safety Town is in need of additional funding for enhancements to a fire safety theatre.

Headquarters Physical Address

* Physical Address 1	8601 Gary Burns Drive
Physical Address 2	
* City	Frisco Tx.
* State	Texas
* Zip	75034 - 2594
Mailing Address	

* Mailing Address1	8601 Gary Burns Drive
Mailing Address2	
* City	Frisco Tx.
* State	Texas
* Zip	75034 - 2594

Additional Information

* This fiscal year, are you receiving Federal funding from any other grant program for the same purpose for which you are applying for this grant?	No
* This fiscal year, are you receiving Federal funding from any other grant program regardless of purpose?	Yes
* 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:

City of Frisco received teh 2011 AFG grant in the amount of $352,000 federal funds.

Request Information

* 1. Select one of the choices listed below. You can apply for a maximum of 3 projects within an activity.
(If you modify your selection, you will lose data entered under the original activity.)

Program Name

Fire Prevention and Safety

Request Details

The number of projects and cost for the activity **Fire Prevention and Safety** are listed in the table below.

Activity	Number of Projects	Total Cost	Action
Fire Prevention and Safety	1	$ 52,000	View Details

Budget

Budget Object Class	Budget Amount
Personnel	0
Benefits	0
Travel	0
Equipment	52,000
Supplies	0
Contractual	0
Construction	0
Other	0
Indirect Charges	0

Indirect Cost Details (complete this section only if you have a Federally approved Indirect Cost Rate agreement). Please note you must add the Indirect Costs as a line item within the Request Details section as they are not automatically calculated.

Agency Indirect Cost Agreement with	
Indirect Cost Rate	%
Agreement Summary	
Total Federal and Applicant Share	
Federal Share	$ 41,600
Applicant Share	$ 10,400
Federal Rate Sharing (%)	80/20

* Non-Federal Resources *(The combined Non-Federal Resources must equal the Applicant Share of $ 10,400)*

a. Applicant	$ 10,400
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	**$ 52,000**

Narrative Statement

The narrative for Fire Prevention and Safety is provided when adding Fire Prevention and Safety Projects under the **Request Details** section.

Assurances and Certifications

FEMA Form SF 424B

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 **Jennifer Tramel** on **05/03/2012**

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 **Jennifer Tramel** on **05/03/2012**

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 #23.

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: **May 7, 2012**

Subject: **Consider and Act Upon Approval of a Purchase Order for Annual Maintenance and Support to SirsiDynix Corporation for the City's Integrated Library System.**

Action Requested: City Council approval of a purchase order for annual maintenance and support to SirsiDynix Corporation for the City's integrated library system, in the amount of $35,142.

Background Information: Sole source expenditure for services related to SirsiDynix Corporation's Integrated Library System owned by the City of Frisco, as allowed by chapter 252.022 (a) (7) of the Texas Local Government Code. The annual cost will be $35,142.

Board/ Citizen Input: N/A

Alternatives: City Council could choose not to approve this purchase order at this time.

Financial Considerations: Available funds are appropriated in the Library Fiscal Year 2012 operating budget.

Legal Review: N/A

Supporting Documents: Department memo and SirsiDynix quote.

Library
City of Frisco, Texas

Memorandum

To: **Tom Johnston, Director of Administrative Services**

From: **Shelley Holley, Library Director**

Date: **May 2, 2012**

Subject: Approval of Purchase Order to SirsiDynix Corporation

---

Action Requested: The library requests City Council approval of the purchase order for the annual maintenance and support services quote from SirsiDynix for the Integrated Library System.

SirsiDynix Integrated Library System

SirsiDynix has been the contractual supplier of the library's Integrated Library System (ILS) since 2004. The attached invoice for $35,142.37 represents the annual software support and maintenance services billing for the upcoming year. The services covered under this agreement include:

- Support and maintenance of the basic library customer, inventory, circulation, and catalog system;
- Support and maintenance of the automated customer contact system that places telephone calls to patrons with overdue items, available holds, and other messages;
- Support and maintenance of the materials acquisition module including electronic data interface with book vendors;
- Support and maintenance of interfaces with other library systems including self-service checkout, public computer reservation systems, interface with e-book downloadable systems, and others;
- Provision and support of a separate test ILS system;
- Provision and support of enhanced content for the public catalog to enhance usability and findability;
- Support and provision of the library subscription to the API software tools which permit customization of the ILS system, custom reports and data manipulation and extraction.

The SirsiDynix ILS is the hub of library operations and all transactions made by staff and the public are dependent on its reliability and availability. Support services from SirsiDynix are used almost on a daily basis. SirsiDynix also provides emergency nights and weekend support as part of this package.

Invoice

SirsiDynix

Invoice INVMT022113
Date 4/4/2012

SIRSI Corporation

SirsiDynix Technology Center
3300 North Ashton Boulevard
Lehi UT 84043

Bill To: Frisco Public Library
Accounts Payable
6101 Frisco Square Blvd.
Frisco TX 75034

Ship To: Frisco Public Library
6101 Frisco Square Blvd.
Suite 3000
Frisco TX 75034

Purchase Order No.	Customer ID	Payment Terms
MAINTENANCE	972-335-5510	Net 30

Item Number	Description	Unit Price	Ext. Price
30-95000-000	Annual SirsiDynix Symphony Software Maint	$1,104.66	$1,104.66
30-95001-000	Annual Unicorn Software Maintenance	$20,427.48	$20,427.48
30-95008-000	Annual Hardware Maintenance	$638.32	$638.32
30-95010-000	Annual Third-Party Subscription Maintenan	$5,360.63	$5,360.63
30-95019-000	Annual Subscription Maintenance for Enter	$1,924.20	$1,924.20
30-95022-000	Annual Subscription for Recurring Consult Effective Period: June 1, 2012 - May 31, 2013	$5,687.08	$5,687.08

Subtotal	$35,142.37
Misc	$0.00
Tax	$0.00
Freight	$0.00
Trade Discount	$0.00
Total	$35,142.37

For questions, Please Contact:
Barbara M Caradine @ 800-288-8020 ext 5566
or barbara.caradine@sirsidynix.com

Please Remit Payment to: SirsiDynix #774271, 4271 Solutions Center, Chicago, IL 60677-4002

If paying by wire or ACH please reference the invoice number on your bank instructions.

SirsiDynix®

SCHEDULE/EXHIBIT "A"

Frisco Public Library

Item Number	Item Description	Serial Number	Qty	Coverage Effective Dates From	To	EOL Date	Price
12320	Symphony Web Services		1	6/1/2012	5/31/2013		0.00
12359	SirsiDynix Symphony NCIP Interface Per C		1	6/1/2012	5/31/2013		295.73
10030	SirsiDynix Symphony Test System		1	6/1/2012	5/31/2013		808.93
	Annual SirsiDynix Symphony Software Maintenance						**1,104.66**
M-1922	4 Port TalkToMe System		1	6/1/2012	5/31/2013		6,428.59
M-1924	9XX Order Interface (Acq.)		1	6/1/2012	5/31/2013		661.02
M-1952	Acquisitions and Fund Accting		1	6/1/2012	5/31/2013		1,424.86
M-1999	Authority Control		1	6/1/2012	5/31/2013		0.00
M-2002	Backup Circulation		1	6/1/2012	5/31/2013		0.00
M-2021	Bibliographic and Inv. Control		1	6/1/2012	5/31/2013		0.00
M-2049	Circulation Control		1	6/1/2012	5/31/2013		0.00
M-2091	Electronic Data Interchange		1	6/1/2012	5/31/2013		713.09
M-2193	iBistro/iLink Suite		1	6/1/2012	5/31/2013		0.00
M-2233	Information Gateway		1	6/1/2012	5/31/2013		0.00
M-2254	Inventory Control		1	6/1/2012	5/31/2013		0.00
M-2272	MARC Import/Export Utilities		1	6/1/2012	5/31/2013		0.00
M-2357	Reference Librarian-PKG		1	6/1/2012	5/31/2013		0.00
M-2369	Reporting Module		1	6/1/2012	5/31/2013		0.00
M-2375	Request Module		1	6/1/2012	5/31/2013		0.00
M-2419	SIP2 Interface Per Cert Vendor		1	6/1/2012	5/31/2013		495.42
M-2424	SmartPORT Client		2	6/1/2012	5/31/2013		0.00
M-2612	UnicornOASIS Bundled		1	6/1/2012	5/31/2013		9,792.45
M-2630	Unique Management Interface		1	6/1/2012	5/31/2013		464.70
M-2655	WebCat WWW Catlog		1	6/1/2012	5/31/2013		0.00
M-2665	WorkFlows Staff Clients		5	6/1/2012	5/31/2013		447.36
M-2714	Z39.50 Version 3 Server		1	6/1/2012	5/31/2013		0.00
	Annual Unicorn Software Maintenance						**20,427.48**
M-2788	3M Self-Check-SIP		1	6/1/2012	5/31/2013		638.32
	Annual Hardware Maintenance						**638.32**
M-0542	Datastream Subscription		30000	6/1/2012	5/31/2013		4,807.42
12219	Enriched Content Video and Music Profiles		1000	9/1/2012	5/31/2013		553.21
	Annual Third-Party Subscription						**5,360.63**
11681	SirsiDynix Enterprise, Annual Subscription		1	6/1/2012	5/31/2013		1,924.20
	Annual Subscription Maintenance for Enterprise						**1,924.20**
11175	Consulting - API, Annual Recurring Servic		1	6/1/2012	5/31/2013		5,687.08
Annual Subscription Maintenance for Recurring Consulting Services							**5,687.08**

AGENDA ITEM #24.

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: **May 7, 2012**

Subject: **Consider and Act Upon Approval of a Purchase Order with Altec Industries, Inc. for the Purchase of One - (1) Bucket Truck with Material Handler**

Action Requested: City Council approval of a purchase order with Altec Industries, Inc. for the purchase of one - (1) bucket truck with material handler, in the amount of $125,400.

Background Information: Purchase made through an interlocal agreement with the National Joint Powers Alliance® Heavy Equipment Contract - #060311. Frisco Engineering Department is requesting the purchase of one-(1) bucket truck with material handler, at a cost of $125,400. This unit is a replacement and will be used by the Traffic division of the Engineering Department for traffic signal and lighting maintenance.

Board/ Citizen Input: N/A

Alternatives: City Council could choose not to approve this purchase order, at this time.

Financial Considerations: Funds are available through the Engineering Department FY 2012 operating budget.

Legal Review: N/A

Supporting Documents: Department memos, quote and National Joint Powers Alliance® Heavy Equipment Contract - #060311

Engineering Services
City of Frisco, Texas

Memorandum

To: **Tom Johnston, Director of Administrative Services**

cc: **Paul Knippel, P.E., Director of Engineering Services**
Tracy Nichols, Traffic Signal and Lighting Supervisor
Sean Merrell, P.E., Senior Traffic Engineer

From: **Brian Moen, P.E., Assistant Director of Engineering Services**

Date: **May 3, 2012**

Subject: **Purchase of Aerial Bucket Truck with Material Handler**

Unit 85003, one of the three aerial bucket trucks used for traffic signal and lighting maintenance, is a 2004 Ford F550 with just over 110,000 miles. Due to its age and mileage, it was recommended for replacement this fiscal year. This unit will be replaced with a brand new 2012 Ford F550 ALTEC Model AT40M telescopic articulating bucket truck with a material handler. Staff considered various different styles of bucket trucks, but settled on this particular ALTEC model after visiting the City of Denton to see the unit in operation.

The truck will be purchased with capital funds budgeted in the FY2012 signal operations budget. The unit can be purchased through the National Joint Powers Alliance® Heavy Equipment Contract - #060311 cooperative purchasing program. The quote for the aerial bucket truck is attached.

ORDER PRICE REVIEW

Altec Industries, Inc. **NJPA Contract #: 060311-All**

SL Quotation Number: 186104-1

DATE: 5/7/2012

Customer Quoted For: City of Frisco
Customer Contact: David McDurmett
Phone: 972-292-5849 **/Fax:** **/Email:** dmcdurmett@friscotexas.gov
Quoted By Inside Sales Rep: Emily Gent / Elana Martinez
Phone: 303-416-0653 **/Fax:** **/Email:** elana.martinez@altec.com

REFERENCE ALTEC MODEL

AT40M	**Articulating Telescopic Aerial Device with Material Handling (Insulated)**	**$ 110,787.00**

Per Altec Commercial Standard Specifications plus Options listed below

(A.) NJPA CONTRACT OPTIONS *(UNIT)*

1			
2			
3			
4			

(A1.) NJPA CONTRACT OPTIONS *(GENERAL)*

1	CL	COMPARTMENT LIGHTS in Body Compartments (Dome Style)	$ 659.00
2	SPOT3	FOUR (4) POINT STROBE SYSTEM (Recessed, LED)	$ 1,012.00
3			
4			

(B.) OPEN MARKET ITEMS

1	Qty. 2 - Dica 18x18x1" Outrigger pads and holders	$ 510.00
2	Auto Retract Ground Cable Reel; includes 1/0 Yellow jacketed cable and Aluminum Clamp (per specs) & Ubolt	$ 1,250.00
3	LED Directional light bar, installed. Includes hard-wired controller in cab	$ 781.00
4	LED FMVSS #108 light package; includes lights and reflectors	$ 395.00
5	Compartment lights to be Rope type, ILO, Dome style	$ 591.00
6	Lower boom lifting eye	$ 275.00
7	Receiver hitch, in lieu of standard pintle hitch; includes tow eyes	$ 420.00
8	Multi-point grounding system	$ 375.00
9	Stock unit fee - Expedited delivery of Sept. 30, 2012	$ 5,825.00
10		

DELIVERY COST TO CUSTOMER $ 2,520.00

TOTAL FOR UNIT/BODY/CHASSIS: $ 125,400.00

(C.) ADDITIONAL OPTIONS

1		
2		
3		
4		

****Pricing Valid for 45 Days****

NOTES

PAINT: White to match chassis, unless otherwise specified
WARRANTY: 12 months or 12,000 miles parts and labor, 90 days travel charges for chassis and mounted equipment (parts only for
TO ORDER: To order, please contact the Altec Inside Sales Representative listed above.
CHASSIS: Per Altec Commercial Standards listed in NJPA Contract
DELIVERY: Build-out units - No later than **270-310** days ARO, FOB Customer Destination
TERMS: Net 30 Days
FET TAX: If chassis is over 33K GVWR, a 12 % FET charge will be applied unless exemption exists
BEST VALUE: Altec boasts the following "Best Value" features: Altec ISO Grip Controls for Extra Protection, Only Lifetime Warranty on Structural Components in Industry, Largest Service Network in Industry (Domestic and Overseas), Altec SENTRY Web/CD Based Training, Dedicated/Direct Sales Manager, In-Service Training with Every Order.

Altec Industries, Inc.
33 Inverness Center Drive
Birmingham, AL 35234
Office: 205.241.3165
www.altec.com

May 8, 2012

City of Frisco
Attn: David McDurmett
11300 Research Road
Frisco, TX 75033

National Joint Powers Alliance®
Heavy Equipment Contract - #060311-All

Dear Mr. McDurmett,

Thank you for your recent inquiry into the potential adoption of Altec's National Joint Powers Alliance® (NJPA) Heavy Equipment Contract #060311-All. Founded in 1929, Altec Industries, Inc. is the world's leading manufacturer of aerial lifts, digger derricks and specialty equipment for the electric utility, telecommunications, tree care and light/sign maintenance industries. Altec provides best-in-class support to customers with our numerous manufacturing, sales and service facilities located throughout North America, as well as, Global sales and service support in over 120 countries. In addition to sales and service solutions, Altec offers a host of ancillary services that include certification training, used and rental equipment, as well as equipment financing.

Altec is honored to have been awarded a national contract in 2010, through NJPA's national competitive bidding process. This contract will provide the City of Frisco access to a full range of Altec's equipment solutions for government, education and non-profit agencies. Altec believes in the concept and value of contract selling through the use of NJPA's Contract Purchasing Program. Through this program, Altec's NJPA Contract offers our customer's the following advantages:

- Facilitates greater efficiency and economy for NJPA customers to acquire goods and services
- Provides competitive price solicitation and bulk purchasing benefits, unobtainable by individual entities
- Supplies "Best-in-Class" National sales, training and service support for all equipment awards
- Offers a broad range of equipment solutions to meet every customer's requirements

We appreciate and value your consideration of Altec for your equipment needs. Please do not hesitate to contact your local Altec representative; Mike Covington or myself if you have further questions about Altec's NJPA contract offering.

Best regards,

Elana Martinez – National Account Manager
Altec Industries, Inc.
33 Inverness Center Drive
Office: 205.995.4862
Cell: 303.416.0653
elana.martinez@altec.com

AGENDA ITEM #24.

Back To Contract Index

NJPA AWARDED CONTRACT

Altec

Heavy Equipment

Public Utility Equipment

Altec Industries, Inc. - #060311-

Altec Industries, Inc. is the world's leading manu
derricks and specialty equipment for the electric
care and light and sign maintenance industries. ,
and service facilities located throughout North A
equipment in over 120 countries. In addition to s
operator training, and a host of auxiliary service
equipment, and equipment financing.

Contact

Courtney Meredith
Office: 205-241-3165
courtney.meredith@altec.com
www.altec.com

Charlie Culp
Office: 205-213-9862
charlie.culp@altec.com
www.altec.com

Elana Martinez
Office: 205-995-4862
Cell: 303-416-0653
elana.martinez@altec.com
www.altec.com

Contract Documentation (#060311-

Request for Proposal (RFP)
Bidders Response
Bid Acceptance & Award

Documentation of Competitive Bidd

NJPA Contract Manager: Jeremy Schwartz
Direct Phone: 218-894-5488
Email

Affidavit of Advertisement
Bid Opening Witness Page
Bid Evaluation
Bid Comment & Review
Board Minutes 7-19-11

Back To Contract Index

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Careers
NJPA Staff
Contact Us
Become a Vendor

Contract Solutions
Contract Purchasing
Search Contracts
Legal Authority
Procurement Process
Contract FAQs

Regional
Regional Programs
Region 5 Members
Academic Programs
Student Recognition
Early Childhood Center
Low Incidence
Health & Safety
Shared Services
Rebates

News & Events
NJPA News
News RSS Feed
NJPA Newsletter
Newsletter Request

888-894-1930 info@njpacoop.org 202 12th Street NE, P.O. Box 219, Staples, MN 564
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RFP 060311

Proposal Offering
And Acceptance and Award
RFP #060311

FORM D

HEAVY CONSTRUCTION EQUIPMENT TOGETHER WITH RELATED ACCESSORIES, SUPPLIES, AND SERVICES,

Proposal Offering (To be completed Only by Proposer)

In compliance with the Request for proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT TOGETHER WITH RELATED ACCESSORIES, SUPPLIES, AND SERVICES, the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby offer and agree to furnish the defined products/services and services in compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they are the sole offeror herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this offer is the sole responsibility of the Proposer.

Company Name: Altec Industries, Inc. Date: 6/1/2011

Company Address: 210 Inverness Center Drive

City: Birmingham State: AL Zip: 35242

Contact Person: Courtney Meredith Title: Inside Sales Representative

Authorized Signature (ink only): Courtney Meredith Courtney Meredith
(Name printed or typed)

Contract Acceptance and Award (To be completed only by NJPA)

Your proposal offering is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined goods and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, and the Proposer's Response. The effective date of the Contract be 19 July, 2011 and continue for four years thereafter AND which is subject to annual renewal at the option of both parties.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: Lane D Waldahl Lane D. Waldahl
(Name printed or typed)

Title: Board Clerk

Awarded this 19th day of July, 2011 **Contract Number # 060311-AII**

NJPA Authorized signature: Todd Lyscio Todd Lyscio
(Name printed or typed)

Title: Executive Director

Executed this 20th day of July **Contract Number # 060311-AII**

AGENDA ITEM #25.

BOURLAND, WALL & WENZEL, P.C.

KAMI K. BEATY
MICHAEL V. BOURLAND
BETHANY L. BROOKS
MEGAN A. CUNNINGHAM
STEPHANIE M. DALEY
DAVID P. DUNNING
GRAIGORY B. FANCHER
DAVID J. GOODMAN
BRYON R. HAMMER
WILLIAM R. KORB
W. MARC MCDONALD

Email: MBourland@bwwlaw.com

ATTORNEYS AND COUNSELORS
301 COMMERCE STREET, SUITE 1500
FORT WORTH, TEXAS 76102-4115

(817) 877-1088 FAX (817) 877-1636

www.BWWLAW.com

ERIC J. MILLNER
DARREN B. MOORE
JEFFREY N. MYERS
JAY B. NEWTON
R. JASON PIERCE
JEREMY R. PRUETT
JULIANNA M. STIBBE
LEWIS D. WALL III
KENNETH L. WENZEL
DUSTIN G. WILLEY
JARED M. WOOD

April 26, 2012

The City of Allen, The City of Frisco, and The City of Plano
Attn: Richard Abernathy
Via E-Mail: RAbernathy@ABERNATHY-LAW.com

Re: Dissolution of The Arts Center of North Texas

Dear Mr. Abernathy:

This letter is provided to you to confirm the basis of our legal representation regarding the dissolution of The Arts Center of North Texas. Our goal is to provide you with professional and efficient legal services regarding this matter. In furtherance of that goal, we believe that it is important to begin with a mutual understanding about the scope and nature of the engagement, the determination of our fees and other charges, and the method of payment. The purpose of this engagement letter and the attached Standard Terms of Engagement for Legal Services is to address these matters as well as certain other terms that will apply to the engagement.

1. Scope of Engagement.

The three cities of Allen, Frisco and Plano have engaged our firm to provide legal services to them in connection with the following matter: the attached list of inquiries regarding the disposition of assets of The Arts Center of North Texas "ACNT". The three cities will share in the payment of our fees equally (one-third each). If any city terminates our services, the remaining cities will share equally all expenses and fees that are incurred after notice of termination.

After review of the scope of work and an analysis of the organization documents of the ACNT and other relevant materials, the firm will respond to the inquiries set forth in the attachment. If there are issues that exist that have not been identified in the attachment, the firm shall timely notify the cities of the same and the cities will determine whether there should be additional services to address those issues.

Within seven days following the execution of the agreement by the last city, the firm shall provide an estimate of time and costs to perform the services identified above and shall do so before incurring fees for its services.

We will strive to perform these legal services in a professional and efficient manner. Our engagement will be limited to the specific legal matter(s) described above. In the event you would like to engage our firm to assist you on additional legal matters, we will furnish you a written supplement to this letter to reflect such additional matters. This engagement and our attorney-client relationship with regard to the engagement will terminate upon our completion of the legal services covered by this engagement letter and any written supplements to this engagement letter. If you later retain our firm to handle other legal matters, such engagement will be established by another engagement letter.

2. Determination of Legal Fees.

Our legal fees for handling the legal matter(s) will be based upon the amount of time spent by our lawyers and legal assistants. Billing rates for our lawyers and legal assistants vary depending primarily upon experience and expertise. In order to reduce overall legal fees, we try to utilize legal assistants whenever appropriate under the supervision of a lawyer. Our current hourly rates for lawyers and legal assistants are included in the Standard Terms of Engagement for Legal Services. Any work performed will be billed at an hourly rate of the attorney performing the work. Please see the attached list of firm attorneys and staff for each person's current hourly billing rate as well as our standard terms of engagement.

3. Other Charges.

In addition to our legal fees, you will be charged for certain other items incidental to the performance of our legal services, including out of pocket expenses, such as filing fees. Such items are more particularly described in the Standard Terms of Engagement for Legal Services.

4. Manner of Payment.

Payment should be made by checks or drafts payable to Bourland, Wall & Wenzel, P.C. at 301 Commerce Street, Suite 1500, Fort Worth, Texas 76102. If desired, arrangements can also be made for electronic funds transfers. If you ever have any questions concerning a billing statement, please contact me.

5. Open Relationship

Further, because of the three cities' decision to engage our law firm to represent all of them in this matter, under the Texas Disciplinary Rules of Professional Conduct, a potential conflict of interest is created as a result of our representation of all of you. Such work will be under an open attorney-client relationship. An open attorney-client relationship is where information will be shared between the attorney and the three clients, but kept confidential as to all outside parties. In this situation we, as your attorney, will be required to divulge to each of you all information relevant to representation of each of you, whether provided to us by one of you, or otherwise acquired.

Please indicate below your agreement as to an Open Client Relationship.

	Title	Signature	Date
City of Allen			
City of Frisco	Attorney for City		5/9/12
City of Plano	City Attorney		4/26/2012

6. Arbitration.

We appreciate the opportunity to serve as your attorneys and anticipate a productive, harmonious relationship. If you become dissatisfied for any reason with the services we have performed or the fees charged, we encourage you to bring that to our attention immediately. If we perceive a problem with the engagement, we will bring it to your attention. Most such problems can be rectified by communication and discussion. However, a dispute could arise between us which cannot be resolved by discussion. We believe that such attorney-client disputes are most satisfactorily resolved through binding arbitration rather than by litigation in court. *More information about the arbitration process can be found in the attached document entitled "Standard Terms of Engagement for Legal Services."*

By signing this letter, this law firm and you agree that any controversy or claim arising out of or relating to our representation of you will be resolved by binding arbitration in Fort Worth, Texas. *Your agreement to arbitrate disputes is not a condition of our agreeing to represent you; however, if you do not wish to agree to arbitrate, please call me so that we can discuss the issue before you sign this letter.*

If you approve of the legal work and legal fees/expenses involved in connection with the planning and documentation described above, please sign at the top of page 3 and keep a copy of this letter for your records. Return the executed letter to our office. If you have any questions about the terms of this engagement, our billing statements or any aspect of our representation, please do not hesitate to call me.

If you approve the legal work and legal fees, please sign below, keep a copy of this letter for your records, and send the executed original to us along with the retainer.

We look forward to working with you.

Sincerely,

BOURLAND, WALL & WENZEL, P.C.

Michael V. Bourland

LEGAL WORK/FEE PROCEDURE APPROVED:

Signature	Title – City of Allen	Date
[signature]	Attorney for the City	May 9, 2012
Signature	Title – City of Frisco	Date
[signature]	City Attorney	4/26/2012
Signature	Title – City of Plano	Date

MVB/mac/270531.4

Arts Center of North Texas ("ACNT") originally known as the Arts of Collin County "ACC"[1]

The ACNT is a Texas non-profit local government corporation established by the Cities of Allen, Frisco, and Plano pursuant to Chapter 431 of the Texas Transportation Code. The ACNT is considering conveying its assets to another non-profit group or to the cities, and then will dissolve. The two primary assets are the 124 acre tract of property and $2.7 Million in cash. The cash reserves comes from a large number of individual and corporate donors over an 8 year period. The cash held by ACNT may be subject to certain restrictions because they were collected in the course of ACNT's BRAVO campaign. Sources indicated that the BRAVO campaign represented the funds collected were for capital costs for one or more specific projects. Other donor restrictions may also attach to use of some of the donated funds. Attached is an email that addresses potential cash restrictions.

There is a potential dispute on whether the 124 acre tract is subject to a gift sale agreement. That agreement reserves approximately 12 acres of that tract to Briar Ridge Investments and contains a reverter clause if the property is not developed by 2015 for the purposes set forth in the gift agreement. The deed that conveyed the property to the ACNT makes no reference to the terms of the gift agreement, does not contain a reverter clause, and was signed by a different donor than Briar Ridge Investments. Briar Ridge Investments did not own the property at the time of the execution of the gift agreement or when the property was conveyed to the ACNT. Portions of the property have since been conveyed for public right of way, drainage and park purposes. In light of the above, the following questions need to be addressed:

1. If the ACNT dissolves, can the cash and/or land assets (except those interests in land that have already been dedicated or conveyed for other purposes) be returned to the original donors? If so, are there any obligations that ACNT must follow for that to occur?
2. Can the ACNT sell the land to any third party but then restrict the use of the proceeds for the purposes set out in the articles of incorporation?
3. If the ACNT dissolves and the Cities receive any or all of the ACNT assets, are the Cities limited to using the assets as provided for in the articles of incorporation?
4. If the land is returned to the Cities, it creates concerns with common ownership and maintenance responsibilities. Is it feasible to allow one city to have the land, and the remaining cities divide the cash proceeds assuming that the value of the land (netting out expenses for maintenance) is comparable to a third of the cash proceeds?
5. Is there any mechanism that would allow the use of the proceeds following dissolution for a wider range of uses than what is set out in the articles or under the dissolution statute of the Local Government Code? If so, what is that mechanism and what uses would be permitted?
6. Would a conveyance of substantially all of the assets of ACNT to a third party prior to filing articles of dissolution (if that were ultimately intended) constitute a de facto dissolution such that the provisions of Chapter 431 of the Texas Transportation Code and the articles of incorporation regarding dissolution

[1] In late 2010, the Arts of Collin County changed its name to Arts Center of North Texas.

control? Does it make a difference if that conveyance is to a for profit vs. a non-profit entity?

7. Are there other options that we have not considered?

Diane Wetherbee

From: Mary Vail-Grube <mgrubearts@sbcglobal.net>
Sent: Thursday, March 01, 2012 4:40 PM
To: Diane Wetherbee
Cc: Tom Brandt
Subject: Fw: ACNT potential dissolution and disposal of assets

Hi Diane

Here is the information on restrictions.

I will be available by phone if you need me in the morning 972-679-0698.

Due to Tom's family emergency he will not be able to attend.

Thank you
Mary

Mary Vail-Grube
Interim Executive Director
Arts Center of North Texas
214-495-5801
mgrube@artscenterofnorthtexas.org

Join our e-news mailing list at
www.artscenterofnorthtexas.org

----- Forwarded Message -----
From: Mary Vail-Grube <mgrubearts@sbcglobal.net>
To: Tom Brandt <tbrandt@fhmbk.com>
Sent: Mon, February 27, 2012 2:54:22 PM
Subject: Re: ACNT potential dissolution and disposal of assets

Tom in response to Diane's question regarding restrictions on donated funds we currently have in our possession.

$100,000 that Kenneth Sellers donated specifically for a grand piano, he has a written agreement that if it is not used for that purpose the funds will be turned over to the Plano Symphony which is also a 501c3.

$750,000 from ATT foundation, also a 501c3. They have stated, in writing, although not in any agreement upfront, that the funds are to be used only for construction expenses related to the PAC.

$90,000+ from Robbie Robinson, only to be used for construction and if not, to be used by cities to fund arts and culture per ILA.

Mary

Standard Terms of Engagement for Legal Services

This statement sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be a part of our agreement with you concerning our provision of legal services. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions.

The Scope of Our Work

The engagement letter to which this statement is attached describes the scope of the legal services we will provide to you. If you have any questions concerning the scope of our legal services, please contact us immediately so that we can avoid any misunderstandings or incurring unnecessary expenditures. Any statements on our part concerning the outcome of your legal matter are expressions of our best professional judgment, but are not guarantees.

Our engagement will be limited to the specific legal matter in the engagement letter. In the event you would like to engage our firm to assist you on additional legal matters, we will furnish you a written supplement to such engagement letter to reflect such additional matters. The engagement and our attorney-client relationship will terminate upon our completion of the legal services covered by the engagement letter and any written supplements to the engagement letter. If you later retain our firm to handle other legal matters, such engagement will be established by another engagement letter.

File Retention Policy

Unless otherwise instructed by you in writing and agreed to by us in writing, after the particular matter is completed, it is the policy of Bourland, Wall and Wenzel, P.C., to dispose of documents after five (5) years. After five (5) years, the file (hard copies, electronic and other media) and other materials that remain in our possession relating to a matter for which our services have been completed or terminated may be destroyed at our discretion.

Identity of Client

The engagement letter to which this statement is attached sets forth the client for whom we will be performing legal services. It is our policy that the person or entity that we represent is limited to the person or entity that is specifically identified in our engagement letter and does not include any other persons or entities (i.e., family members, employees, officers, directors, managers, owners, parent companies, subsidiary companies, affiliates, joint venturers, etc.) unless such a representation is otherwise agreed to by our firm in writing. Accordingly, the normal duties that a lawyer owes a client (i.e. confidentiality, loyalty, etc.) will not apply to any person or entity other than the person or entity identified in the engagement letter.

Cooperation

In order for our representation of you to be effective, we must rely on the accuracy and completeness of the facts and information you and your representatives provide to us. Accordingly, you and your representatives agree to disclose fully and accurately all facts concerning the legal matter and keep us informed of all developments relating to such matter. To the extent that it is necessary or helpful for you or your representatives to attend meetings in connection with this matter, we will attempt to schedule such meetings at a convenient time and place.

Who Will Provide the Legal Services

Customarily, each client of the firm is served by a principal lawyer contact. Subject to the supervisory role of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the firm. This often occurs for the purpose of involving lawyers or legal assistants with special expertise in a given area of the law or for the purpose of providing services on the most cost-efficient and timely basis.

Legal Fees

Unless a specific fee quote is set forth in the engagement letter, our legal fees for a particular matter are based upon the amount of time spent by our lawyers and legal assistants in performing the services necessary to complete the matter. Billing rates for our lawyers and legal assistants vary depending primarily upon experience and expertise. In order to reduce overall legal fees, we try to utilize legal assistants whenever appropriate. Our current hourly rates for lawyers and legal assistants are included in this statement. These billing rates are reviewed and adjusted each year in January and are subject to change with or without notice.

We will keep accurate records of the time we devote to your work, including conferences (both in person conferences and telephone conferences), negotiations, court appearances, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters. We record our time in units of one-quarter (1/4) of an hour.

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will respond to your request by furnishing an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated.

Other Charges

In addition to our legal fees, clients are billed for charges and costs for certain items incident to the performance of our legal services. Such items include, but are not limited to, photocopying, long-distance calls (calls will be billed per minute at the actual rate charged to our firm), facsimile transmissions, postage and express delivery charges, couriers, filing fees, deposition and transcript costs, specialized computer applications such as computerized legal research, and travel expenses. Whenever such charges or costs are incurred, we will specifically itemize them on the billing statement. In addition, at times, it may be necessary for our firm to involve one or more outside experts or consultants, such as accountants, engineers, appraisers, or other legal counsel to assist our firm in connection with the representation. Such charges made by outside experts and consultants may be submitted directly to you for payment to such experts and consultants. Prior to retaining any outside experts or consultants, we will obtain your approval. In addition, you will have the opportunity to review, in advance, the fee structure of any expert or consultant we propose to retain.

Retainer and Trust Deposits

New clients of the firm may be asked to deposit a retainer with the firm. Unless otherwise agreed, the retainer deposit will be credited toward your unpaid invoices, if any. At the conclusion of the engagement or at such time as the deposit is unnecessary or is appropriately reduced, the remaining balance or an appropriate part of it will be returned to you unless otherwise agreed. If the retainer deposit proves insufficient to cover contemplated fees and other charges, it may have to be increased.

Deposits which are received to cover specific items will be disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be refunded to you.

Billing Arrangements and Terms of Payment

Unless you have a special retainer arrangement, we will bill you on a regular basis, normally each month, for our legal fees and other charges and costs. Our most common billing format includes a narrative description of the legal services performed, the date on which we performed such legal services, the lawyer or legal assistant who performed such services, the number of hours (or increments thereof) worked on the matter, and the corresponding legal fee for the services performed. In addition, the billing statement will include an itemization of the charges and other costs incurred by our firm in connection with such legal matter for the period covered by the billing statement. You agree to make payment of all billing statements not covered by a special retainer arrangement within 30 days of receiving our statement. If you have any questions concerning a particular billing statement, please feel free to ask your principal lawyer contact or the firm's managing shareholder.

Termination and Withdrawal

You may terminate our representation at any time, with or without cause, by notifying us. Any such termination should be made in writing and addressed to the principal attorney handling your legal matter. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the work performed will be retained by the firm. Your termination of our representation will not affect your responsibility for payment of legal services rendered and charges and costs incurred before termination and in connection with an orderly transition of any matters.

Our representation of you is subject to rules of professional conduct for the jurisdiction in which we practice. Such rules of professional conduct list several types of conduct or circumstances that require or allow our firm to withdraw from representing a client, including for example, conflict of interest with another client, nonpayment of fees or costs by a client, misrepresentation or failure to disclose a material fact by a client, and fundamental disagreements. We try to identify in advance and discuss with our client any situation which may lead to our withdrawal, and if withdrawal ever becomes necessary, we will give the client written notice of our withdrawal. In the event we elect to withdraw from this engagement for any reason, you agree to take all steps necessary to free us from any obligation to perform further legal services for you, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and other charges incurred on your behalf prior to the date of such withdrawal.

Arbitration

Arbitration is a form of dispute resolution by which the parties to a dispute agree to submit the matter to a neutral third party arbitrator with experience in the area in dispute. The parties empower the arbitrator to determine the case and agree to abide by the arbitrator's decision rather than litigate the matter in court. Therefore, if the parties agree to submit a dispute to arbitration, those parties waive any right to a trial by jury and furthermore, the arbitrator's legal and factual determinations are generally not subject to appellate review. Finally, the rules of evidence and procedure in arbitration are generally less formal and rigid than in a court.

Arbitration has received favorable endorsement by both the United States Supreme Court as well as the Texas Supreme Court due to its many benefits including its economical and expeditious nature.

Because arbitration is often less acrimonious and more confidential than litigation, it is particularly suited to resolution of disputes between attorneys and their clients. As with any decision affecting your legal rights, you are free to discuss the advisability of arbitration with us or any of your other advisors, to employ independent counsel to advise you and to ask any questions which you may have.

Unless otherwise agreed to in writing by you and us, any dispute arising out of or relating to our representation of you, including, but not limited to, any controversy or claim arising out of or relating to this agreement, our relationship, the services or scope of services rendered, the fees, costs, or expenses charged, the appropriateness of actions taken or not taken, or any other matter relating to our representation, will be submitted to arbitration in Fort Worth, Texas under the commercial arbitration rules of the American Arbitration Association. Such arbitration shall be conducted in accordance with the statutory and substantive law of the State of Texas. The arbitrator shall have authority to determine his or her own jurisdiction. The decision of the arbitrator shall be binding, conclusive and non-appealable.

If you have any questions about any of the matters set forth in this statement, please feel free to contact your principal lawyer contact at our firm. Again, we appreciate the opportunity to be of service to you.

BOURLAND, WALL & WENZEL, P.C.

Billing Rates
(Per Hour)
Effective January 2012

Attorneys	
Kami K. Beaty	$ 215.00
Michael V. Bourland	$ 525.00
Bethany L. Brooks	$ 240.00
Megan A. Cunningham	$ 190.00
Stephanie M. Daley	$ 265.00
David P. Dunning	$ 340.00
Graig B. Fancher	$ 215.00
David J. Goodman	$ 315.00
Bryon R. Hammer	$ 315.00
William R. Korb	$ 375.00
W. Marc McDonald	$ 375.00
Eric J. Millner	$ 250.00
Darren B. Moore	$ 315.00
Jeffrey N. Myers	$ 360.00
Jay B. Newton	$ 235.00
R. Jason Pierce	$ 215.00
Jeremy R. Pruett	$ 240.00
Julianna M. Stibbe	$ 190.00
Lewis D. Wall III	$ 360.00
Kenneth L. Wenzel	$ 425.00
Dustin G. Willey	$ 260.00
Jared M. Wood	$ 190.00

Paralegals	
Kelly Gonzales	$ 160.00
Julie Kamp	$ 160.00
Stephanie Lackey	$ 160.00
Tina Schubert	$ 150.00

Legal Assistants	
Emily Baker	$ 110.00
Michelle Dzivi	$ 80.00
Mary Holt	$ 75.00
Kristi Howard	$ 75.00
Adrienne Johnson	$ 110.00
Sandy McWhorter	$ 80.00
Tracey Merritt	$ 110.00
Terry Monger	$ 110.00
Jamie Nix	$ 75.00
Debbie Reinhardt	$ 80.00
Stacie Silver	$ 80.00
Jennifer Zarate	$ 75.00

AGENDA ITEM #26.

CITY MANAGER'S OFFICE

Office of the City Manager
City of Frisco, Texas

Memorandum

To: **Mayor and Council**

From: **Ron K. Patterson, Assistant City Manager**

CC: **George Purefoy, City Manager**

Date: **May 8, 2012**

Re: **Impact Fee, Development and Reimbursement Agreement**

Action Requested:

Consider and act upon adoption of a Resolution authorizing the City Manager to execute an Impact Fee, Development and Reimbursement Agreement between Frisco Austin Ridge, LLC, One Austin Ridge Investments, LP and the City of Frisco, Texas.

Background Information:

The subject property of this agreement is within the property boundary that was contained within the old Lone Star Ranch agreement that is no longer valid due to the *Impact Fee Settlement Agreement* that was approved by City Council Resolution 11-08-148R on August 16, 2011. This property began development prior to the finalization of the above referenced agreement and remains under development to date.

Due to the above circumstances the Developer has installed both road and water infrastructure, and will install additional road infrastructure, for which they would have otherwise been and are eligible for impact fee credits on the subject property but have yet to receive such credit. The Developer has submitted the required information to determine the amount of impact fee credits for which they are eligible. Staff has reviewed such documentation for the road and water line and determined the projects are contained within the Capital Improvement Plan and eligible under the Impact Fee Ordinance for impact fee credits in the amount of $570,260.42 for road improvements and $76,142.38 for water improvements.

After further investigation it was determined that the developer does not have enough lots remaining in the overall development to use all of the road impact fee credits.

Based on the number of lots remaining to be developed they would only use $350,598.00 (assumes this credit amount is provided by this Agreement by reducing the remainder of the thoroughfare impact fees to zero) of the $570,260.42 leaving a remaining balance of $219,662.42, which should be reimbursed. This is an unusual circumstance because the City and the developer would normally have entered into a development agreement prior to the beginning of the project which would have prevented the requirement for a reimbursement but would have provided the exact same impact fee credit total.

Road Infrastructure Credits –

Phase I	$305,145.75
Phase II	265,114.67
Total	$570,260.42

Total Useable –

Based on Lots	$350,598.00

Reimbursement Amount –

Difference	$219,662.42

In addition to reducing the remaining thoroughfare impact fees to zero and providing the above reimbursement, the attached agreement also provides for a release, hold harmless and indemnity agreement.

Financial Considerations:

The approval of this agreement will require the reimbursement of impact fees in the amounts reflected above under “Reimbursement Amount”.

Legal Review:

The agreement has been reviewed by Rebecca Brewer of the City Attorney’s office.

Supporting Documents:

- Resolution
- Impact Fee, Development and Reimbursement Agreement between Frisco Austin Ridge, LLC, One Austin Ridge Investments, LP and the City of Frisco, Texas

Staff Recommendation:

Staff recommends approval as submitted.

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 IMPACT FEE, DEVELOPMENT AND REIMBURSEMENT AGREEMENT BETWEEN FRISCO AUSTIN RIDGE, LLC, ONE AUSTIN RIDGE INVESEMENT, LP AND THE CITY OF FRISCO, TEXAS.

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 Impact Fee, Development and Reimbursement Agreement between Frisco Austin Ridge, LLC, One Austin Ridge Investment, LP, and the City of Frisco, Texas, 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 _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

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

After Recording Return to:
City of Frisco
Attention: City Manager
6101 Frisco Square Boulevard, 5th Floor West
Frisco, Texas 75034

IMPACT FEE, DEVELOPMENT AND REIMBURSEMENT AGREEMENT BETWEEN FRISCO AUSTIN RIDGE, LLC, ONE AUSTIN RIDGE INVESTMENTS, LP AND THE CITY OF FRISCO, TEXAS

THIS IMPACT FEE, DEVELOPMENT AND REIMBURSEMENT AGREEMENT (this "Agreement"), dated as of _____, 2012 (the "date of the Agreement"), is made and entered into by and between the **CITY OF FRISCO, TEXAS**, a Texas Home-Rule municipal corporation ("Frisco"), **FRISCO AUSTIN RIDGE, LLC** a Texas limited liability company, and **ONE AUSTIN RIDGE INVESTMENTS, L.P.** a Texas limited partnership (collectively, "Developer").

WHEREAS, at all times material to subject matter of this Agreement, Developer, or its predecessors in interest, has been the sole owner of that certain tract of land situated in the City of Frisco, Denton County, Texas, containing 85.863 acres of land, more or less, located in the D. Lawhorn Survey, Abstract No. 727, the J. Ragland Survey, Abstract No. 1092, as more particularly described on **Exhibit "A"**, attached hereto and incorporated herein for all purposes (the "Property"), subject to the parties' understanding that certain lots within the Property have already been permitted and sold to individual owners thereof; and

WHEREAS, Developer has constructed, at its sole cost and expense, a twenty-five foot (25') wide thoroughfare consisting of the eastern two (2) lanes of Lone Star Ranch Parkway as well as associated storm sewer improvements from approximately station 35+00 south of Lebanon Road to approximately station 21+00 south of Alley K, adjacent to or near the Property, which is necessary to serve the Property and is generally depicted (yellow highlighted area) on the Final Plat for Austin Ridge at Lone Star Ranch Phase I dated July 2007, which is attached hereto and incorporated for all purposes as **Exhibit "B"** (collectively, the "Lone Star Ranch Paving Improvements – Phase I"). Such Lone Star Paving Improvements have been finally accepted by Frisco; and

WHEREAS, Developer shall construct at the time of development of Phase II of Austin Ridge at Lone Star Ranch, at its sole cost and expense, an additional section of a twenty-five foot (25') wide thoroughfare consisting of the eastern two (2) lanes of Lone Star Ranch Parkway as well as associated storm sewer improvements in and along the right-of-way alignment, adjacent to or near the Property, which is necessary to serve the Property and is generally depicted (green

highlighted area) on the Final Plat for Austin Ridge at Lone Star Ranch Phase I dated July 2007 as , which is attached hereto and incorporated for all purposes as **Exhibit "B"** (collectively, the "Lone Star Ranch Paving Improvements – Phase II").

WHEREAS, Developer has constructed, at its sole cost and expense, a 12" water line along the right-of-way alignment of Lone Star Ranch Parkway from Lebanon Parkway to just south of Alley K, adjacent to or near the Property which is necessary to serve the Property, as generally depicted on the Final Plat for Austin Ridge at Lone Star Ranch Phase I dated July 2007 which is attached hereto and incorporated for all purposes as **Exhibit "B"**, (the "Austin Ridge Water Improvements"). Such Austin Ridge Water Improvements have been finally accepted by Frisco; and

WHEREAS, Prior to the date of this Agreement Developer has paid impact fees on developed portions of the Property ("Impact Fees Paid") as required by Ordinance No. 90-06-08 and as amended by Ordinance Nos. 91-03-01, 93-02-07, 94-04-07, 00-02-29, 01-09-66, 05-07-53, and any other amendment, as they exist or may be amended (additionally and collectively the "Impact Fee Ordinance"); and

WHEREAS, In consideration for, among other things, Developer's execution of that certain Impact Fee Settlement Agreement, approved by the City Council at its meeting of August 16, 2011, pursuant to Resolution Number 11-08-148R, ("Impact Fee Settlement Agreement"), the Impact Fees Paid and Developer's ongoing infrastructure development of Lone Star Ranch Paving Improvements – Phase I, Lone Star Ranch Paving Improvements – Phase II and the Austin Ridge Water Improvements identified in City's Capital Improvements Plan ("CIP"), Developer has requested and City agrees to provide Developer with a partial reimbursement of the Impact Fees Paid and to provide credits for future thoroughfare and water impact fees for existing and future development on the Property; and

WHEREAS, Developer acknowledges and agrees that City shall have no obligation to reimburse Developer any amounts or any impact fees it has paid up through the date of this Agreement except as expressly provided herein with regard to the Property; and

WHEREAS, In consideration for City agreeing to tender Developer the Reimbursement Amount set forth herein, Developer agrees to release, indemnify and hold harmless City according to the terms set forth in this Agreement; and

WHEREAS, Frisco has investigated and determined that it has been and will be advantageous and beneficial to Frisco and it citizens to allow the Developer to construct the Lone Star Ranch Parkway Paving Improvements – Phases I and II and Austin Ridge Water Improvements, as provided herein; and

WHEREAS, Frisco has further investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to establish the payment of thoroughfare and water impact fees on the Property as provided herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Developer agree as follows:

1. **Findings Incorporated**. The findings set forth above are made a part of this Agreement as if set forth herein verbatim.

2. **Land Subject to Agreement**. The land that is subject to this Agreement is the Property. Developer represents, at all times material to the subject matter of this Agreement, Developer, or its predecessors in interest, has/have been the sole owner of the Property, subject to the parties' understanding that certain lots within the Property have already been permitted and sold to individual owners thereof.

3. **Construction of the Lone Star Ranch Parkway Paving Improvements – Phase I, and Austin Ridge Water Improvements and Construction Costs**. Developer has constructed, at its sole cost and expense, the Lone Star Ranch Parkway Paving Improvements – Phase I and Austin Ridge Water Improvements in accordance with **Exhibit "B"**. Lone Star Ranch Parkway Paving Improvements – Phase I and Austin Ridge Water Improvements have been completed and finally accepted by Frisco and conveyed to Frisco in accordance with Frisco's applicable ordinances, rules and regulations. Developer represents and warrants that the construction costs for the Lone Star Ranch Parkway Paving Improvements – Phase I are two hundred eighty-two thousand five hundred forty-two and 37/100 ($282,542.37) and Austin Ridge Water Improvements are seventy thousand five hundred two and 20/100 ($70,502.20), plus miscellaneous cost to include bonds, engineering and geotechnical are twenty eight thousand two hundred forty-three and 57/100 ($28,243.57) as more particularly described in **Exhibit "C"**, attached hereto and incorporated herein for all purposes (collectively, the "Phase I Construction Cost").

4. **Construction of the Lone Star Ranch Parkway Paving Improvements – Phase II and Agreed Construction Costs Estimate**. Developer shall construct, at its sole cost and expense, the Lone Star Ranch Parkway Paving Improvements – Phase II in accordance with **Exhibit "B"**. Lone Star Ranch Parkway Paving Improvements – Phase II shall be completed in accordance with all applicable City Engineering standards then in effect and be finally accepted by Frisco and conveyed to Frisco in accordance with Frisco's applicable ordinances, rules and regulations. Developer and City agreed upon construction costs for the Lone Star Ranch Parkway Paving Improvements – Phase II to be two hundred forty-five thousand four hundred seventy-six and 55/100 ($245,476.55), plus miscellaneous cost to include bonds, engineering and geotechnical estimated to be nineteen thousand six hundred thirty-eight and 12/100 ($19,638.12) as more particularly described in **Exhibit "D"**, attached hereto and incorporated herein for all purposes (collectively, the "Phase II Construction Cost").

5. **Impact Fees**. Except as otherwise provided in this Agreement in relation to the Reimbursement Amount, this Agreement shall only apply to thoroughfare and water impact fees due on the Property under the Impact Fee Ordinance after the date of this Agreement. The Property shall be subject to the thoroughfare and water impact fee schedule in effect at the time of development; provided, however, if Developer complies with the terms and conditions of this

Agreement and in consideration for, among other things, the Phase I and Phase II Construction Cost paid or to be paid by Developer at its sole cost and expense, Frisco agrees to:

a. Reduce thoroughfare impact fees for all existing and future lots within the Property owned by Developer or Developer's successors in interest, including without limitation, Landon Homes, L.P., on which thoroughfare impact fees have not been previously paid as of the date of this Agreement to zero dollars and 00/100 ($0.00); and

b. Reduce the assessed water impact fees within the Property by seventy-six thousand one hundred forty-two dollars and 38/100 ($76,142.38). Such reduction shall be prorated to reduce the amount of water impact fees due on all existing and future lots within the Property owned by Developer or Developer's successors in interest, including without limitation, Landon Homes, L.P., on which water impact fees have not been previously paid as of the date of this Agreement. As such, the water impact fees will be $1,374.79 per remaining lot within the Property.

c. Revise the current and all future impact fee schedules related to the affected lots within the Property to reflect the modifications under Paragraph 5(a) and (b) of this Agreement such that the collection of impact fees at the time of obtaining a building permit will be adjusted accordingly for the benefit of Developer or Developer's successor in interest, including without limitation, Landon Homes, L.P.

Notwithstanding anything to the contrary herein, Developer acknowledges and agrees that: (i) under no circumstance whatsoever shall it be entitled to a monetary reimbursement of any kind with regard to the Lone Star Ranch Parkway Paving Improvements – Phases I and II, Austin Ridge Water Improvements, the value of the Credits, or impact fees previously paid for development of the Property other than the Reimbursement Amount contained in this Agreement; and (ii) the Credits are not transferrable to any other property, regardless of ownership of same.

6. **Reimbursement Amount to Developer**. In consideration for, among other things, the Impact Fees Paid, Developer's construction of Lone Star Parkway Paving Improvements – Phases I and II as well as the Austin Ridge Water Improvements and Developer's execution of the Impact Fee Settlement Agreement and its agreement to release, indemnify and hold harmless City according to the terms set forth in this Agreement, City agrees to reimburse Developer a partial reimbursement of the Impact Fees Paid, in the amount of two hundred nineteen thousand six hundred sixty-two and 42/100 ($219,662.42) ("Reimbursement Amount"). Allocation of the Reimbursement Amount shall be from Thoroughfare Impact Fees only.

Thirty (30) calendar days following the latest date this Agreement is executed, as evidenced in the notary section below, City will deliver payment of the Reimbursement Amount to Developer at the address provided below.

7. **Release**. Developer acknowledges and agrees that this Agreement and the rights, duties and obligations herein are strictly contingent upon it waiving, releasing and relinquishing any previous, current and/or future claims that it may have to reimbursements for impact fees paid on the Property up to and including the date of this Agreement ("Released Claims"), and Developer hereby waives, releases and relinquishes the Released Claims; provided however, nothing in this Paragraph is intended to waive, release or relinquish City's obligations under this Agreement.

8. INDEMNIFICATION. DEVELOPER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, SUITS, JUDGMENTS, LIABILITIES, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) BROUGHT BY ANY PERSON OR ENTITY, AGAINST CITY, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, RELATED IN ANY WAY TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE RELEASED CLAIMS, THE REIMBURSEMENT AMOUNT, ANY FINANCIAL CLAIMS AGAINST THE CALCULATION, OWNERSHIP AND/OR PAYMENT OF THE REIMBURSEMENT AMOUNT, ANY CLAIM THAT ANY PAST AND/OR FUTURE INDIVIDUAL, ENTITY OR LANDOWNER AND/OR PURCHASER MAKES RELATED TO THE REIMBURSEMENT AMOUNT, INCLUDING PREDECESSORS IN INTEREST, SUCCESSORS OR ASSIGNS, OF THE THIRD PARTIES DESCRIBED IN THIS PARAGRAPH 8 (COLLECTIVELY, "CLAIMS").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL SELECTED BY DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY'S APPROVAL MUST BE IN WRITING AND CANNOT BE UNREASONABLY WITHHELD. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY REASONABLE REFUSAL TO APPROVE OR RETENTION OF DEFENSE COUNSEL BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY AND DEFEND CITY, INCLUDING BUT NOT LIMITED TO, PAYING ATTORNEYS' FEES AND COSTS, PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL SUBMIT TO CITY FOR APPROVAL ITS SELECTED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. DEVELOPER SHALL RETAIN DEFENSE COUNSEL WITHIN TWO (2) BUSINESS DAYS OF RECEIPT OF CITY'S WRITTEN APPROVAL. IF WRITTEN APPROVAL IS REASONABLY WITHHELD BY CITY, FOR REASONS SUCH AS, AMONG OTHERS, LACK OF COMPETENCE, LACK OF EXPERIENCE, POOR REPUTATION, CONFLICT OF INTEREST OR PERSONALITIES OR ANY OTHER REASONABLE BASIS, DEVELOPER SHALL RETAIN DEFENSE COUNSEL SELECTED BY CITY ON TERMS APPROVED IN WRITING BY CITY. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY CITY, INCLUDING ANY AND ALL ATTORNEYS' FEES.

THIS PARAGRAPH 8 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

9. **Default**. If Developer fails to comply with any provision of this Agreement, and such failure is not cured within thirty (30) days after Developer receives written notice of such failure from Frisco, then Frisco shall have the following remedies, in addition to Frisco's other rights and remedies:

a. to file this instrument in the Land Records of Denton County as a lien and/or encumbrance on the Property; and/or

b. to nullify Paragraphs 5 and 6 of this Agreement and immediately enforce the Impact Fee Ordinance through imposition of the full amount of thoroughfare and water impact fees in affect at the time they are due and making such immediately due and payable in an amount equal to the difference between any thoroughfare and water impact fees already tendered to Frisco by Developer and the total assessed thoroughfare and water impact fees; and/or

c. to refuse to issue a Building Permits for the Property; and/or

d. to seek specific enforcement of this Agreement.

If Frisco fails to comply with the terms and conditions of this Agreement and such failure is not cured within thirty (30) days after Frisco receives written notice of such failure from Developer, then Developer may seek specific enforcement of this Agreement as its sole and exclusive remedy.

10. **Covenant Running with the Land**. This Agreement shall be a covenant running with the land and Property and shall be binding upon Developer, its officers, directors, partners, employees, representatives, agents, successors, assigns, as authorized herein, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Denton County, Texas.

11. **Limitations of Agreement**. The parties hereto acknowledge that this Agreement is limited to the construction of the Lone Star Ranch Parkway Paving Improvements – Phases I and II and Austin Ridge Water Improvements and thoroughfare and water impact fees due under the Impact Fee Ordinance. Frisco ordinances covering property taxes, utility rates, permit fees, inspection fees, development fees, wastewater impact fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further this Agreement does not waive or limit any of the obligations of Developer to Frisco under any ordinance, whether now existing or in the future arising, except as otherwise expressly stated herein.

12. **Notices**. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery

of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco, addressed to it at:

City of Frisco
City Manager
6101 Frisco Square Boulevard, 5th Floor
Frisco, Texas 75034
Telephone: (972) 292-5105
Facsimile: (972) 292-5122

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attention: Richard Abernathy
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4040

If to Developer, addressed to it at:

Frisco Austin Ridge, LLC
Attn: Daniel J. Walsh
4050 W. Park Blvd.
Plano, Texas 75093
Telephone: 214-619-2930
Facsimile: 214-619-1098

With a copy to:

Sloan & Roberts, PLLC
Attn: Kenneth W. Sloan
5950 Berkshire Ln., Ste. 450
Dallas, Texas 75225
Telephone: 214-987-6070
Facsimile: 214-987-6071

13. **PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT**.

A. DEVELOPER ACKNOWLEDGES AND AGREES IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT THAT:

(I) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:

(A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;

(B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;

(C) NUISANCE; AND/OR

(D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(II) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT AND PROJECT PLACES ON FRISCO'S INFRASTRUCTURE.

(III) DEVELOPER HEREBY RELEASES FRISCO FROM ANY OBLIGATION TO PERFORM OR COMMISSION A TAKINGS IMPACT ASSESSMENT UNDER CHAPTER 2007 OF THE TEXAS GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED.

(IV) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO FRISCO PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE

RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. DEVELOPER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.

(V) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, AS AUTHORIZED HEREIN, VENDORS, GRANTEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.

B. DEVELOPER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.

C. DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

D. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

14. **Vested Rights/Chapter 245 Waiver**. The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Frisco with fair notice of any Developer project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

15. **Attorney's Fees**. In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to, a proceeding brought pursuant to this Agreement, the prevailing party may recover its reasonable and necessary attorney's fees from the non-

prevailing party as permitted by this written agreement and in compliance with Section 271.153 of the Texas Local Government Code, as it exists or may be amended.

16. **Incorporation of Recitals**. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of Frisco and the authorized representative of Developer.

17. **Warranties/Representations**. All warranties, representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

18. **Entire Agreement**. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

19. **Venue**. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

20. **Consideration**. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

21. **Counterparts**. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

22. **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 of this Agreement.

23. **Savings/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 provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. **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 counsel.

25. **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.

26. **Assignment/Binding Effect**. Subject to the limitation in Paragraph 5 above, this Agreement is assignable, in whole or in part, upon the following conditions, all of which must be satisfied before any such assignment shall be valid and enforceable:

a. the assignment of the Agreement must be evidenced by a recordable document (the "Assignment"), the form of which must be approved in writing by Frisco; such approval not to be unreasonably withheld;

b. the Assignment must expressly contain, among any other reasonable requirements and/or conditions of Frisco, an acknowledgment and agreement that all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee, the party who is responsible for the payment of the impact fees that Developer is obligated to pay under this Agreement and the party who is entitled to the Credits, or any portion thereof, contemplated herein, and the contact name, address, phone number, fax number and electronic mail address of the assignee;

c. Developer will file any approved, executed Assignment in the Land Records of Denton County, Texas; and

d. Developer shall provide Frisco with a file-marked copy of the Assignment within ten (10) days of filing the same.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, partners, employees, representatives, agents, vendors, grantees, and/or trustees, heirs, executors, administrators, legal representatives, successors and assigns, as authorized herein. Notwithstanding anything contained herein to the contrary, application of impact fee credits to lots sold by Developer to a builder such as Landon Homes, L.P. will not constitute an Assignment.

27. **Indemnification**. The parties agree that the Indemnity provision set forth in Paragraph 8 or 13 herein are conspicuous, and the parties have read and understood the same.

28. **Construction**. All construction described herein shall be subject to and in compliance with all ordinances of Frisco, as they exist, may be amended or in the future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Developer to Frisco.

29. **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.

30. **Sovereign Immunity**. Except in relation to enforcement of Frisco's obligations under this Agreement, the parties hereto agree that Frisco has not waived its sovereign immunity by entering into and/or performing its obligations set forth herein.

31. **Reference to Developer**. When referring to "Developer" herein, this Agreement shall refer to and be binding upon Developer, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

32. **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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

EXECUTED as of _____, 2012.

CITY OF FRISCO, TEXAS

_____
George Purefoy, City Manager

ATTEST:

_____
Jenny Page, City Secretary

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Joplin, P.C.
Rebecca Brewer, City Attorneys

FRISCO AUSTIN RIDGE, LLC
a Texas limited liability company

By: _____
Daniel J. Walsh,
Vice President

ONE AUSTIN RIDGE INVESTMENT, LP
a Texas limited partnership

By: Frisco AR Management, LLC
a Texas limited liability company
its General Partner

By: _____
Daniel J. Walsh,
Vice President

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE DULY AUTHORIZED REPRESENTATIVE FOR THE **CITY OF FRISCO, TEXAS**, A TEXAS HOME RULE CORPORATION, AND HE EXECUTED THE SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2012.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

STATE OF TEXAS:

COUNTY OF _____:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **DANIEL J. WALSH**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE DULY AUTHORIZED REPRESENTATIVE FOR BOTH **FRISCO AUSTIN RIDGE, LLC,** A TEXAS LIMITED LIABILITY COMPANY, AND **FRISCO AR MANAGEMENT, LLC**, A TEXAS LIMITED LIABILITY COMPANY, GENERAL PARTNER OF **ONE AUSTIN RIDGE INVESTMENTS, LP**, A TEXAS LIMITED PARTNERSHIP AND HE EXECUTED THE SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

Exhibit "A"
Property Description and Depiction
(8 Pages)

Exhibit A

TRACT I:

BEING a tract of land situated in the D. Lawhorn Survey, Abstract No. 727, in the City of Frisco, Denton County, Texas and being a portion of a tract of land conveyed to Frisco 1000, Ltd., as evidenced in a deed recorded in County Clerk's File No. 04-R0109740 of the Real Property Records of Denton County, Texas (R.P.R.D.C.T) and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8-inch "BDD" capped iron rod found for the most southerly, southeast corner of said Frisco 1000, Ltd., tract, same being the northeast corner of a tract of land conveyed to LSR Development, Inc., as evidenced in a deed recorded in county Clerk's File No. 00-R0020716 R.P.R.D.C.T.;

THENCE South 89°44'10" West, along the common line of said Frisco 1000, Ltd., tract and said LSR Development, Inc., tract, a distance of 364.28 feet to a 5/8-inch "BDD" capped iron rod set for a corner;

THENCE North 16°44'45" East, departing said common line, a distance of 363.67 feet to a 5/8-inch "BDD" capped iron rod set for a corner;

THENCE North 15°50'04" East, a distance of 59.64 feet to a 5/8-inch "BDD" capped iron rod set for the point of curvature of a curve to the left;

THENCE in an easterly direction, along the arc of said curve to the left, through a central angle of 16°12'33", having a radius of 1,500.00 feet, a chord bearing of South 82°16'28" East, a chord distance of 422.94 feet and an arc length of 424.35 feet to a 5/8-inch "BDD" capped iron rod set for the end of said curve, same being on the south line of said Frisco 1000, Ltd., tract;

THENCE South 89°37'14" West, along the south line of said Frisco 1000, Ltd., tract, a distance of 176.71 feet to 5/8-inch "BDD" capped iron rod set for an inner ell corner of said Frisco 1000, Ltd., tract;

THENCE South 00°08'44" East, along an east line of said Frisco 1000, Ltd., tract, a distance of 345.73 feet to THE POINT OF BEGINNING and containing 2.674 acres (116,490 square feet) of land, more or less.

TRACT II:

BEING a tract of land situated in the D. Lawhorn Survey, Abstract number 727, and being a portion of that certain tract of land described to Lebanon Development 180 Joint Venture, by deed recorded in Volume 2817, Page 0014, Deed Records, Denton County, Texas, and being further described as follows:

BEGINNING at a 5/8" iron rod found for corner in the proposed centerline of Lebanon Road (120' R.O.W.), same being on the south line of STONE CREEK VILLAGE PHASE 1, an addition to the City of Frisco according to the plat thereof recorded under County Clerk's File No. 2001-R0045546, said 5/8" iron rod being the beginning of a curve to the left, having a radius of 1500.00 feet and a chord which bears S 86° 59' 48" E, 177.01 feet;

THENCE along the centerline of said Lebanon Road, with said curve to the left, through a central angle of 06° 45' 55" for an arc distance of 177.11 feet to a 1/2" iron rod set for corner at the end of said curve;

THENCE N 89° 37' 14" E continuing along the centerline of said Lebanon Road, a distance of 981.52 feet to a 1/2" iron rod set for corner;

THENCE S 00° 31' 03" E, departing the centerline of said Lebanon Road, a distance of 212.21 feet to a 1/2" iron rod set for a corner;

THENCE S 54° 18' 21" W, a distance of 748.31 feet to a 1/2" iron rod set for corner;

THENCE S 59° 56' 16" W, a distance of 412.79 feet to a 1/2" iron rod set for corner in the north line of that certain tract described to LSR Development, Inc., by deed recorded in County Clerk's File No. 04-R0109450, Deed Records, Denton County, Texas;

THENCE S 89° 44' 17" W along the north line of said LSR Development, Inc. tract, a distance of 178.54 feet to a 1/2" iron rod set for corner at the northwest corner of said LSR Development, Inc. tract, in the east line of that certain tract of land described to LSR Development, Inc., by deed recorded under County Clerk's File No. 00-R0020716;

THENCE N 01° 46' 09" W, along the west line of said LSR Development, Inc. tract, a distance of 503.25 feet to a 1/2" iron rod set for corner at the northeast corner of said LSR Development, Inc. tract, same being the southeast corner of a called Tract III, Part One as conveyed to LSR Development, Inc. by deed recorded under County Clerk File No. 04-R0109740, Deed Records, Denton County, Texas;

THENCE N 00° 08' 44" W, along the west line of the aforementioned Lebanon Development 180 Joint Venture tract and the east line of said Tract III, Part One, a distance of 356.17 feet to the POINT OF BEGINNING and containing a calculated area of 15.815 acres or 688,901 square feet of land.

TRACT III:

BEING a tract of land situated in the D. Lawhorn Survey, Abstract number 727, and being a portion of that certain tract of land described to LSR Development, Inc., as recorded in County Clerk file number 04-R0109450, Denton County, Texas, and being all of that certain tract of land described to LSR Development, Inc., as recorded in County Clerk file number 00-R0020716, Denton County, Texas, and being further described as follows:

BEGINNING at a 1/2" iron rod set for corner in the east line of proposed Lone Star Ranch Parkway (110' R.O.W.), same being in the northwest corner of LSR Development, Inc., tract, also being the south line of that certain tract of land described to Frisco 1000, Ltd., as recorded in County Clerks file numbers 04-R0109740;

THENCE N 89° 44' 10" E, also the south line of said Frisco 1000, Inc., tract, a distance of 1021.51 feet to a 1/2" iron rod set for in the west line of that certain tract of land described to Lebanon Development 180 Joint Venture, as recorded in Volume 2817, Page 0014, Deed Records, Denton County, Texas;

THENCE S 01° 46' 09" E, along the west line of said Lebanon Development 180 Joint Venture tract, passing at a distance of 503.25 to a 1/2" iron rod set for the westerly southwest corner of said tract, also the northwest corner of that certain tract described to said LSR Development, Inc., as recorded in Clerk's File No. 04-R0109450;

THENCE N 89° 44' 17" E, along the south line of said Lebanon Development 180 Joint Venture tract, a distance of 178.76 feet to a 1/2" iron rod set for a corner;

THENCE S 59° 59' 29" W, departing said south line, a distance of 147.77 feet to a 1/2" iron rod set for corner;

THENCE S 29° 32' 43" W, a distance of 700.02 feet to a 1/2" iron rod set for corner;

THENCE N 70° 31' 17" W, a distance of 913.71 feet to a 1/2" iron rod set for corner in the aforementioned east line of Lone Star Ranch Parkway, same being the beginning of a non-tangent curve to the left, having a radius of 1560.00 feet and a chord which bears N 10° 09' 43" E, 505.10 feet;

THENCE along said curve to the left, through a central angle of 18° 38' 00" for an arc distance of 507.33 feet to a 1/2" iron rod set for corner;

THENCE N 00° 50' 43" E, a distance of 112.05 feet to a 1/2" iron rod set for corner at the beginning of a curve to the right, having a radius of 1440.00 feet and a chord which bears N 06° 10' 35" E, 267.58 feet;

THENCE along said curve to the right, through a central angle of 10° 39' 44", for an arc distance of 267.97 feet to the POINT OF BEGINNING and containing a calculated area of 25.254 acres or 1,100,050 square feet of land.

SAVE AND EXCEPT the following tract of land:

BEING a tract of land situated in the D. Lawhorn Survey, Abstract No. 727, in the City of Frisco, Denton County, Texas and being a portion of a tract of land conveyed to LSR Development, Inc., as evidenced in a deed recorded in county Clerk's File No. 00-R0020716, as evidenced in a deed recorded in County Clerk's File No. 04-R0109740 and a portion of a tract of land conveyed to Hwy 423-Lebanon, Ltd., as evidenced in a deed recorded in County Clerk's File No. 96-R0059961, both of the Real Property Records of Denton County, Texas (R.P.R.D.C.T.) and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch "BDD" capped iron rod found for the most southerly, northeast corner of said LSR Development, Inc., tract, same being the southeast corner of a tract of land conveyed to Frisco 1000, Ltd., as evidenced in a deed recorded in County Clerk's File No. 04-R0109740 R.P.R.D.C.T.;

THENCE South 89°44'10" West, along the common line of said Frisco 1000, Ltd., tract and said LSR Development, Inc., tract, a distance of 364.28 feet to a 5/8-inch "BDD" capped iron rod set for the POINT OF BEGINNING;

THENCE South 16°44'45" West, departing said common line, a distance of 257.14 feet to a 5/8-inch

"BDD" capped iron rod set for a corner;

THENCE North 72°31'06" West, a distance of 397.62 feet to a 5/8-inch "BDD" capped iron rod set for the point of curvature of a curve to the left;

THENCE In a westerly direction, along the arc of said curve to the left, through a central angle of 13°07'08", having a radius of 929.39 feet, a chord bearing of North 79°04'40" West, a chord distance of 212.33 feet and an arc length of 212.90 feet to a 5/8-inch "BDD" capped iron rod set for the end of said curve;

THENCE North 81°51'50" West, a distance of 69.75 feet to a 5/8-inch "BDD" capped iron rod set on the curving west line of said Hwy 423-Lebanon, Ltd., tract, same being the point of curvature of a non-tangent curve to the right;

THENCE In a northerly direction, along the west line of said Hwy 423-Lebanon, Ltd., tract and along the arc of said curve to the left, through a central angle 02°50'35", having a radius of 1,500.00 feet, a chord bearing of North 09°36'31" East, a chord distance of 74.42 feet and an arc length of 74.43 feet to a 5/8-inch "BDD" capped iron rod set for the northwest corner of said Hwy 423-Lebanon, Ltd., tract, same being on the south line of aforesaid Frisco 1000, Ltd., tract;

THENCE North 89°44'10" East, along the north line of said Hwy 423-Lebanon, Ltd., tract, the north line of said LSR Development, Inc., tract and the south line of said Frisco 1000, Ltd., tract, a distance of 718.47 feet to the POINT OF BEGINNING and containing 2.415 acres (105,210 square feet) of land, more or less.

TRACT IV:

BEING a tract of land situated in the D. Lawhorn Survey, Abstract No. 727 and in the J. Ragland Survey, Abstract No. 1092, being portions of those certain tracts of described to Highway 423 -- Lebanon, LTD., recorded under County Clerk's File No.'s 96-R0069961 and 96-R0085903, Denton County, Texas, and being further described as follows:

BEGINNING at a 1/2" iron rod set for corner at the intersection of the centerline of proposed Lone Star Ranch Parkway (110' R.O.W.) with the centerline of Stewart Creek Road, said 1/2" iron rod also being on the south line of a tract of land conveyed to Frisco 1000, Ltd., recorded under County Clerk's File No. 00-R0109740, from said iron rod, the most southerly, southeast corner of said Frisco 1000, Ltd., tract bears N 89° 44' 10" E, 1082.75 feet;

THENCE N 89° 44' 10" E, along the south line of said Frisco 1000, Ltd., tract, a distance of 61.24 feet to a 1/2" iron rod set for corner at the northwest corner of that certain tract described to LSR Development, Inc., by deed recorded under said County Clerk's File No. 00-R0020716, in the proposed southeasterly line of Lone Star Ranch Parkway, same being the beginning of a non-tangent curve to the left, having a radius of 1440.00 feet and a chord which bears S 06° 10' 32" W, 267.55 feet;

THENCE along said proposed southeasterly line, with said curve to the left, through a central angle of 10° 39' 39", for an arc distance of 267.94 feet to a 1/2" iron rod set for corner;

THENCE S 00° 50' 43" W, along said southeasterly line, for a distance of 112.05 feet to a 1/2" iron rod set for corner at the beginning of a curve to the right, having a radius of 1560.00 and a

chord which bears S 10° 09' 45" W, 505.13 feet;

THENCE along said proposed southeasterly line, with said curve to the right, through a central angle of 18° 38' 05", for an arc distance of 507.37 feet to a 1/2" iron rod set for corner at the southwest corner of the aforementioned LSR Development tract;

THENCE S 70° 31' 17" E, departing said proposed southeasterly line, and along the south line of said LSR Development tract, a distance of 913.71 feet to a 1/2" iron rod set for corner in the northwest line of U.S.A. Tract G-619-A (Lewisville Lake);

THENCE along the northwest line of said U.S.A. tract the following:

S 29° 32' 43" W, a distance of 653.39 feet to U.S.A. Army Corps of Engineers monument G-618-5 found for corner;

S 86° 59' 32" W, a distance of 518.56 feet to a 1/2" iron rod set for corner;

S 56° 23' 50" W, a distance of 206.79 feet to a 1/2" iron rod set for corner;

S 01° 13' 47" E, a distance of 166.99 feet to U.S. Army Corps of Engineers monument G-619-A-1 found for corner;

S 87° 08' 05" W, a distance of 270.50 feet to a 1/2" iron rod set for corner;

S 43° 40' 52" W, a distance of 142.02 feet to a 1/2" iron rod set for corner;

S 10° 04' 12" W, a distance of 142.53 feet to U.S. Army Corps of Engineers Monument G-619-A-4 found for corner;

S 30° 16' 31" W, a distance of 227.45 feet to a 1/2" iron rod set for corner;

S 45° 29' 39" W, a distance of 356.75 feet to U.S. Army Corps of Engineers Monument G-619-A-6 found for corner;

N 62° 19' 44" W, a distance of 250.15 feet to a 1/2" iron rod set for corner;

S 16° 21' 25" W, a distance of 217.84 feet to U.S. Army Corps of Engineers Monument G-619-A-8 found for corner;

S 64° 19' 02" W, a distance of 206.96 feet to a 1/2 iron rod set for the most southerly common corner of aforesaid Highway 423 - Lebanon, Ltd. tracts

THENCE N. 00° 36' 44" W, departing the northwest line of the aforementioned U.S.A. tract and along the common line of said Highway 423 - Lebanon, Ltd., tracts, a distance of 1027.02 feet to a 1/2" iron rod set for corner in the southerly right o f way line of aforesaid proposed Lone Star Ranch Parkway at the beginning of a non-tangent curve to the right, having a radius of 1124.75

feet and a chord which bears S 80° 59' 46" W, 254.02 feet;

THENCE along said southerly line and along said curve to the right, through a central angle of 12° 58' 04", for an arc distance of 254.56 to a 1/2" iron rod set for the end of said curve;

THENCE S 85° 46' 48" W, continuing along said southerly line, a distance of 150.00 feet to a 1/2" iron rod set for a corner;

THENCE N 89° 58' 17" W, continuing along said southerly line, a distance of 163.00 feet to a 1/2" iron rod set for the north corner of a proposed corner clip at the intersection on the south line of said Lone Star Ranch Parkway with the proposed east right of way line of F.M. 423 (a proposed variable width R.O.W.);

THENCE S 44°51' 05" W, along said east line of F.M. 423, a distance of 35.25 feet to a 1/2" iron rod set for a corner;

THENCE S 00°·19' 34" E, continuing along said east line, a distance of 148.33 feet to a 1/2" iron rod set for a corner;

THENCE S 04° 14' 39" W, continuing along said east line, a distance of 150.60 feet to a 1/2" iron rod set for a corner on the current east right of way line of said F.M. 423 (90' R.O.W.);

THENCE N 00° 16' 53" W, along the east line of said F.M. 423, a distance of 393.53 feet to a 1/2" iron rod set for corner on the centerline of aforesaid Lone Star Ranch Parkway;

THENCE S 89° 58' 17" E, departing the east line of said F.M. 423 and along the centerline of said Lone Star Ranch Parkway, a distance of 299.70 feet to a 1/2" iron rod set for the beginning of a curve to the left, having a radius of 1064.75 feet and a chord which bears N 71° 28; 06" E, 677.83 feet;

THENCE continuing along said centerline and along said curve to the left, through a central angle of 37° 07' 15", for an arc distance of 689.83 feet to a 1/2" iron rod set for the end of said curve;

THENCE N 52° 54' 29" E, continuing along said centerline, a distance of 666.47 feet to a 1/2" iron rod set for the beginning of a curve to the left, having a radius of 1500.00 feet and a chord which bears N 26° 52' 36" E, 1316.59 feet;

THENCE continuing along said centerline and along said curve to the left, through a central angle of 52° 03' 46", for an arc distance of 1363.00 feet to a 1/2" iron rod set for the end of said curve;

THENCE N 00° 50' 43" E, continuing along said centerline, a distance of 112.05 feet to a 1/2" iron rod set for corner at the beginning of a curve to the right, having a radius of 1500.00 feet and a chord which bears N 05° 56' 14" E, 266.26 feet;

THENCE along said centerline and along said curve to the right, through a central angle of 10° 11' 02", for an arc distance of 266.61 feet to the POINT OF BEGINNING and containing a calculated area of 46.483 acres or 2,024,807 square feet of land, more or less.

SAVE & EXCEPT from the above tracts of land, the following as deeded to the City of Frisco In Right of Way Deed recorded in/under Clerks File No. 2008-32156 of the Real Property Records, Denton County, Texas, described as follows:

Being a 1.948 acre tract of land situated in D. LAWHORN SURVEY, ABSTRACT NO. 727, City of Frisco, Denton County, Texas and being a portion of a tract of land described in deed to Lakeside HSM II, LTD., recorded in Document No. 2006-48217, Deed Records, Denton County, Texas being more particularly described as follows:

Beginning at a 5/8 inch iron rod with a plastic cap stamped "BOD" found at the common north corner of said Lakeside HSM II, LTD. tract and a tract of land described in deed to Frisco Independent School District, recorded in Instrument No. 2007-38944, Deed Records, Denton County, Texas, said point also being in the present south line of the Lebanon Road, a 60 foot wide public right-of-way and being at the beginning of a curve to the left having a radius of 1,500 feet, a central angle of 16 degrees 12 minutes 32 seconds, and having a chord bearing and distance of South 82 degrees 16 minutes 28 seconds East, 422.94 feet;

Thence in a southeasterly direction, continuing along said curve to the left, the north line of said Lakeside HSM I, Ltd. tract and the present south line of said Lebanon Road, an arc distance of 424.35 feet to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set for corner;

Thence North 89 degrees 37 minutes 14 seconds East, continuing along the north line of said Lakeside HSM I, LTD. tract and the present south line of said Lebanon Road, a distance of 981.65 feet to a 1/2 inch iron rod with a plastic cap stamped "SPIARSENG" set for corner at the common north corner of said Lakeside HSM II, LTD. tract and a tract of land described in deed to Lebanon Development 180 J.V., recorded in Volume 2817, Page 14, Deed Records, Denton County, Texas;

Thence South 00 degrees 32 minutes 12 seconds East, along the common line of said Lakeside HSM II, LTD. tract and said Lebanon Development 180 J.V. tract, a distance of 60.00 feet to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set for corner;

Thence South 89 degrees 37 minutes 14 seconds East, being 60 feet south of and parallel to the present south line of said Lebanon Road, a distance of 981.81 feet to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set for corner and being at the beginning of a curve to the right having a radius of 1,560.00 feet, a central angle of 16 degrees 12 minutes 29 seconds, and a chord bearing and distance of North 82 degrees 16 minutes 29 seconds West, 439.87 feet;

Thence in a northwesterly direction, continuing along said curve to the right and being 60 feet south of and parallel to the present south line of said Lebanon Road, an arc distance of 441.34 feet to a 1/2" iron rod with a plastic cap stamped "SPIARSENG" set in the common line of said Lakeside HSM II, LTD. tract and said Frisco Independent School District tract;

Thence North 15 degrees 51 minutes 08 seconds East, along the common line of said Lakeside HSM II, Ltd. tract and said Frisco Independent School District tract, a distance of 60.00 feet to the POINT OF BEGINNING and containing a computed area of 1.948 acres of land or 84,875 square feet more or less.

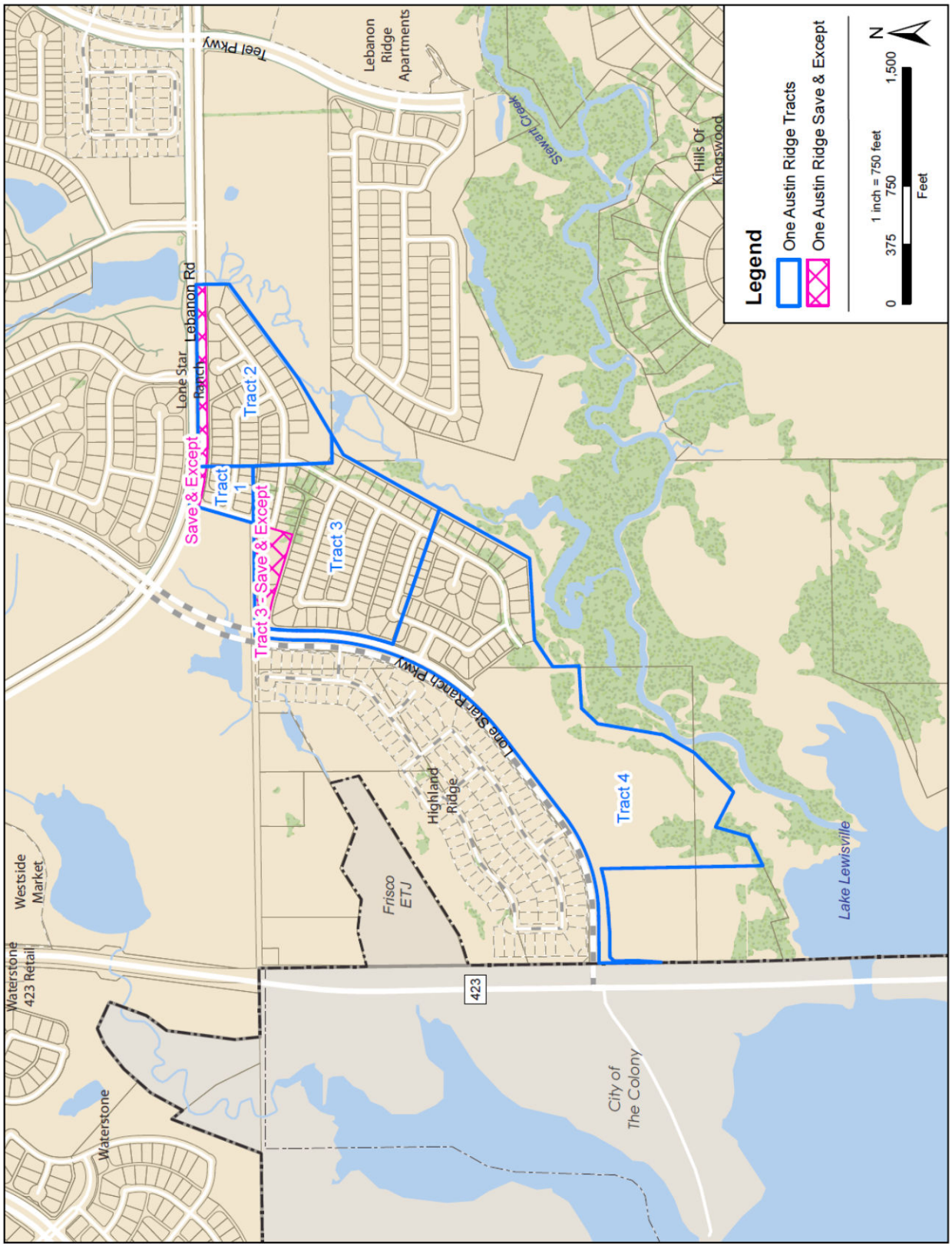
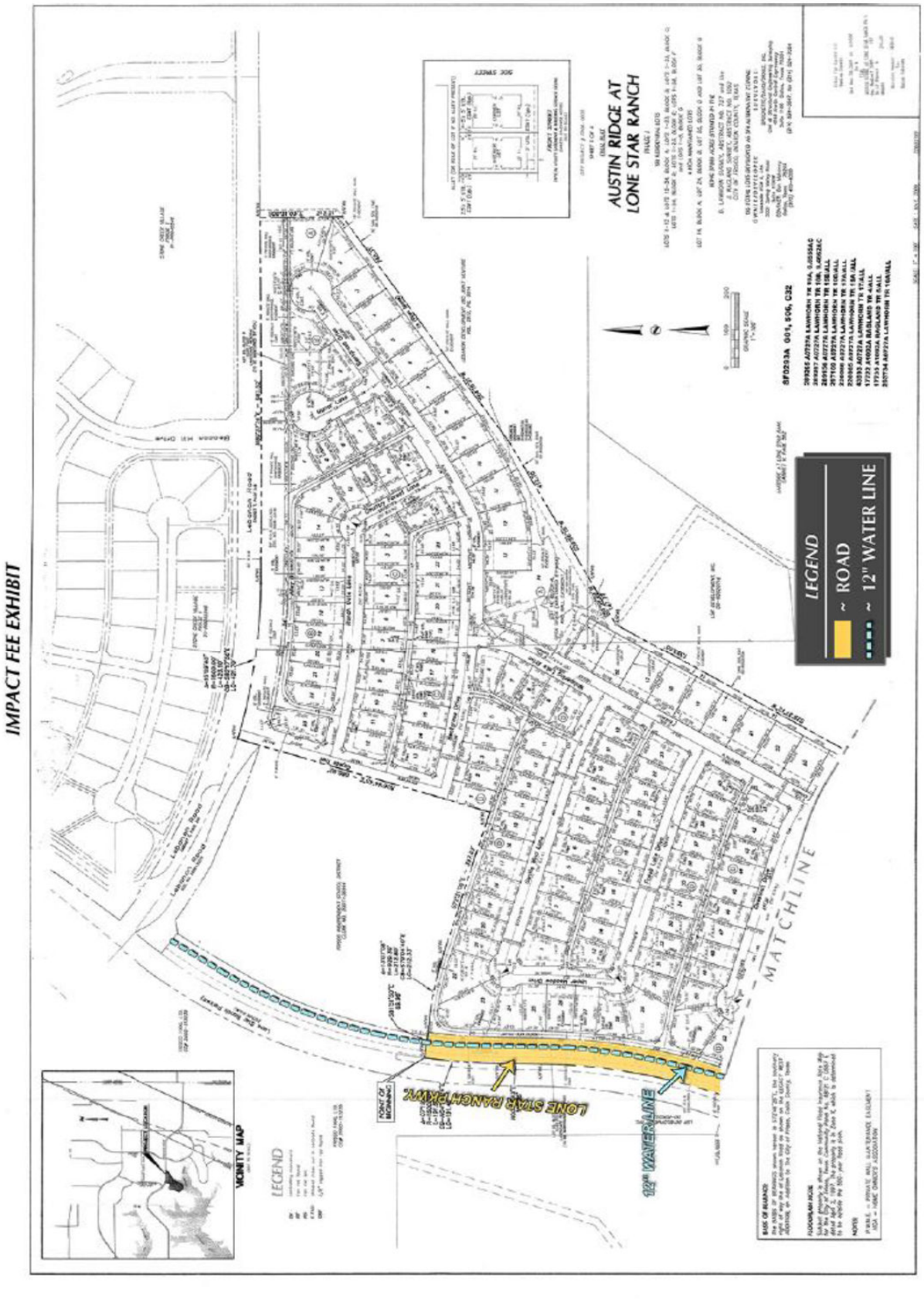

Legend
One Austin Ridge Tracts
One Austin Ridge Save & Except
1 inch = 750 feet
0
375
750
1,500
Feet
N
Teel Pkwy
Lebanon Ridge Apartments
Sleeman Creek
Hills Of Kingswood
Lebanon Rd
Lone Star Ranch
Tract 2
Tract 1
Save & Except
Tract 3
Tract 3 - Save & Except
Lone Star Ranch Pkwy
Highland Ridge
Tract 4
Lake Lewisville
Frisco ETJ
Westside Market
Waterstone 423 Retail
Waterstone
423
City of The Colony

Exhibit "B"
Austin Ridge at Lone Star Ranch
Final Plat
(2 Pages)


IMPACT FEE EXHIBIT
AUSTIN RIDGE AT
LONE STAR RANCH
LEGEND
~ ROAD
~ 12" WATER LINE
MATCHLINE
LONE STAR RANCH PKWY
12" WATERLINE
VICINITY MAP
LEGEND
DENTON. Doc: .0000000112_05/28/2009. V/P: .112__2009

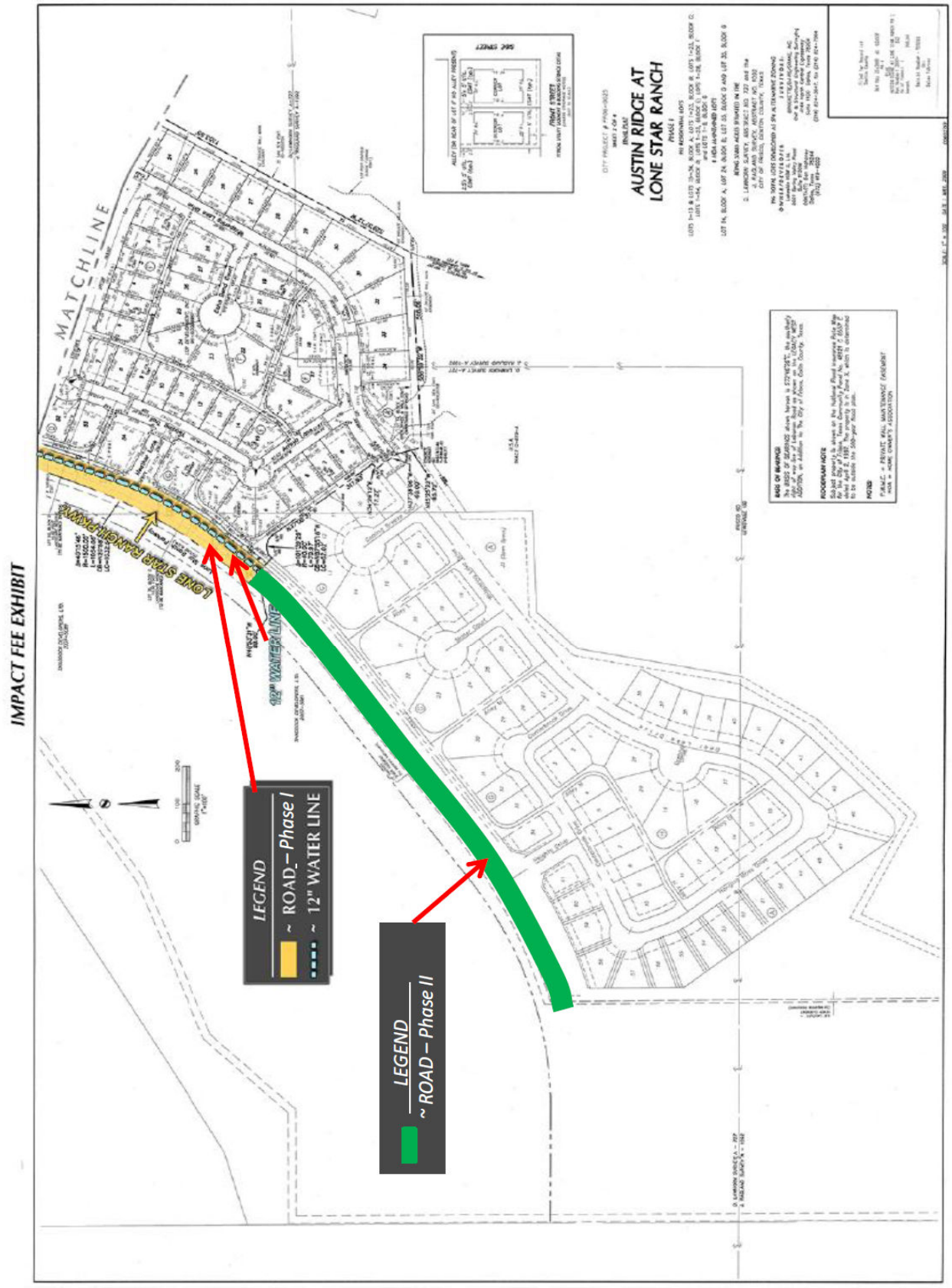

IMPACT FEE EXHIBIT
AUSTIN RIDGE AT
LONE STAR RANCH
PHASE I
MATCHLINE
LONE STAR RANCH PKWY
12" WATER LINE
LEGEND
~ ROAD – Phase I
~ 12" WATER LINE
LEGEND
~ ROAD – Phase II

Exhibit "C"
Lone Star Ranch Parkway Paving Improvements - Phase I and
Austin Ridge Water Improvements
(Phase I Construction Cost)
(1 Page)

AUSTIN RIDGE AT LONE STAR RANCH PHASE 1

LONE STAR RANCH PARKWAY ~ 1,357 LF

Date: April 3, 2012 Revised Date: April 9, 2012

Opinion of Probable Cost ~ Impact Fee Credit

EXCAVATION	UNIT COST	UNIT	QTY	TOTAL
CLEARING & GRUBBING ROW	$ 900.00	ACRE	1.87	$ 1,683.00
UN-CLASSIFIED EXCAVATION	$ 1.69	CY.	3,161	$ 5,342.09
2' MOISTURE CONDITIONING (6' B.O.C.)	$ 2.20	CY.	1,860	$ 4,092.00
4' CURLEX EROSION CONTROL	$ 0.65	L.F.	2,714	$ 1,764.10
TOTAL ~ EXCAVATION				**$ 12,881.19**

PAVING	UNIT COST	UNIT	QTY	TOTAL
12" LIME STABILIZED SUBGRADE	$ 5.25	SY.	4,690	$ 24,622.50
EMULSIFY SUBGRADE	$ 0.38	SY.	4,690	$ 1,782.20
HYDRATED LIME (72 LBS/SY)	$ 102.00	TON	169	$ 17,238.00
DOUBLE LIME APPLICATION	$ 1.30	SY.	4,690	$ 6,097.00
8" - 3,500 PSI REINF. CONCRETE STREET (25' B-B)	$ 25.80	SY.	4,014	$ 103,561.20
10 MIL POLY (6' BACK OF CURB)	$ 1.95	L.F.	2,714	$ 5,292.30
8' SIDEWALK (3,000 PSI)	$ 3.30	SF.	21,538	$ 71,075.40
BARRIER FREE RAMPS	$ 1,200.00	EA.	2	$ 2,400.00
BARRIER FREE RAMPS	$ 850.00	EA.	1	$ 850.00
BARRICADE	$ 37.00	L.F	50	$ 1,850.00
4" RAISED TYPE "2" TRAFFIC BUTTONS	$ 3.00	L.F.	110	$ 330.00
4" RAISED TYPE "W" TRAFFIC BUTTONS	$ 2.40	EA.	212	$ 508.80
STREET SIGN	$ 315.00	EA.	2	$ 630.00
TOTAL ~ PAVING				**$ 236,237.40**

STORM SEWER	UNIT COST	UNIT	QTY	TOTAL
39" RCP	$ 81.85	LF.	70	$ 5,729.50
30" RCP	$ 50.75	LF.	101	$ 2,562.88
24" RCP	$ 38.65	LF.	78	$ 1,507.35
21" RCP	$ 33.65	LF.	242	$ 4,071.65
18" RCP	$ 28.90	LF.	132	$ 1,907.40
12' RECESSED CURB INLETS	$ 2,520.00	EA.	1	$ 2,520.00
10' RECESSED CURB INLETS	$ 2,310.00	EA.	2	$ 4,620.00
8' RECESSED CURB INLETS	$ 2,100.00	EA.	1	$ 2,100.00
STORM MANHOLE ON 21" RCP	$ 2,915.00	EA.	1	$ 2,915.00
STORM MANHOLE ON 30" RCP	$ 2,915.00	EA.	1	$ 2,915.00
HEADWALL FOR 39" RCP (CH-FW-0)	$ 1,470.00	EA.	1	$ 1,470.00
HEADWALL FOR 21" RCP (CH-FW-0)	$ 1,105.00	EA.	1	$ 1,105.00
TOTAL ~ STORM SEWER				**$ 33,423.78**

SUBTOTAL	**$ 282,542.37**

WATER	UNIT COST	UNIT	QTY	TOTAL
12" DR-18 PVC WATERMAIN 2	$ 24.40	LF.	2188	$ 53,387.20
12" GATE VALVE & BOX	$ 1,315.00	EA.	5	$ 6,575.00
2" BLOWOFF VALVE	$ 800.00	EA.	1	$ 800.00
FITTINGS	$ 2,345.00	TON	1.0	$ 2,345.00
FIRE HYDRANT & 6" VALVE	$ 2,465.00	EA.	3	$ 7,395.00
TOTAL ~ WATER				**$ 70,502.20**

SUBTOTAL	**$ 353,044.57**

MISCELLANEOUS	TOTAL
BONDS (1%)	$ 3,530.45
ENGINEERING & CONSTRUCTION STAKING (6%)	$ 21,182.67
GEOTECHNICAL (1%)	$ 3,530.45
TOTAL ~ MISCELLANEOUS	**$ 28,243.57**

GRAND TOTAL	**$ 381,288.13**

Exhibit "D"
Lone Star Ranch Parkway Paving Improvements - Phase II
(Phase II Construction Cost)
(1 Page)

AUSTIN RIDGE AT LONE STAR RANCH PHASE 2

LONE STAR RANCH PARKWAY ~ 1,400 +/- LF

Date: April 25, 2012 Revised Date:

Opinion of Probable Cost ~ Impact Fee Credit

EXCAVATION	UNIT COST	UNIT	QTY	TOTAL
CLEARING & GRUBBING ROW	$ 900.00	ACRE	1.92	$ 1,728.00
UN-CLASSIFIED EXCAVATION	$ 1.69	CY.	3,200	$ 5,408.00
2' MOISTURE CONDITIONING (6' B.O.C.)	$ 2.20	CY.	2,000	$ 4,400.00
4' CURLEX EROSION CONTROL	$ 0.65	L.F.	2,800	$ 1,820.00
TOTAL ~ EXCAVATION				**$ 13,356.00**

PAVING	UNIT COST	UNIT	QTY	TOTAL
12" LIME STABILIZED SUBGRADE	$ 5.25	SY.	4,800	$ 25,200.00
EMULSIFY SUBGRADE	$ 0.38	SY.	4,800	$ 1,824.00
HYDRATED LIME (72 LBS/SY)	$ 102.00	TON	173	$ 17,646.00
DOUBLE LIME APPLICATION	$ 1.30	SY.	4,690	$ 6,097.00
8" - 3,500 PSI REINF. CONCRETE STREET (25' B-B)	$ 25.80	SY.	4,100	$ 105,780.00
10 MIL POLY (6' BACK OF CURB)	$ 1.95	L.F.	2,800	$ 5,460.00
8' SIDEWALK (3,000 PSI)	$ 3.30	SF.	11,200	$ 36,960.00
BARRIER FREE RAMPS	$ 1,200.00	EA.	2	$ 2,400.00
BARRIER FREE RAMPS	$ 850.00	EA.	1	$ 850.00
BARRICADE	$ 37.00	L.F	25	$ 925.00
4" RAISED TYPE "2" TRAFFIC BUTTONS	$ 3.00	L.F.	110	$ 330.00
4" RAISED TYPE "W" TRAFFIC BUTTONS	$ 2.40	EA.	212	$ 508.80
STREET SIGN	$ 315.00	EA.	2	$ 630.00
TOTAL ~ PAVING				**$ 204,610.80**

STORM SEWER	UNIT COST	UNIT	QTY	TOTAL
39" RCP	$ 81.85	LF.	50	$ 4,092.50
30" RCP	$ 50.75	LF.	50	$ 1,268.75
24" RCP	$ 38.65	LF.	80	$ 1,546.00
21" RCP	$ 33.65	LF.	200	$ 3,365.00
18" RCP	$ 28.90	LF.	150	$ 2,167.50
12' RECESSED CURB INLETS	$ 2,520.00	EA.	1	$ 2,520.00
10' RECESSED CURB INLETS	$ 2,310.00	EA.	2	$ 4,620.00
8' RECESSED CURB INLETS	$ 2,100.00	EA.	1	$ 2,100.00
STORM MANHOLE ON 21" RCP	$ 2,915.00	EA.	1	$ 2,915.00
STORM MANHOLE ON 30" RCP	$ 2,915.00	EA.	1	$ 2,915.00
HEADWALL FOR 39" RCP (CH-FW-0)	$ 1,470.00	EA.	0	$ -
HEADWALL FOR 21" RCP (CH-FW-0)	$ 1,105.00	EA.	0	$ -
TOTAL ~ STORM SEWER				**$ 27,509.75**

SUBTOTAL	**$ 245,476.55**

WATER	UNIT COST	UNIT	QTY	TOTAL
12" DR-18 PVC WATERMAIN 2	$ 24.40	LF.	0	$ -
12" GATE VALVE & BOX	$ 1,315.00	EA.	0	$ -
2" BLOWOFF VALVE	$ 800.00	EA.	0	$ -
FITTINGS	$ 2,345.00	TON	0.0	$ -
FIRE HYDRANT & 6" VALVE	$ 2,465.00	EA.	0	$ -
TOTAL ~ WATER				**$ -**

SUBTOTAL	**$ 245,476.55**

MISCELLANEOUS	UNIT COST	UNIT	QTY	TOTAL
BONDS (1%)				$ 2,454.77
ENGINEERING & CONSTRUCTION STAKING (6%)				$ 14,728.59
GEOTECHNICAL (1%)				$ 2,454.77
TOTAL ~ MISCELLANEOUS				**$ 19,638.12**

GRAND TOTAL	**$ 265,114.67**

AGENDA ITEM #27.

Office of the City Manager
City of Frisco, Texas

Memorandum

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

cc: **George Purefoy, City Manager**
Henry Hill, Deputy City Manager
Ron Patterson, Assistant City Manager
Nell Lange, Assistant City Manager

From: **Ben Brezina, Assistant to the City Manager**

Date: **May 15, 2012**

Subject: **Consider and act upon approval of a Resolution Denying the March 6, 2012 Effective Date of Atmos Energy Corp, Mid-Tex Division Requested Rate Change.**

Action Requested: City Council consideration and approval of a Resolution denying the March 6, 2012 Effective Date of Atmos Energy Corp, Mid-Tex Division requested rate change.

Background Information: The City, along with approximately 150 other cities served by Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about January 31, 2012, Atmos Mid-Tex filed with Atmos Cities Steering Committee ("ACSC") city members that exercise original jurisdiction a request for a rate increase in excess of $49 million. ACSC members, including the city of Frisco on February 21, 2012, passed resolutions suspending the effective date of the proposed increase to allow ACSC attorneys and consultants to study the request. A summary of the consultants' findings is attached as Exhibit A. The ACSC Settlement Committee has met with Company officials to negotiate a settlement. While ACSC has given the Company a settlement offer, Atmos Mid-Tex does not want to provide a written offer before the expiration of city jurisdiction on June 11, 2012.

In 2003, TXU Gas filed a statewide rate case which became known at the Railroad Commission of Texas ("RRC") as Gas Utilities Docket ("GUD") No. 9400. That same year the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Shortly after GUD No. 9400 was decided in 2004, Atmos Energy purchased TXU Gas and created what is known as Atmos Energy Corp., Mid-Tex Division. The City is within the Atmos Mid-Tex Division.

Atmos Mid-Tex filed four GRIP cases before filing a traditional rate case in September, 2007. As part of ACSC's Settlement Agreement with Atmos of the 2007 rate case, ACSC and Atmos created a substitute process for annual piecemeal GRIP cases. That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year experiment. Last year, it was extended for a fourth year with some slight modifications to the original formulas. ACSC negotiated with Atmos in the final quarter of last year to further extend the RRM process, but no agreement was reached. Atmos has expressed a desire to reach a settlement of the January 31, 2012 filing that includes a revised RRM process.

Discussion and Purpose

Atmos Mid-Tex filed a Statement of Intent on January 31, 2012, seeking to increase system-wide base rates (which exclude the cost of gas) by approximately $49 million or 11.94%. However, the Company is requesting an increase of 13.6%, excluding gas costs, for its residential customers. Additionally, the application would change the way that rates are collected, by increasing the residential fixed-monthly (or customer) charge from $7.50 to $18.00 and decreasing the consumption charge from $0.25 per 100 cubic feet ("ccf") to $0.07 per ccf.

ACSC engaged attorneys and consultants to review Atmos Mid-Tex's proposed rate increase. Additionally, the ACSC cities passed suspension resolutions earlier this year, extending the effective date of Atmos Mid-Tex's proposed rate increase to June 4, 2012, in order to permit the cities time to review Atmos Mid-Tex's Statement of Intent. During their review, ACSC's consultants found justification that Mid-Tex's rates should be decreased. On April 25, 2012, the Company extended the effective date of its proposed rate change, which similarly extended cities' jurisdictional deadline to June 11, 2012.

ACSC and the Company have engaged in some settlement discussions but have not yet reached agreement. ACSC is hoping to achieve settlement with the Company in order to perpetuate the RRM process. The ACSC Settlement Committee therefore recommends denial of the Company's proposed rate increase rather than a rate decrease to facilitate further settlement discussions. The resolution prevents the Company's proposed rates from automatically going into effect on June 11. The Company has expressed a desire for settlement while an appeal from the cities' denial of the rate increase is pending at the RRC. Should a settlement be reached, the City may be required to pass an ordinance setting new rates pursuant to the settlement.

The purpose of the resolution is to deny Atmos Mid-Tex's proposed rate increase pending further settlement discussions and to prevent Atmos' proposed rate increase from automatically taking effect on June 11, 2012.

Explanation of "Be It Resolved Paragraphs"

Section 1. The paragraph denies the Company's proposed rate increase.

Section 2. This provision provides that the Company shall continue to charge its existing rates to its customers within the City.

Section 3. By law, the Company must reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by ACSC will present their invoices to the City of Arlington which will then seek reimbursement from Atmos Mid-Tex. The City will not incur liability for payment of rate case expenses by adopting a denial resolution.

Section 4. This section merely recites that the resolution was passed at a meeting that was open to the public and that the consideration of the resolution was properly noticed.

Section 5. This section provides that both Atmos Mid-Tex's designated representative and counsel for ACSC will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.

Timing of City Action

ACSC members with original jurisdiction suspended the proposed effective date of March 6, 2012, extending city jurisdiction until June 4, 2012. On April 25, 2012, the Company extended its effective date by a week, which similarly extended the June 4, 2012 deadline to June 11, 2012. It does not appear that settlement could be achieved within a time frame that would allow the City to take action prior to June 11, 2012. Thus, ACSC members are encouraged to pass a denial resolution. Atmos Mid-Tex has promised to support the action which does not preclude a subsequent settlement. If settlement is achieved, ACSC will return to member cities with a request for approval of the settlement.

Board Review / Citizen Input:
None.

Alternatives: The alternative to approving the Resolution would be to not do so and Atmos would have the right to impose the full effect of its requested higher rates on June 11, 2012. City council has the option of either setting a new rate or denying the request. Either action will trigger an appeal by the Company to the Railroad Commission. The Atmos Cities Steering Committee (ACSC) of which the city is a member recommends denial because of a hope that a settlement can be achieved before a hearing takes place at the Railroad Commission. Setting a lower rate at this time could lead to entrenched positions that may make settlement more difficult. ACSC believes that litigation could lead to a worse result for ratepayers than settlement.

Financial Considerations:
None.

Legal Review:
The Ordinance has been reviewed by the City Attorney's office.

Supporting Documents:

- Resolution
- Exhibit A
- Rate Review Mechanism (RRM) FAQ sheet
- List of Atmos Steering Committee Cities

Staff Recommendation:
Staff recommends approval of the Resolution.

CITY OF FRISCO, TEXAS **RESOLUTION NO. _____**

RESOLUTION OF THE CITY OF FRISCO DENYING ATMOS ENERGY CORP., MID-TEX DIVISION'S ("ATMOS MID-TEX") REQUESTED RATE CHANGE; REQUIRING THE COMPANY TO REIMBURSE THE CITY'S REASONABLE RATEMAKING EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND ACSC'S LEGAL COUNSEL

WHEREAS, the City of Frisco, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and is a regulatory authority under the Gas Utility Regulatory Act ("GURA") and under Chapter 104, §104.001 et seq. of GURA, has exclusive original jurisdiction over Atmos Mid-Tex's rates, operations, and services within the City; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of over 150 similarly situated cities served by the Company that have joined together to facilitate the review and response to natural gas issues affecting rates charged in the Atmos Mid-Tex Division; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC and the Company worked collectively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three-year experiment by ACSC as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, ACSC and the Company agreed to extend the RRM process in reaching a settlement in 2010 on the third RRM filing; and

WHEREAS, in 2011, ACSC and the Company engaged in good faith negotiations regarding the continuation of the RRM process, but were unable to come to ultimate agreement; and

WHEREAS, on or about January 31, 2012, the Company filed a Statement of Intent with the cities retaining original jurisdiction within its Mid-Tex service division to increase rates by approximately $49 million; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, the City suspended the effective date of Atmos Mid-Tex's proposed rate increase for the maximum period allowed by law and thus extended the City's jurisdiction until June 4, 2012; and

WHEREAS, on April 25, 2012, the Company extended the effective date for its proposed rates by one week, which similarly extended the City's jurisdiction until June 11, 2012; and

WHEREAS, the ACSC Executive Committee hired and directed legal counsel and consultants to prepare a common response to the Company's requested rate increase and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, ACSC's consultants conducted a review of the Company's requested rate increase and found justification that the Company's rates should be decreased; and

WHEREAS, ACSC and the Company have engaged in settlement discussions but will be unable according to Company representations to reach settlement in sufficient time for cities to act before June 11, 2012; and

WHEREAS, failure by ACSC members to take action before June 11, 2012 would allow the Company the right to impose its full request on residents of said ACSC members; and

WHEREAS, the ACSC Settlement Committee recommends denial of the Company's proposed rate increase in order to continue settlement discussions pending the Company's appeal of cities' denials to the Railroad Commission of Texas; and

WHEREAS, the GURA § 103.022 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

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

1. That the rates proposed by Atmos Mid-Tex to be recovered through its gas rates charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

2. That the Company shall continue to charge its existing rates to customers within the City and that said existing rates are reasonable.

3. That the City's reasonable rate case expenses shall be reimbursed by the Company.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this _____ day of _____, 2012.

_____

MAHER MASO, Mayor

ATTEST:

_____

JENNY PAGE, City Secretary

APPROVED AS TO FORM:

_____

ABERNATHY, ROEDER
BOYD & JOPLIN, PC
City Attorneys

Exhibit A

ACSC Consultants' Recommended Adjustments to Atmos Mid-Tex's 2012 Statement of Intent to Increase Rates[1]

Following a review of the Company's 2012 Statement of Intent, ACSC consultants found justification for an approximately $77 million decrease to the Company's requested revenue, resulting in a $23 million decrease to the current rates charged by Atmos Mid-Tex. ACSC consultants' recommendation for a rate decrease is based upon the following major components:[2]

- Lowering the Company's return on equity from 10.9% to 9.5%, resulting in a revenue requirement decrease of over $30 million
- Removing the Company's improper post-test year adjustment to add plant from January to March 2012, resulting in a revenue requirement decrease of approximately $5 million
- Removing the Company's proposal for an energy efficiency plan to be funded only by ratepayers, resulting in a revenue requirement decrease of over $1 million
- Various adjustments to accumulated deferred income tax, resulting in a revenue requirement decrease of approximately $10 million
- Recognizing new depreciation rates as filed by the Company (without adjustment by ACSC consultants), resulting in a revenue requirement decrease of approximately $15 million
- Various adjustments to the Company's requested level of operating and maintenance (O&M) expense, resulting in a revenue requirement decrease of over $8 million
- Reducing rate base to account for ratepayer supplied funds relating to other post-employment benefits (FASB 106), resulting in a revenue requirement decrease of over $8 million
- Cap residential customer charge at $9.00, instead of Atmos' requested $18.00.

[1] All figures are adjustments resulting in a revenue requirement impact to Atmos' filed case system-wide. Factoring out Dallas, the ACSC cities would see slight decreases in the numbers listed above.
[2] Please note that the adjustments listed are on a stand-alone basis, and may have a different impact when combined with the other adjustments.

FREQUENTLY ASKED QUESTIONS REGARDING ACSC AND THE RRM RATEMAKING PROCESS

What is the Role of Cities in Ratemaking?

Cities have historically exercised original jurisdiction over the level of gas rates charged within their boundaries. Generally, gas distribution utilities have filed rate cases at the city level and only gone to the Railroad Commission of Texas ("RRC") with an appeal of city action or if they cannot reach a settlement with cities. If a utility and cities reach an agreement, the utility may then file a case at the RRC to implement the same rates approved by cities in areas outside municipal boundaries.

Once a case is at the RRC, the Commission Staff generally expects cities to intervene and do most of the discovery, sponsor opposing witnesses, and do most of the cross-examination and briefing. There is no consumer advocate at the RRC. If cities do not participate in hearings at the RRC, the request of a regulated utility is likely to be rubber-stamped.

What is the background to the creation of the Atmos Cities' Steering Committee?

The Atmos pipeline and distribution systems were built, owned and operated by Lone Star Gas ("LSG") which maintained over 200 rate jurisdictions until it sold its assets to Texas Utilities ("TXU") in the late 1990's. That meant that many cities had their own unique distribution rates and that individual cities had to process rate cases at the local level. LSG-Pipeline served all 200-plus distribution systems and pipeline rates were set by the RRC.

From the early 1980's through the late 1990's, LSG filed no pipeline or system-wide rate case at the RRC. When LSG was finally brought before the RRC to show cause why its rates should not be reduced, approximately 80 cities intervened and created an *ad hoc* group known as the Steering Committee of Cities Served by Lone Star.

TXU purchased the LSG assets in the late 1990's and immediately commenced consolidating 200-plus ratemaking jurisdictions into regions. As regional cases were filed, cities within each region created an *ad hoc* committee to form a common strategy and negotiating position. Once TXU had aggregated the cities into five or six jurisdictions, each with a different rate, Texas Utilities Gas Company filed a system-wide case to bring all of the old LSG territory under one common rate. The different city regional committees then united and formed the Allied Coalition of Cities ("ACC"). While the gas utility assets were owned and controlled by TXU, the Steering Committee transformed itself from an *ad hoc* group that came together only in response to rate filings by the utility into a permanent standing committee.

In Gas Utilities Docket ("GUD") No. 9400 in 2004, TXU's request for a $61.6 million system-wide increase was aggressively opposed by ACC. The Company

received only a $2.01 million increase. Unhappy with that result, TXU decided that owning a gas system was neither as fun nor as profitable as the deregulated electric system, and they sold the system to Atmos Energy Corporation ("Atmos" or "Company"). ACC was then transformed into the Steering Committee of Cities Served by Atmos and then renamed Atmos Cities Steering Committee to obtain an easy to remember acronym, "ACSC".

What is the Atmos Cities Steering Committee?

ACSC is a coalition of 154 cities that unite in common purpose to address gas utility rate and franchise issues related to Atmos Energy Corporation. Its objectives are to: (1) ensure that gas utility rates charged to cities and their residents are fair and reasonable; (2) maintain reasonable franchise fee revenues for cities; (3) protect cities' original jurisdiction over rates and services; (4) be a voice for consumers where no state agency assumes such a role; and (5) promote sound ratemaking policy in the public interest.

Cities join the permanent standing committee by passing a resolution and agreeing to support the work of ACSC through modest occasional *per capita* assessments which support ongoing administrative and legislative advocacy and all expenses where cities are not entitled to reimbursement. Each member city designates a representative to ACSC. Member representatives may volunteer to serve on the ACSC Executive Committee or Settlement Committee. The Executive Committee sets policy, hires legal counsel and consultants, directs litigation, establishes a legislative agenda, sets assessments on members as needed and meets quarterly with Atmos executives. The Settlement Committee is directly involved in negotiating resolution of contested matters with Atmos executives.

The list of current members is attached.

What is the benefit of membership in ACSC?

One hundred fifty-four cities speaking as one voice is much more effective in advocacy before the Railroad Commission and legislature than any one city or multiple small groups of cities.

The legislature has given gas utilities a right to an annual increase in rates. Resources (both financial and human) of individual cities are conserved by membership in ACSC. Additionally, membership enhances institutional memory of ratemaking issues, public policy debates, and right-of-way and franchise fee battles.

What has ACSC accomplished recently?

Going into the legislative session, ACSC in December 2010 released a 48-page report, "Natural Gas Consumers and the Texas Railroad Commission." More than 200

television, newspaper and radio news sites posted information on and a link to the report which may be found on ACSC's website, TexasGasConsumers.org.

Earlier in 2010, ACSC representatives visited on several occasions with the Sunset Commission Staff, and several ACSC recommendations for reform were included in the Sunset Commission Report on the Railroad Commission, delivered to the legislature's Sunset Committee prior to public hearings on the agency. Several ACSC member representatives testified before the legislature regarding reforms needed at the Railroad Commission.

During the most recent legislative session, lobbying efforts by ACSC were critical in killing two gas utility bills that would have undermined traditional regulation, deprived cities of certain rights, and led to even greater rate increases.

ACSC has resolved a major issue involving franchise fees. Atmos unilaterally, without notice, ceased inclusion of franchise fees in the calculations of gross receipts regardless of whether specific franchises included such payments. Several cities were willing to pursue the matter through litigation. However, counsel for ACSC was able to negotiate a resolution that allowed each member city to determine whether it desired an increase in franchise fee payments based on inclusion of franchise fees in the calculation of gross receipts. If a city opted for inclusion of fee-on-fee revenues, it had the further option of retroactive payments back to the point in time that Atmos decided to curtail fee-on-fee payments. Each member had these options regardless of the wording of the then valid franchise agreement. This resolution spared significant litigation costs and anxiety and was only possible because of the clout of the ACSC membership.

One of the most significant accomplishments of ACSC occurred in 2007 via a settlement of the then pending system-wide rate case. Approximately 50 ACSC city representatives showed up in Arlington for a meeting with Atmos executives who were shocked at the vocal opposition to Atmos practices, the unfairness of annual Gas Reliability Infrastructure Program ("GRIP") rate filings that precluded city and citizen review, and the Company's lack of coordination with cities. That meeting led to the creation of the Rate Review Mechanism ("RRM") process and greater ongoing communication between the Company and ACSC.

In 2010, ongoing communications between ACSC and the Company led to a workable solution to the need to replace steel service lines in a manner that accommodated city needs to control their rights-of-way, while moderating the rate impact and focusing first on the riskiest service lines based on leak repair histories. This compromise precluded a more onerous (from a city and consumer perspective) program threatened by the RRC.

What is a RRM case?

The concept of a RRM proceeding emerged as a three-year experimental substitute for GRIP cases as part of the settlement of Atmos Mid-Tex's 2007 system-wide rate case. In 2003, the Texas Legislature added Section 104.301, Interim Adjustment for Changes in Investment, to the Gas Utility Regulatory Act. While not identified as such in the law, § 104.301 was referred to as the Gas Reliability Infrastructure Program or GRIP. The GRIP adjustments allowed gas companies to recover changes to invested capital without a review of whether increased revenues or declining expenses offset the invested capital costs. Both Atmos Pipeline and Atmos Mid-Tex filed GRIP cases as soon as the RRC adopted rules to implement the interim adjustments. As explained below, it quickly became apparent that the GRIP adjustments were terrible public policy.

As an alternative to GRIP, ACSC entered into a negotiated agreement with Atmos in 2007 to establish the RRM process. Unlike GRIP, the RRM provided for an annual review of all portions of Mid-Tex's cost of service. It fixed an authorized rate of return on equity for the three-year period at 9.6% (which was less than what the RRC would have authorized) and set caps on the extent to which expenses or investments could increase from one year to the next. More importantly, it allowed cities to make a comprehensive evaluation of all aspects of the utility business—investment, operation and maintenance expenses and revenues—unlike GRIP which only allows consideration of changes to invested capital.

Why is RRM superior to GRIP?

The GRIP cases are one-sided guarantees of a rubber-stamp of the utility's rate request. ACSC attempted to participate in the first two GRIP proceedings filed by both Atmos Pipeline and Atmos Mid-Tex at the RRC. Not only were cities' motions to intervene denied, but also, ACSC's comments were ignored. At the city level, ACSC consultants determined that Atmos was not only including items such as artwork, chairs, computers and meals in interim rate adjustments that were allegedly intended to promote pipeline safety, but also the Company was over-earning its previously authorized rate of return. ACSC attacked the Commission's rule in court because it denied city participation, denied a hearing on a contested matter, and denied cities' recovery of any expenses associated with resisting GRIP rate increases. The courts have not been helpful to cities and the Texas Supreme Court has affirmed the denial of cities' right to participate in GRIP cases at the RRC.

Cities have contended that GRIP is terrible public policy since it authorizes what would from a history of public interest regulation be regarded as unlawful—piecemeal ratemaking. GRIP allows rates to increase if the utility's invested capital net of depreciation increases year-over-year. An increase in rates is mandated under GRIP if investment increases, even if increasing revenues and declining expenses more than offset the costs associated with increased investment.

The RRM process negotiated by ACSC solves the piecemeal ratemaking problem by providing for a comprehensive review of Atmos' expenses and revenues. Furthermore, RRM benefits ACSC by: (1) allowing cities participation that would be denied under GRIP; (2) allowing cities to recover, at utility shareholder expense, all their ratemaking costs; and (3) avoiding both litigation and RRC jurisdiction.

The legislature has functionally authorized annual increases in gas utility rates through the GRIP process. Since consumers are otherwise stuck with annual rate increases, it is better to have cities participating in the comprehensive RRM process than unable to participate in a piecemeal process.

What has been the history of the RRM efforts?

In 2010, ACSC, in settling the third RRM proceeding, agreed to a slight modification and extension of the process. A settlement of the fourth annual RRM is now pending before ACSC members. The results of the four RRM proceedings are as follows:

RRM Filing	Year	Atmos Request	ACSC Settlement
#1	2008	$33.5 million	$20 million
#2	2009	$20.2 million	$2.6 million
#3	2010	$70.2 million	$27 million
#4	2011	$15.7 million	$6.6 million

These results are better for cities and consumers than would have been authorized by the RRC under the GRIP process.

What is the future of the RRM process?

The settlement of the fourth RRM filing anticipated ACSC and Atmos working between August and December to refine the RRM process. A settlement perpetuating the RRM process was not reached by the end of 2011 which has led to the filing of the January 31, 2012 traditional rate case. Discussions regarding the future of the RRM process will continue as we attempt to resolve the rate case by settlement.

ACSC Cities (154 Total)

Abilene
Addison
Allen
Alvarado
Angus
Anna
Argyle
Arlington
Bedford
Bellmead
Benbrook
Beverly Hills
Blossom
Blue Ridge
Bowie
Boyd
Bridgeport
Brownwood
Buffalo
Burkburnett
Burleson
Caddo Mills
Carrollton
Cedar Hill
Celeste
Celina
Cisco
Cleburne
Clyde
College Station
Colleyville
Colorado City
Comanche
Coolidge
Coppell
Corinth
Corral City
Crandall
Crowley
Dalworthington Gardens
Denison
DeSoto
Duncanville
Eastland
Edgecliff Village
Emory
Ennis
Euless
Everman
Fairview
Farmers Branch
Farmersville
Fate
Flower Mound
Forest Hill
Fort Worth
Frisco
Frost
Gainesville
Garland
Garrett
Grand Prairie
Grapevine
Haltom City
Harker Heights
Haskell
Haslet
Hewitt
Highland Park
Highland Village
Honey Grove
Hurst
Iowa Park
Irving
Justin
Kaufman
Keene
Keller
Kemp
Kennedale
Kerrville
Killeen
Krum
Lakeside
Lake Worth
Lancaster
Lewisville
Lincoln Park
Little Elm
Lorena
Madisonville
Malakoff
Mansfield
McKinney
Melissa
Mesquite
Midlothian
Murphy
Newark
Nocona
North Richland Hills
Northlake
Oak Leaf
Ovilla
Palestine
Pantego
Paris
Parker
Pecan Hill
Plano
Ponder
Pottsboro
Prosper
Quitman
Red Oak
Reno (Parker County)
Richardson
Richland
Richland Hills
River Oaks
Roanoke
Robinson
Rockwall
Roscoe
Rowlett
Royse City
Sachse
Saginaw
Seagoville
Sherman
Snyder
Southlake
Springtown
Stamford
Stephenville
Sulphur Springs
Sweetwater
Temple
Terrell
The Colony
Trophy Club
Tyler
University Park
Venus
Vernon
Waco
Watauga
Waxahachie
Westlake
Whitesboro
White Settlement
Wichita Falls
Woodway
Wylie

Updated 03.02.11

AGENDA ITEM #28.

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

From: John Webb, AICP, Zoning & Subdivision Administrator *JW*

XC: George Purefoy, City Manager
John Lettelleir, AICP, Director of Development Services

Date: May 9, 2012

Subject: Planning & Zoning Commission Site Plan and Plat Approvals

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In accordance with the Zoning and Subdivision Ordinances, the City Council may appeal the decision of the Planning & Zoning Commission regarding their action taken on any site plan or plat by submitting a written notice of appeal to Development Services. A favorable motion of four members of the City Council is required to appeal the decision of the Planning & Zoning Commission and to direct staff to submit a written notice of appeal on behalf of the City Council.

Following are the memos detailing the preliminary site plans, site plans, preliminary plats, final plats, replats, conveyance plats, and/or amended plats approved by the Planning & Zoning Commission at their May 8, 2012 meeting.

Chairman Trykoski was absent due to an-out-of town personal trip, and Vice Chair Russell was absent due to an out-of-town business commitment.

DEVELOPMENT SERVICES

CITY OF FRISCO

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WWW.FRISCOTEXAS.GOV

May 9, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, May 8, 2012

Final Plat: Richwoods, Phase 3 (FP12-0011)
Owner(s): Richwoods Development LLC.

Description:
34 Single Family-8.5 lots and four Common Area lots, on 12.1± acres on the southwest corner of Friendship Road and Richwoods Drive. Zoned Planned Development-144-Single Family-8.5 with a Specific Use Permit (S-201) for Private Streets. Neighborhood #26. JE

Result/Action:

Approved: 5-0 (Trykoski & Russell absent)
Denied:
Tabled:

ACTION:

The item was approved as submitted.

JE/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

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May 9, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, May 8, 2012

Final Plat: Richwoods, Phase 2 (FP12-0010)
Owner(s): Richwoods Development LLC.

Description:
22 Single Family-7 lots, 12 Single Family-8.5 lots, and seven Common Area lots, on 14.0± acres on the east side of Richwoods Drive, 600± feet north of Kelmscot Road. Zoned Planned Development-146-Single Family-7 and Planned Development-144-Single Family-8.5 with a Specific Use Permit (S-201) for Private Streets. Neighborhood #26. JE

Result/Action:

Approved: 5-0 (Trykoski & Russell absent)
Denied:
Tabled:

ACTION:

The item was approved as submitted.

SM/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

DEVELOPMENT SERVICES

CITY OF FRISCO

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May 9, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, May 8, 2012

Site Plan: Frisco High School, Block A, Lot 1 (SPRP12-0004)
Owner(s): Frisco Independent School District

Description:
A public high school on one lot on 43.1± acres on the southwest corner of Stonebrook Parkway & Parkwood Boulevard. Zoned Planned Development-105-Residential Estate and Planned Development-114-Commercial-1. Neighborhood #23. SM

Result/Action:

Approved: 5-0 (Trykoski & Russell absent)
Denied:
Tabled:

ACTION:

The item was recommended for approval subject to:

1. Staff approval of Landscape Plans.
2. Additions and/or alterations resulting from Engineering Services' review of construction plans.

This Site Plan will expire on 04-09-2014.

SM/kj

cc:

Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	

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WWW.FRISCOTEXAS.GOV

May 9, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, May 8, 2012

Revised Site Plan: Vista Park at Phillips Creek Ranch, Block A, Lot 1 (SPFP12-0013)
Owner(s): PCR Land Company LLC

Description:
An amenity center on one lot on 8.2± acres on the west side of Lone Star Ranch Parkway, 1,590± feet south of Stonebrook Parkway. Zoned Planned Development-202-Single Family-8.5. Neighborhood #38. JE

Result/Action:

Approved: 5-0 (Trykoski & Russell absent)
Denied:
Tabled:

ACTION:

The item was approved subject to additions and/or alterations resulting from Engineering Services' review of the construction plans.

The Revised Site Plan will expire on 03-26-2014.

JE/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

DEVELOPMENT SERVICES

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May 9, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, May 8, 2012

Final Plat: Hickory Center at Preston, Block A, Lot 3 (SPFP11-0008)
Owner(s): Allegiance Frisco, L.P.

Description:
Three retail buildings on one lot on 6.1± acres on the south side of Gary Burns Drive, 365± feet west of Preston Road. Zoned Planned Development-51-Retail. Neighborhood #20. SM

Result/Action:

Approved: 5-0 (Trykoski & Russell absent)
Denied:
Tabled:

ACTION:

The item was approved as submitted.

The Site Plan will expire on 02-07-2013.

SM/kj

cc:

Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	

AGENDA ITEM #29.

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, Planner**

Date: **5/2/2012**

Agenda Caption: **Consider and act upon adoption of an Ordinance for a Specific Use Permit for a Commercial Antenna Support Structure within a 600 square foot lease area on one lot 0.7± acre on the east side of Legacy Drive, 900± feet south of Warren Parkway. Zoned Planned Development-32-Commercial-1/Office with a SUP (S-28) for a Commercial Antenna. Neighborhood #34. Case No. SUP11-0009**

Action Requested: City Council adoption of an Ordinance granting the Specific Use Permit for a Commercial Antenna Support Structure.

Background Information: On April 17, 2012, the City Council held a Public Hearing and directed staff to prepare an ordinance by a vote of 5-0. Councilmember Nelson was absent.

Board Review/Citizen Input: On March 27, 2012, the Planning & Zoning Commission held a public hearing and voted 5-0 to recommend approval of the request. (Hamilton absent).

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 City Attorney's office prepared the Ordinance.

Supporting Documents:

- City Council Outcome Memo dated April 18, 2012.
- Ordinance.

Recommendation: Recommended for adoption.

DEVELOPMENT SERVICES

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WWW.FRISCOTEXAS.GOV

April 18, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the City Council meeting, April 17, 2012

Public Hearing -
Specific Use Permit: Legacy Water Tower Addition, Block A, Lot 1 (SUP11-0009)
Owner(s): City of Frisco

Description:
A request for a Specific Use Permit for a Commercial Antenna Support Structure within a 600 square-foot lease area on one lot on 0.7± acre on the east side of Legacy Drive, 900± feet south of Warren Parkway and consider and act to direct staff to prepare an ordinance of the same. Zoned Planned Development-32-Commercial-1/Office with a SUP (S-28) for a Commercial Antenna. Neighborhood #34.

Result/Action:

Approved: 5-0 (Nelson absent)
Denied:
Tabled:

ACTION:
City Council approved the Specific Use Permit and directed staff to prepare an Ordinance subject to the removal of the temporary pole within 60 days of the acceptance of the construction of the new water tower.

RC/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S ZONING ORDINANCE NO. 11-04-09, GRANTING A SPECIFIC USE PERMIT FOR A COMMERCIAL ANTENNA SUPPORT STRUCTURE, LOCATED ON A TRACT OF LAND SITUATED IN THE CITY OF FRISCO AND IN THE COLLIN COUNTY SCHOOL LAND NO. 6 SURVEY, ABSTRACT NUMBER 149, COLLIN COUNTY, TEXAS, CONTAINING 0.0138 ACRES OR 600 SQUARE FEET OF LAND, MORE OR LESS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE AND ZONING ORDINANCE NO. 11-04-09; 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, New Cingular Wireless, PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility, which has a lease agreement with the City of Frisco, Texas ("Frisco") for the use of the Legacy Elevated Storage Tank (the "Applicant") initiated a request to allow a Specific Use Permit for a Commercial Antenna Support Structure on 0.0138 acres or 600 square feet of land, more or less, situated in the Collin County School Land No. 6 Survey, Abstract No. 149, City of Frisco, Collin County, Texas; and

WEHREAS, Frisco, as owner of the Legacy Elevated Storage Tank, does not object to the Applicant's request; 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 the ordinance amendment have been given in the manner and form set forth by law, and public hearings have been held on the ordinance amendment and all other requirements of notice and completion of such amendment procedures have been fulfilled; and

WHEREAS, the City Council finds that Applicant has agreed to comply with all provisions of the ordinances of Frisco, including but not limited to Frisco's Zoning Ordinance

No. 11-04-09, and has further agreed to comply with the additional restrictions set forth herein and the site plan, attached hereto as Exhibits "A & B" and incorporated herein for all purposes; and

WHEREAS, the City Council has investigated into and determined that it will be advantageous and beneficial to Frisco and its inhabitants to grant the Specific Use Permit herein, and that such grant will not be detrimental to the public welfare, safety or health, and that the Specific Use Permit should be granted.

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: Specific Use Permit Granted. Applicant is granted a Specific Use Permit to allow a Commercial Antenna Support Structure, which is zoned Planned Development-32-Commercial-1/Office with a SUP (S-28) for a Commercial Antenna, subject to:

1. Removal of the Commercial Antenna Support Structure, (being the "temporary wooden pole facility") within sixty (60) days of Frisco's acceptance of the completed construction of the new Frisco water tower to replace the existing Legacy Elevated Storage Tank.

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 "Property"). The general location of the Property is depicted on Exhibit "A-1", attached hereto. Except when otherwise permitted by Section 2.05.02 of the Frisco Zoning Ordinance, the Property shall be developed in compliance with the conditions expressly stated in the site plan, attached hereto as Exhibits "A" and " B".

SECTION 3: Failure to Comply/Assignable and Transferable. Except as otherwise stated above, all terms of the Specific Use Permit shall be complied with prior to issuance of a

Certificate of Occupancy. Failure to comply with any term or condition of this Ordinance and/or Frisco's Zoning Ordinance No. 11-04-09, as they exist or may be amended, will result in the Specific Use Permit being declared null and void and of no force and effect. The Specific Use Permit is issued to the entity named above and is assignable and transferable.

SECTION 4: Specific Use Permits Regulations. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind a Specific Use Permit if:

1. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Frisco, that occurs on the Property;
2. The building, premise, or land used under a Specific Use Permit are enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;
3. Violation of any provision of the terms or conditions of this Specific Use Permit;
4. Ad valorem taxes on the Property are delinquent by more than six (6) months;
5. The Specific Use Permit was obtained by fraud or deception; or
6. As otherwise permitted by law and/or Frisco's Zoning Ordinance No. 11-04-09, as it exists or may be amended.

SECTION 5: Specific Use Permit Effective Date. This Specific Use Permit shall be effective from and after the effective date of this Ordinance. Upon termination of this Specific Use Permit, the Property shall cease to be used as provided herein unless another Specific Use Permit or appropriate zoning has been obtained.

SECTION 6: Unlawful Use of Premises. It shall be unlawful for any person, firm, entity or corporation to make use of the above-referenced tract of land in some manner other than as authorized by this Ordinance or other applicable ordinances.

SECTION 7: Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Frisco's 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 8: Savings/Repealing Clause. Frisco's 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 9: 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 regardless of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 10: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 15th day of May, 2012.

_____

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" (1 of 2)
SUP11-0009

State of Texas §
County of Collin §

Legal Description
LEASE AREA

BEING a tract of land situated in the situated in Collin County School Land No. 6 Survey, Abstract No. 149, City of Frisco, Collin County, Texas, same being out of and a portion of that certain tract of land conveyed to the City of Frisco by Special Warranty Deed dated February 17, 1988, and recorded in Volume 2812, Page 810, Deed Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 3/4" iron rod found for the northeast corner of said City of Frisco tract, same being on the east line of Lot 2, Block A, Frisco Medical Center, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet N, Page 88, Map Records, Collin County, Texas, and being the most easterly southeast corner of Lot 6 Block A, Legacy Medical Plaza II, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet 2007, Page 702, Map Records, Collin County, Texas;

THENCE along the north line of said City of Frisco tract, same being the southerly line of said Lot 6 Block A, Legacy Medical Plaza II, North 89 degrees 47 minutes 12 seconds West, a distance of 16.85 feet to a Point;

THENCE through the interior of said City of Frisco tract, South 00 degrees 12 minutes 48 seconds West, a distance of 3.08 feet to the POINT OF BEGINNING hereof;

THENCE continuing through the interior of said City of Frisco tract the following four (4) courses:

1. South 00 degrees 12 minutes 48 seconds West, a distance of 20.00 feet to a Point;

2. North 89 degrees 47 minutes 12 seconds West, a distance of 30.00 feet to a Point;

3. North 00 degrees 12 minutes 48 seconds East, a distance of 20.00 feet to a Point;

4. South 89 degrees 47 minutes 12 seconds East, a distance of 30.00 feet to the POINT OF BEGINNING hereof and containing 0.0138 acres or 600 square feet of land, more or less.

PARENT TRACT

BEING a tract of land situated in the situated in Collin County School Land No. 6 Survey, Abstract No. 149, City of Frisco, Collin County, Texas, same being all of that certain tract of land conveyed to the City of Frisco by Special Warranty Deed dated February 17, 1988, and recorded in Volume 2812, Page 810, Deed Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 3/4" iron rod found for the northeast corner of said City of Frisco tract, same being on the east line of Lot 2, Block A, Frisco Medical Center, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet N, Page 88, Map Records, Collin County, Texas, and being the most easterly southeast corner of Lot 6 Block A, Legacy Medical Plaza II, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet 2007, Page 702, Map Records, Collin County, Texas;

THENCE along the east line of said City of Frisco tract, same being the west line of said Lot 2, Block A, Frisco Medical Center, South 00 degrees 12 minutes 48 seconds West, passing at a distance of 135.00 feet the southwest corner of said Lot 2, Block A, Frisco Medical Center, same being the northwest corner of Villages of Stonebriar Park, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet P, Page 328, Map Records, Collin County, Texas, and continuing for a total distance of 150.00 feet to a 5/8" iron rod found for the southeast corner of said City of Frisco tract, same being the northeast corner of Lot 5, Block 1, Legacy Medical Plaza, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet 2007, Page 452, Map Records, Collin County, Texas;

THENCE along the south line of said City of Frisco tract, same being the north line of said Lot 5, Block 1, Legacy Medical Plaza, North 89 degrees 47 minutes 12 seconds West, a distance of 200.00 feet to a 3/4" iron rod found for the southwest corner of said City of Frisco tract, same being the northwest corner of said Lot 5, Block 1, Legacy Medical Plaza, and being on the east line of Lot 4R, Block 1, Legacy Medical Plaza, an addition to the City of Frisco, Collin County, Texas, according to the map or plat thereof recorded in Cabinet 2008, Page 608, Map Records, Collin County, Texas;

THENCE along the west line of said City of Frisco tract, same being the east line of said Lot 4R, Block 1, Legacy Medical Plaza, North 00 degrees 12 minutes 48 seconds East, passing at a distance of 65.00 feet the northeast corner of said Lot 4R, Block 1, Legacy Medical Plaza, same being the southeast corner of the remainder of that certain tract of land conveyed to Stonebriar by Volume 2369, Page 459, Deed Records, Collin County, Texas, at a distance of 85.00 the northeast corner of the remainder of said Stonebriar tract, same being the most southerly southeast corner of said Lot 6 Block A, Legacy Medical Plaza II, and continuing for a total distance of 150.00 feet to a 3/4" iron rod found for the northwest corner of said City of Frisco tract, same being an interior corner of said Lot 6 Block A, Legacy Medical Plaza II;

THENCE along the north line of said City of Frisco tract, same being a southerly line of said Lot 6 Block A, Legacy Medical Plaza II, South 89 degrees 47 minutes 12 seconds East, a distance of 200.00 feet to the POINT OF BEGINNING hereof and containing 0.6887 acres or 30,000 square feet of land, more or less.

Exhibits "A" & "B"
(2 of 2)
SUP11-0009

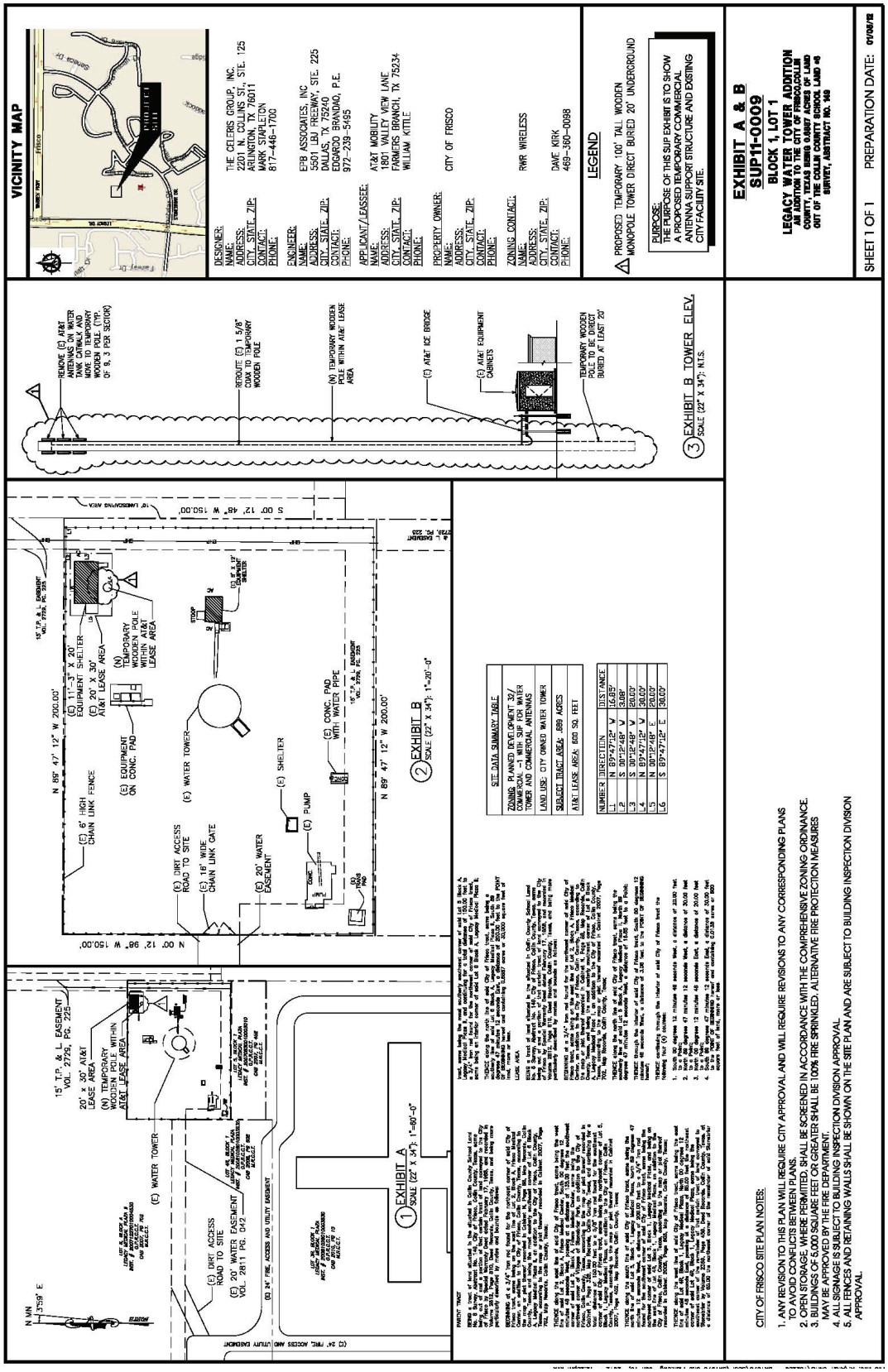


Exhibit "A-1"
SUP11-0009

SUP11-0009
Legacy Water Tower Addition
Block A, Lot 1
AT&T Temporary Pole



AGENDA ITEM #30.

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, Planner**

Date: **5/2/2012**

Agenda Caption: **Consider and act upon adoption of an Ordinance for a Specific Use Permit for an Assisted Living Facility on one lot on 2.0± acres on the north side of Timber Ridge Drive, 380± feet east of Teel Parkway. Zoned Planned Development-183-Office-1. Neighborhood #39. Case No. SUP12-0002**

Action Requested: City Council adoption of an Ordinance granting the Specific Use Permit for an Assisted Living Facility.

Background Information: On April 17, 2012, the City Council held a Public Hearing and directed staff to prepare an ordinance by a vote of 5-0. Councilmember Nelson was absent.

Board Review/Citizen Input: On March 27, 2012, the Planning & Zoning Commission held a public hearing and voted 5-0 to recommend approval of the request. (Hamilton absent)

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 City Attorney's office prepared the Ordinance.

Supporting Documents:

- City Council Outcome Memo dated April 18, 2012.
- Ordinance.

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

April 18, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the City Council meeting, April 17, 2012

Public Hearing -
Specific Use Permit: Timber Ridge Plaza, Block A, Lot 1 (SUP12-0002)
Owner(s): MJBD Enterprises, Inc.

Description:
A request for a Specific Use Permit for an Assisted Living Facility on one lot on 2.0± acres on the north side of Timber Ridge Drive, 380± feet east of Teel Parkway and consider and act to direct staff to prepare an ordinance of the same. Zoned Planned Development-183-Office-1. Neighborhood #39.

Result/Action:

Approved: 5-0 (Nelson absent)
Denied:
Tabled:

ACTION:
City Council approved the Specific Use Permit and directed staff to prepare an Ordinance subject to compliance with the attached preliminary façade plan.

RC/kj

cc:

Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO'S ZONING ORDINANCE NO. 11-04-09, GRANTING A SPECIFIC USE PERMIT FOR AN ASSISTED LIVING FACILITY, LOCATED ON A TRACT OF LAND SITUATED IN THE CITY OF FRISCO AND IN THE M. HARRIS SURVEY, ABSTRACT NUMBER 564, DENTON COUNTY, TEXAS, CONTAINING 2.0 ACRES OF LAND, MORE OR LESS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE AND ZONING ORDINANCE NO. 11-04-09; 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, MJBD Enterprises, Inc. (the "Applicant"), initiated a request to allow a Specific Use Permit for an Assisted Living Facility on 2.0 acres of land, more or less, situated in the M. Harris Survey, Abstract No. 564, City of Frisco, Denton County, Texas ("Frisco"); 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 the ordinance amendment have been given in the manner and form set forth by law, and public hearings have been held on the ordinance amendment and all other requirements of notice and completion of such amendment procedures have been fulfilled; and

WHEREAS, the City Council finds that Applicant has agreed to comply with all provisions of the ordinances of Frisco, including but not limited to Frisco's Zoning Ordinance No. 11-04-09, and has further agreed to comply with the additional restrictions set forth herein and the site plan, attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, the City Council has investigated into and determined that it will be advantageous and beneficial to Frisco and its inhabitants to grant the Specific Use Permit herein, and that such grant will not be detrimental to the public welfare, safety or health, and that the

Specific Use Permit should be granted.

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: Specific Use Permit Granted. Applicant is granted a Specific Use Permit to allow an Assisted Living Facility, which is zoned Planned Development-183-Office-1, subject to:

1. Façade Plan treatments as depicted in Exhibit's "C".

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 "Property"). The general location of the Property is depicted on Exhibit "A-1", attached hereto. Except when otherwise permitted by Section 2.05.02 of the Frisco Zoning Ordinance, the Property shall be developed in compliance with the conditions expressly stated in the site plan, attached hereto as Exhibit "B".

SECTION 3: Failure to Comply/Assignable and Transferable. Except as otherwise stated above, all terms of the Specific Use Permit shall be complied with prior to issuance of a Certificate of Occupancy. Failure to comply with any term or condition of this Ordinance and/or Frisco's Zoning Ordinance No. 11-04-09, as they exist or may be amended, will result in the Specific Use Permit being declared null and void and of no force and effect. The Specific Use Permit is issued to the entity named above and is assignable and transferable.

SECTION 4: Specific Use Permits Regulations. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind a Specific Use Permit if:

1. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Frisco, that occurs on the Property;
2. The building, premise, or land used under a Specific Use Permit are enlarged,

modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;

3. Violation of any provision of the terms or conditions of this Specific Use Permit;
4. Ad valorem taxes on the Property are delinquent by more than six (6) months;
5. The Specific Use Permit was obtained by fraud or deception; or
6. As otherwise permitted by law and/or Frisco's Zoning Ordinance No. 11-04-09, as it exists or may be amended.

SECTION 5: Specific Use Permit Effective Date. This Specific Use Permit shall be effective from and after the effective date of this Ordinance. Upon termination of this Specific Use Permit, the Property shall cease to be used as provided herein unless another Specific Use Permit or appropriate zoning has been obtained.

SECTION 6: Unlawful Use of Premises. It shall be unlawful for any person, firm, entity or corporation to make use of the above-referenced tract of land in some manner other than as authorized by this Ordinance or other applicable ordinances.

SECTION 7: Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Frisco's 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 8: Savings/Repealing Clause. Frisco's 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 9: 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 regardless of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 10: Effective Date: This Ordinance shall become effective from and after its adoption and publication as required by law the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 15th day of May, 2012.

_____
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" (1 of 2)
SUP12-0002

State of Texas ~
County of Denton ~

Legal Description

Being a tract of land situated in the City of Frisco, Denton County, Texas, being a portion of Lot 1, Block A of Timber Ridge Plaza according to the plat recorded in Cabinet Number 2009, Slide 67 of the Plat Records of Denton County, Texas. Said tract of land being more particularly described as follows:

BEGINNING at a found 1/2 inch rebar at the southeast corner of said Lot 1;

THENCE SOUTH 89 degrees 53 minutes 25 seconds WEST, along the South line of said Lot 1, a distance of 250.04 feet to a set 1/2 inch capped rebar stamped "JPH LAND SURVEYING", from said set 1/2 inch capped rebar stamped "JPH LAND SURVEYING", a found 1/2 inch rebar at the most southern, southwest corner of said Lot 1, bears SOUTH 89 degrees 53 minutes 25 seconds WEST, a distance of 379.99 feet;

THENCE NORTH 00 degrees 02 minutes 13 seconds WEST, a distance of 348.22 feet to a set 1/2 inch capped rebar stamped "JPH LAND SURVEYING" on the North line of said Lot 1, from said set 1/2 inch capped rebar stamped "JPH LAND SURVEYING", a found 1/2 inch rebar at the northwest corner of said Lot 1, bears SOUTH 89 degrees 47 minutes 50 seconds WEST, a distance of 396.40 feet;

THENCE NORTH 89 degrees 47 minutes 50 seconds EAST, along the North line of said Lot 1, a distance of 250.04 feet to a found 1/2 inch rebar at the northeast corner of said Lot 1;

THENCE SOUTH 00 degrees 02 minutes 13 seconds EAST, along the East line of said Lot 1, a distance of 348.63 feet to the POINT OF BEGINNING, containing 2.000 acres.

This description is based upon the Land Title Survey made by Jon P. Hoebelheinrich, Registered Professional Land Surveyor number 5478 of JPH Land Surveying, Inc. on December 22, 2011.

Exhibit "A"
(2 of 2)
SUP12-0002

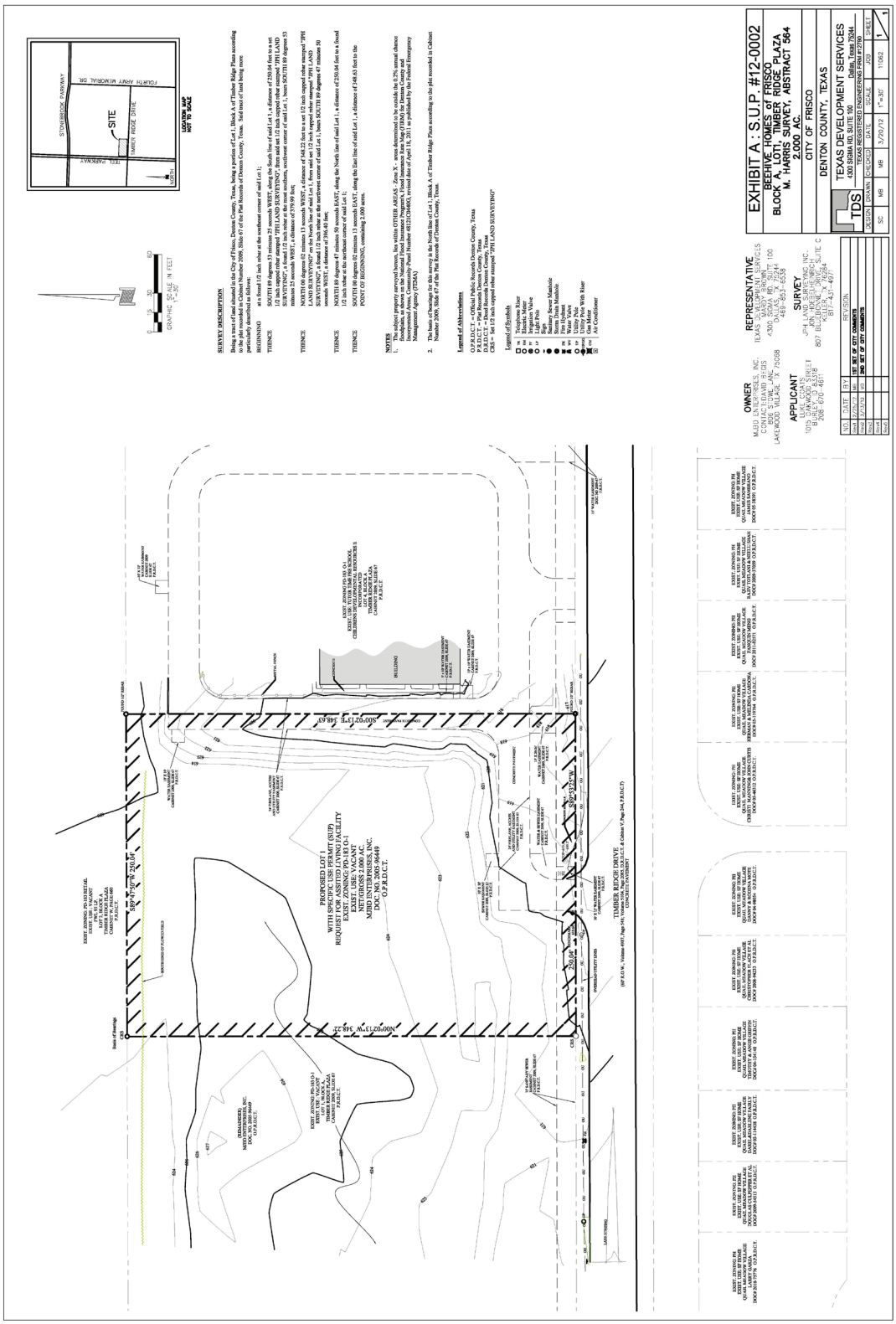


Exhibit "A-1"
SUP12-0002

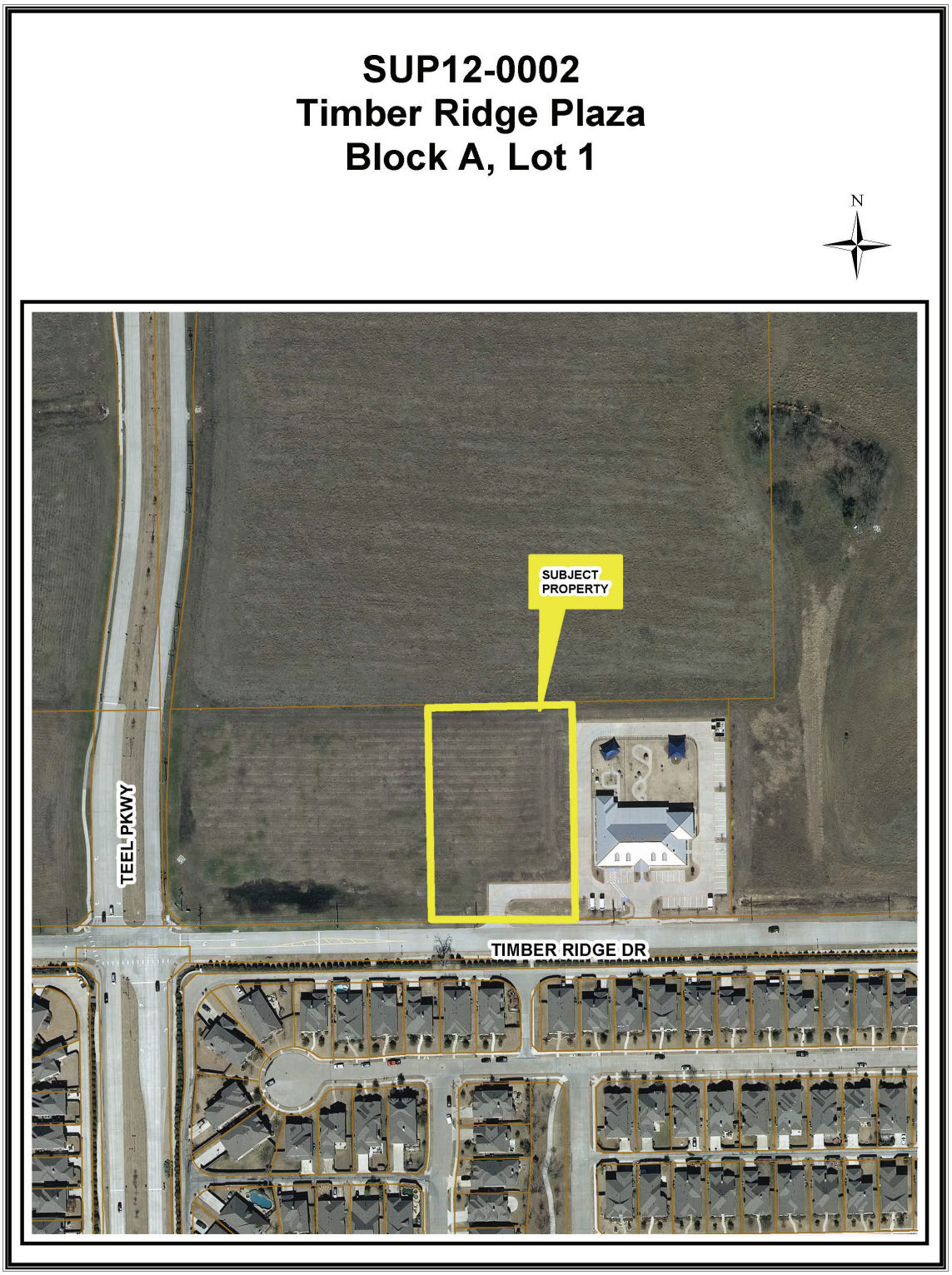


Exhibit "B"
SUP12-0002

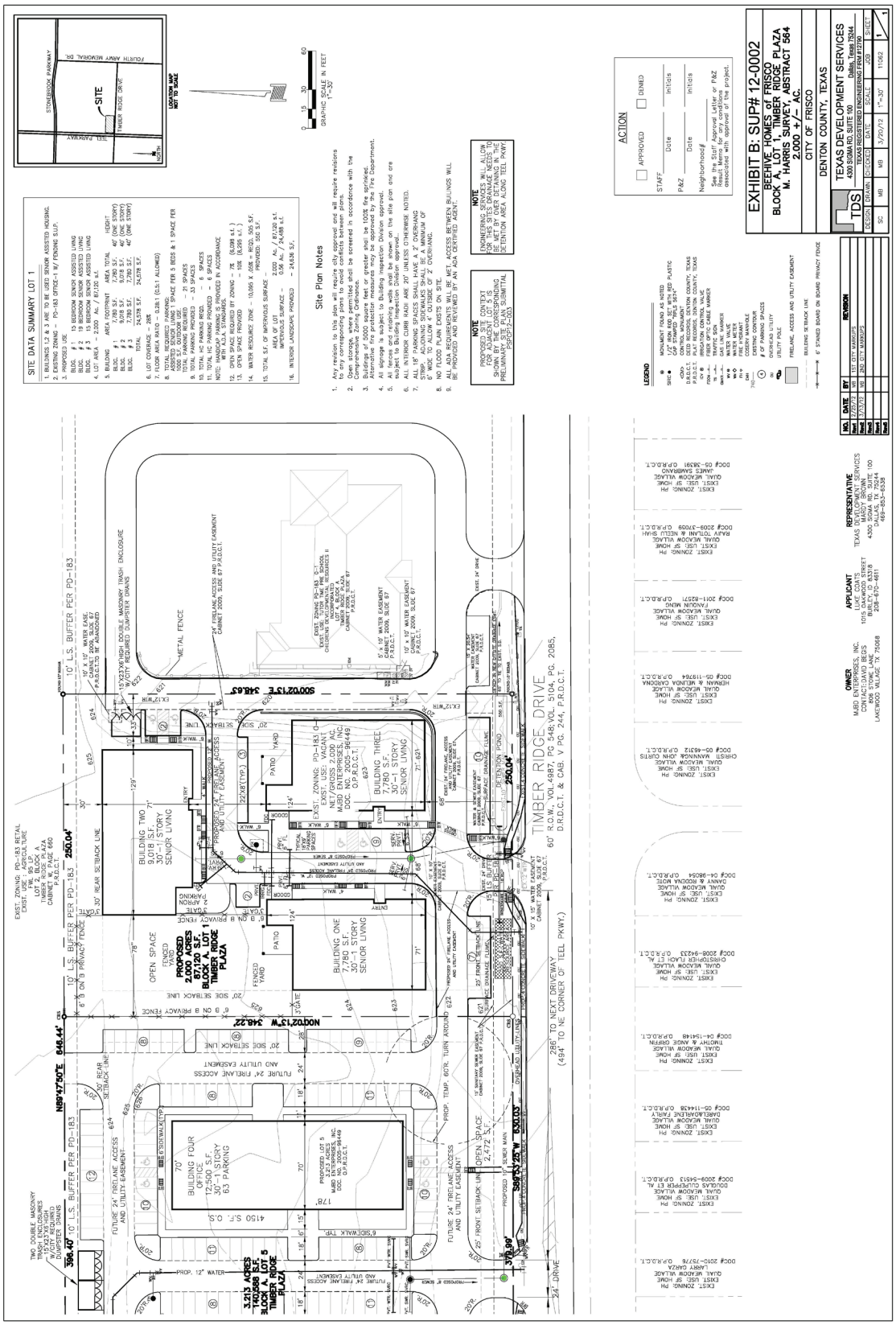

EXHIBIT B: SUP# 12-0002
BEEHIVE HOMES of FRISCO
BLOCK A, LOT 1, TIMBER RIDGE PLAZA
M. HARRIS SURVEY, ABSTRACT 564
2.000 +/- AC.
CITY OF FRISCO
DENTON COUNTY, TEXAS
TEXAS DEVELOPMENT SERVICES
4300 SIGMA RD, SUITE 100
Dallas, Texas 75244
TDS
TEXAS REGISTERED ENGINEERING FIRM F-7726
SITE DATA SUMMARY LOT 1
Site Plan Notes
NOTE
PROPOSED SITE CONTEXT FOR ADJACENT LOTS IS SHOWN FOR REFERENCE ONLY. REFER TO PRELIMINARY SITE PLAN SUBMITTAL #SP07-0203
NOTE
ENGINEERING SERVICES WILL ALLOW FOR THIS SITES DRAINAGE NEEDS TO BE PIPED TO THE NEAREST DETENTION AREA ALONG TEEL PKWY.
ACTION
APPROVED
DENIED
STAFF Date Initials
P&Z Date Initials
Neighborhood#
See the Staff Approved Letter or P&Z Minutes for any additional stipulations associated with approval of the project.
OWNER
APPLICANT
REPRESENTATIVE
LEGEND
TIMBER RIDGE DRIVE
BUILDING TWO 9,018 S.F. 30'-1 STORY SENIOR LIVING
BUILDING THREE 7,780 S.F. 30'-1 STORY SENIOR LIVING
BUILDING ONE 7,780 S.F. 30'-1 STORY SENIOR LIVING
BUILDING FOUR OFFICE 12,500 S.F. 30'-2 STORY 63 PARKING
OPEN SPACE FENCED PROPOSED 2.000 ACRES 87,120 S.F. BLOCK A, LOT 1 TIMBER RIDGE PLAZA
PROPOSED LOT 5 3.213 ACRES MARD ENTERPRISES, INC. DOC. NO. 2005-96448 O.P.R.D.C.T.
PROPOSED LOT 1 3.213 ACRES 140,568 S.F. BLOCK A, LOT 5 TIMBER RIDGE PLAZA
PROP. TEMP. 60'R. TURN AROUND
286' TO NEXT DRIVEWAY (494' TO NE CORNER OF TEEL PKWY.)
60' R.O.W., VOL.4987, PG. 548/VOL. 5104, PG. 2085, D.R.D.C.T. & CAB. V PG. 244, P.R.D.C.T.
EXIST. ZONING: PD-183 EXIST. USE: VACANT NET/GROSS: 2.000 AC. MAX FAR: 0.25 DOC. NO. 2005-96449 O.P.R.D.C.T.
EXIST. ZONING: PD-183 EXIST. USE: TIMBER RIDGE PLAZA INCORPORATED DOC. NO. 2005-96447 P.R.D.C.T.
EXIST. ZONING: PD-183 EXIST. USE: TEXTON TWC PRE SCHOOL CABINET 2009, SLIDE 67 P.R.D.C.T.
EXIST. ZONING: PD-183 EXIST. USE: RETAIL CABINET W, PAGE 666 P.R.D.C.T.
EXIST. ZONING: SF EXIST. USE: SF HOME OAKS MEADOW VILLAGE
EXIST. ZONING: PH EXIST. USE: SF HOME OAKS MEADOW VILLAGE
EXIST. ZONING: SF EXIST. USE: SF HOME OAKS MEADOW VILLAGE
EXIST. ZONING: PH

Exhibit "C"
(1 of 2)
SUP12-0002

Planned Development-183 General Architectural Character

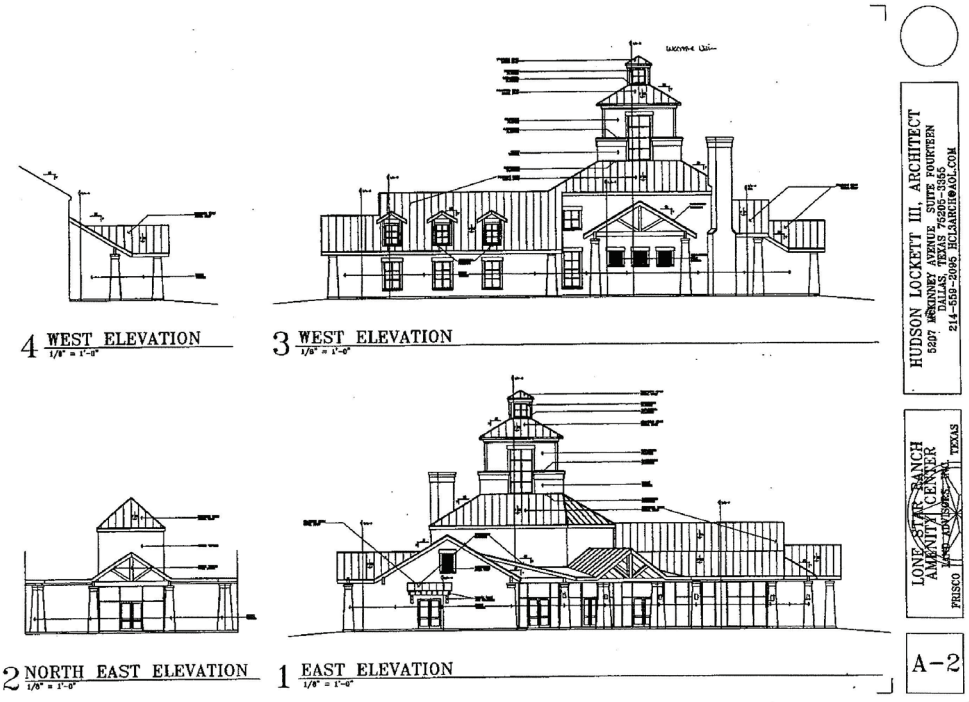
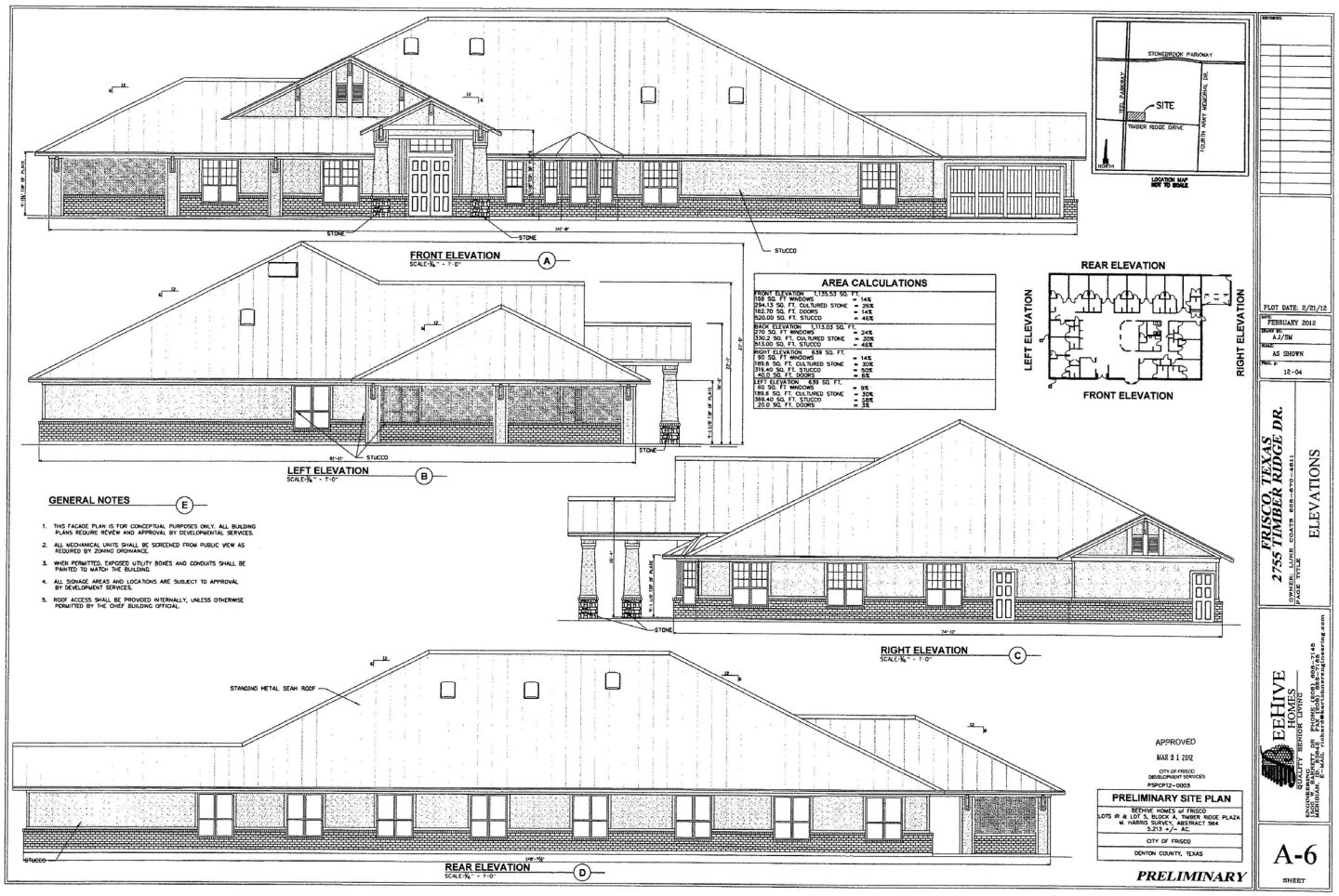


Exhibit "C"
(2 of 2)
SUP12-0002

SUP12-0002 & PSPCP12-0003 Facade Plan



AGENDA ITEM #31.

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, Planner**

Date: **5/2/2012**

Agenda Caption: **Consider and act upon adoption of a Resolution authorizing the construction of Wayfield Drive located within the City of Frisco Parkland know as Frisco Commons; declaring a portion of the parkland necessary for the construction of the street to serve Creekside Village. PP12-0002.**

Action Requested: City Council consideration and approval of a Resolution authorizing the construction of Wayfield Drive located within the City of Frisco Parkland known as Frisco Commons to serve the adjacent single family residential subdivision of Creekside Village.

Background Information: The Planning & Zoning Commission approved preliminary plat (PP12-0002) for a proposed single family subdivision which includes the dedication of right-of-way for a new residential street within the Frisco Commons Park. The street, Wayfield Drive, is needed to connect the subdivision to Kent Drive for a second point of access.

Board Review/Citizen Input: On May 1, 2012, the City Council held a public hearing and voted 5-0 to direct staff to prepare the Resolution authorizing the use of parkland for street purposes.

Alternatives: City Council may:

- Approve the Resolution authorizing the City to construct Wayfield Drive.
- Deny the Resolution;
- Amend the Resolution; or
- Table the Resolution.

Financial Considerations: Not applicable

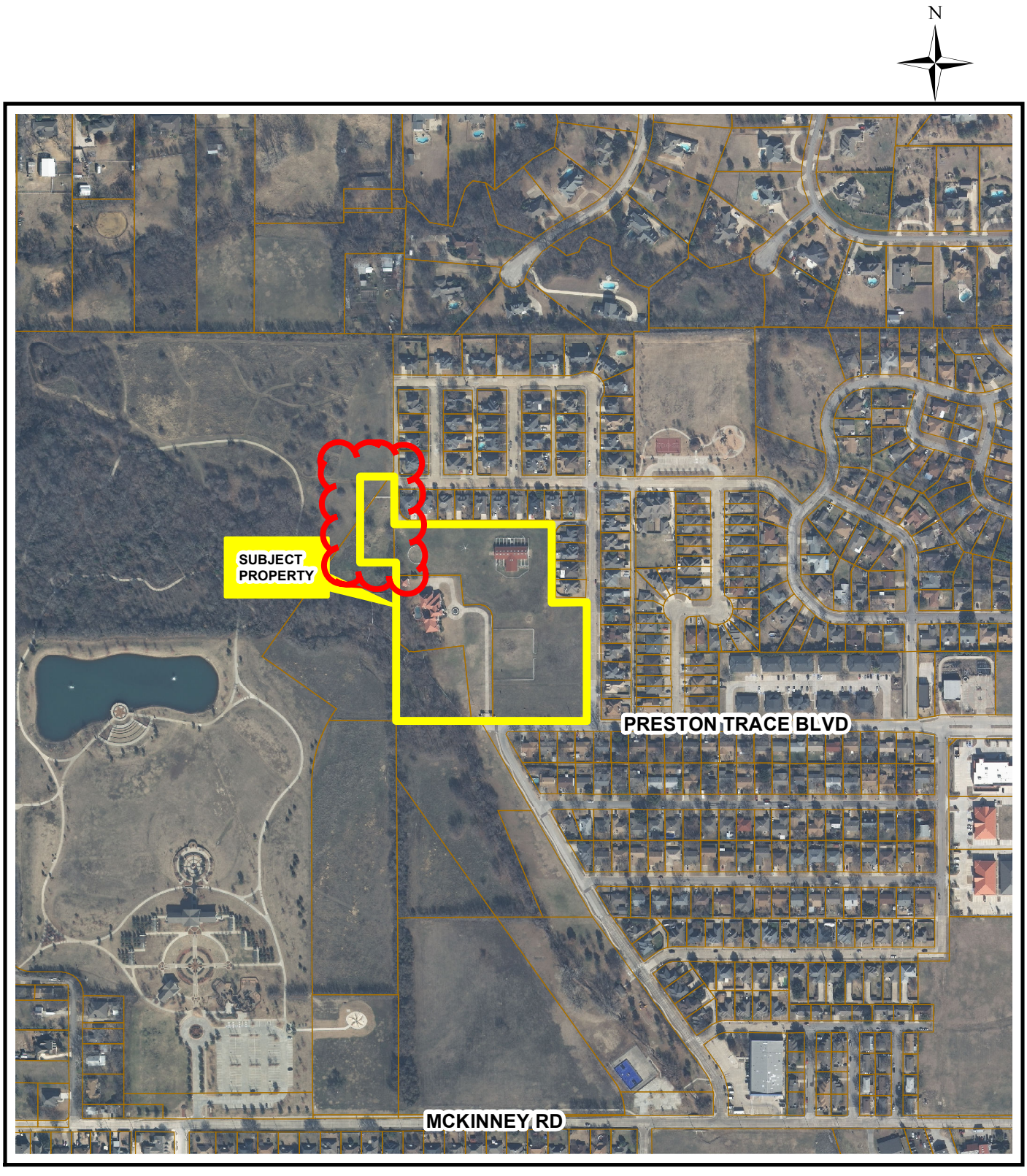
Legal Review: The City Attorney's Office has reviewed and approved the Resolution as to form.

Supporting Documents:

- Locator Map.
- Copy of Resolution.

Staff Recommendation: Staff recommends City Council approve a Resolution authorizing the construction of Wayfield Drive located within the City of Frisco Parkland known as Frisco Commons to serve the adjacent single family residential subdivision of Creekside Village.

PP12-0002
Creekside Village



CITY OF FRISCO, TEXAS **RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AUTHORIZING THE CONSTRUCTION OF WAYFIELD DRIVE LOCATED WITHIN THE CITY OF FRISCO PARKLAND KNOWN AS FRISCO COMMONS; DECLARING A PORTION OF THE PARKLAND NECESSARY FOR THE CONSTRUCTION OF THE STREET; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") investigated and determined that it is in the best interest of the City of Frisco, Texas ("Frisco") and its citizens to allow the construction of Wayfield Drive in and through land dedicated for the use of parks in Frisco, located adjacent to Creekside Village and known as Frisco Commons ("Parkland"), as more generally depicted on *Exhibit "A"*, attached hereto and incorporated herein for all purposes ("Project"); and

WHEREAS, the City Council has further investigated and determined that there is no feasible and prudent alternative to the use of the Parkland; that the Project includes all reasonable planning to minimize harm to the Parkland as a park which may result from the Project; that the Project will provide for the connection of two (2) subdivisions in Frisco; that the Project is needed to meet Frisco's required two (2) points of access; that the Project is the only plausible means of providing neighborhood connectivity for emergency services between the residential subdivisions; that the Parkland will still be utilized as a park; that the Project will provide alternate means of access to the Parkland; and that the Project will more safely distribute traffic in the area in and around the Parkland; and

WHEREAS, the City Council has further investigated and determined that it has complied with all requirements set forth in Chapter 26, Texas Parks and Wildlife Code, as amended; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and beneficial to Frisco and its inhabitants to undertake and allow the Project as set forth below.

NOW THEREFORE, BE IT RESOLVED 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 Resolution as if fully set forth herein.

SECTION 2. Necessity of Project. The City Council hereby finds and declares that the portion of the Parkland Property reflected in and on *Exhibit "A"* for the construction of the Project is necessary for the construction of the Project and is based the findings set forth above, including but not limited to, the fact that there is no feasible and prudent alternative to the use of the Parkland; that the Project includes all reasonable planning to minimize harm to the Parkland as a park which may result from the Project; that the Project will provide for the connection of two (2) subdivisions in Frisco; that the Project is needed to meet Frisco's required two (2) points of access; that the Project is the only plausible means of providing neighborhood connectivity for emergency services between the residential subdivisions; that the Project will provide alternate means of access to the Parkland; that the Project will more safely distribute traffic in the area in and around the Parkland; that the Parkland will still be utilized as a park; and that Frisco has complied with any and all lawful requirements to construct the Project on a portion of the Parkland.

SECTION 3: Savings/Repealing Clause. All provisions of any resolution in conflict with this Resolution are hereby repealed; but such repeal shall not abate any pending matters of the repealed resolution. Any remaining portions of conflicting resolutions shall remain in full force an effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Resolution shall remain in full force and effect. Frisco hereby declares that it would have passed this Resolution, 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 Resolution shall take effect immediately from and after its passage.

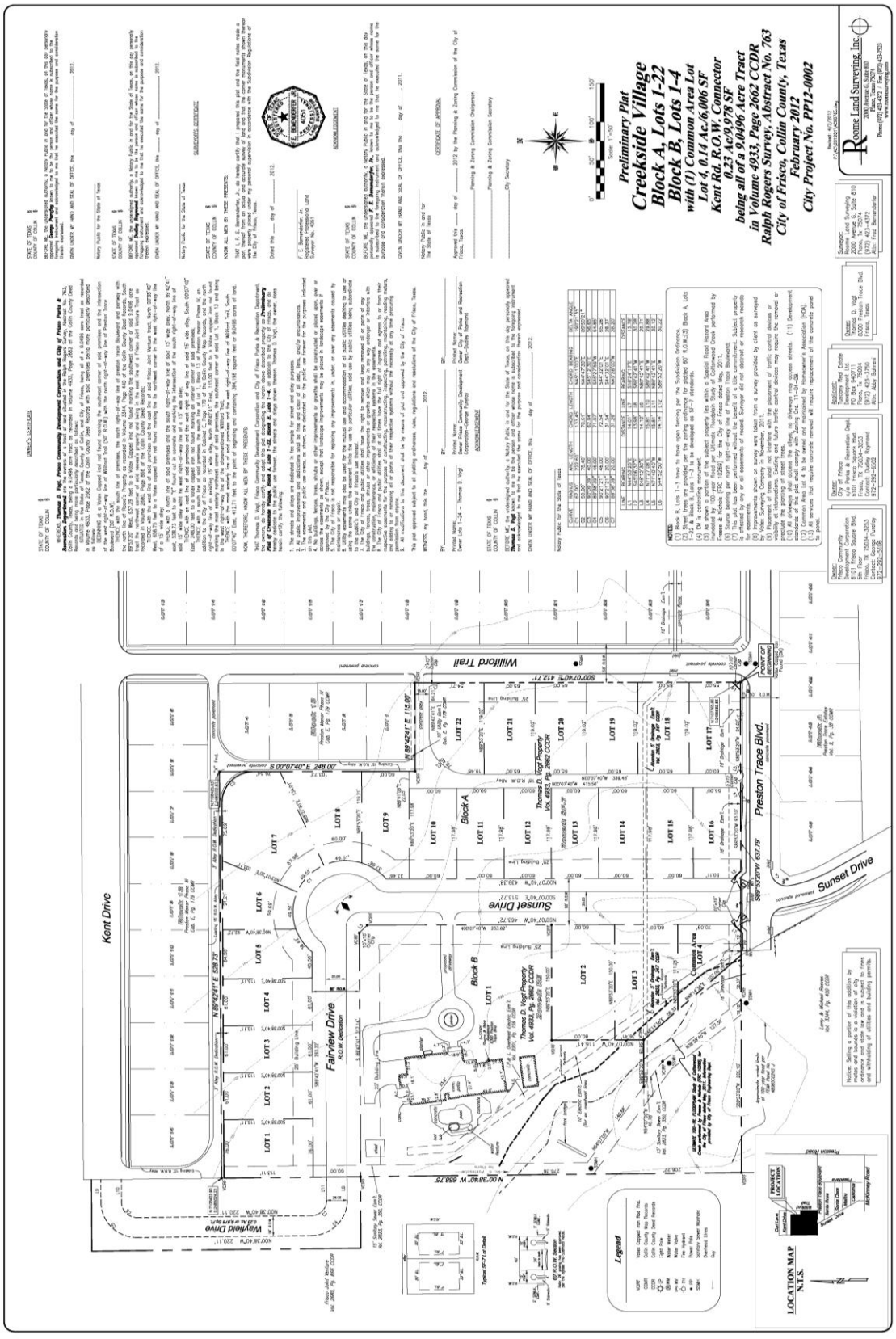
RESOLVED THIS the ___ day of _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

EXHIBIT "A"
Description of Project



AGENDA ITEM #32.

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: **5/2/2012**

Agenda Caption: **Consider and act upon adoption of two Ordinances to amend Planned Development-216-Mixed Use to modify the boundaries, amend the zoning exhibit and the development standards. The property contains 410.0± acres on the southwest corner of US Highway 380 and Dallas Parkway. Neighborhood #53. Zoning Case No. Z11-0020.**

Action Requested: City Council adoption of two Ordinances approving the zoning.

Background Information: On May 1, 2012, the City Council held a public hearing and directed staff to prepare an Ordinance by a vote of 4-0. Council members Johnson and Nelson were absent. The attached ordinances reflect the repealing of Ordinance No. 07-08-34, the new boundaries for Planned Development-216, and the rezoning of the Smothermon Tract to a separate Planned Development.

Board Review/Citizen Input: On February 28, 2012, the Planning & Zoning Commission held a public hearing and voted 6-0 to recommend approval of the request.

Alternatives: The City Council may:

- Approve the Ordinances;
- Approve the Ordinances with modifications;
- Deny the Ordinances; or
- Table for further review.

Financial Considerations: None.

Legal Review: The Ordinances were prepared by the City Attorney's office.

Supporting Documents:

- City Council Outcome Memo dated May 2, 2012.
- Ordinances.

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

May 2, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the City Council meeting, May 1, 2012

Public Hearing - Zoning: North Frisco - Forest City (Z11-0020)
Owner(s): Ernest Mahard, Jr., Mahard Egg Farm, Inc., The Mahard 2003 Partnership, LP, Smothermon Family Partners, LTD, and Frisco Economic Development Corporation

Description:
A request to amend Planned Development-216 to modify the boundaries and amend the zoning exhibit and development standards and consider and act to direct staff to prepare an Ordinance of the same. The property contains 410.0± acres on the southwest corner of US Highway 380 and Dallas Parkway. Zoned Agricultural and Planned Development-216. Neighborhood #53. Tabled: 4/3/12 and 4/17/12.

Result/Action:

Approved: 4-0 (Johnson & Nelson absent)
Denied:
Tabled:

ACTION:
City Council approved the Zoning request and directed staff to prepare an Ordinance subject to:

Multifamily Development South of Rockhill Road:

Surface parking is permitted within the interior of the block for multifamily as depicted on the zoning exhibit, with the condition that a minimum of 25% of the required parking be provided as tuck under or structured parking. The surface, tuck under or structured parking shall be located internally within the development whereby there is no direct access to a parking space within the development from the street.

Multifamily Development North of Rockhill Road:

A minimum of 80% of the required parking for multifamily shall be within structured or tuck under parking.

MW/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, REPEALING ORDINANCE NO. 07-08-34 AND AMENDING FRISCO'S ZONING ORDINANCE NO. 11-04-09 TO REZONE A TRACT OF LAND CONSISTING OF 356.39 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 148, THE COLLIN COUNTY LAND SCHOOL SURVEY, ABSTRACT NO. 147 AND THE H.C. BARNES SURVEY, ABSTRACT NO. 58, CITY OF FRISCO, COLLIN COUNTY, TEXAS, TO THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-216-MIXED USE, HERETOFORE ZONED AGRICULTURAL (A) AND PLANNED DEVELOPMENT-216-MIXED USE (PD-216-MXD); 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 previously adopted Ordinance No. 07-08-34 establishing Planned Development-216; and

WHEREAS, Forest City West (the "Applicant") initiated a request to rezone 356.39 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, the Collin County School Land Survey, Abstract No. 148 and the H.C. Barnes Survey, Abstract 58, City of Frisco, Collin County, Texas ("Frisco"), as identified in **Exhibit "A"**, attached hereto and incorporated herein for all purposes; and

WHEREAS, the City Council has further investigated and determined that it would be advantageous and beneficial to the citizens of Frisco to repeal Ordinance No. 07-08-34 in its entirety and to rezone the 356.39 acres and place in the zoning classification Planned Development-216-Mixed Use; and

WHEREAS, based upon the Applicant's request, the City Council has further investigated and determined that Zoning Ordinance No. 11-04-09 ("ZO") should be amended; 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.

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: Repeal Ordinance No. 07-08-34. Frisco Ordinance No. 07-08-34 is 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. 07-08-34 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. 07-08-34 occurring before the effective date of this Ordinance.

SECTION 3: Amendments to 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 356.39 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 148, the Collin County School Land Survey, Abstract No. 147 and the H.C. Barnes Survey, Abstract 58, 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-216-Mixed Use. 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 and uses for the Property in this Planned Development District shall conform to the Planned Development Standards attached hereto as **Exhibit "C"**, the Zoning Exhibit attached hereto as **Exhibit "D"** and the Illustrative Diagrams and Streetscape Typologies attached hereto as **Exhibit "E"**. **Exhibits "C", "D", and "E"** attached hereto 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 (3) originals, official and identical copies of the zoning exhibit map 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; and

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 amendment 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 feet (200') 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 Zoning Ordinance No. 11-04-09, as they exist 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 day's 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 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 8: 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 9: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law and the Frisco City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 15th day of May, 2012.

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"
Z11-0020

LEGAL DESCRIPTION
356.39 ACRES

BEING of a tract of land out of the COLLIN COUNTY SCHOOL LAND SURVEY, Abstract No. 148 , the COLLIN COUNTY SCHOOL LAND SURVEY, Abstract No. 147 and the H.C. BARNES SURVEY, Abstract No. 58, in the City of Frisco, Collin County, Texas, being part of the 160 acre tract of land described in deed to Ernest Mahard, Jr. et ux recorded in Volume 886, Page 295 of the Deed Records of Collin County, Texas, being part of the tract of land described in deed to Mahard 2003 Partnership, LP recorded in Volume 5670, Page 1915 of the Land Records, Collin County, Texas, being all of a tract of land described in deed to Frisco Economic Development Corporation recorded in Volume 5923, Page 117 of the Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point in the north line of a tract of land described in deed to Bert Fields, Jr., recorded in Volume 439, Page 408 of the Deed Records of Collin County, Texas and for the southeast corner of a tract of land described in deed to Smothermon Family Partners, Ltd. recorded in Document No. 20070122000097420 of the Official Public Records of Collin County, Texas;

THENCE with the east line of said Smothermon tract, North 00°29'20" West, a distance of 2364.83 feet to the northeast corner of said Somthermon tract;
THENCE with the north line of said Smothermon tract, South 89°15'28" West, a distance of 1001.26 feet to the northwest corner of said Somthermon and the northeast corner of a tract of land described in deed to the County of Collin recorded in Volume 4983, Page 2271 of the Land Records of Collin County, Texas;
THENCE with the north and east line of said County of Collin tract, North 89°35'27" West, a distance of 742.13 feet to a point for corner;
THENCE with the east line of said County of Collin tract and the east line of a tract of land described in deed to Wilpat Real Estate Partners, Ltd., recorded in Volume 5699, Page 2478 of the Land Records of Collin County, Texas, North 00°41'00" West, a distance of 1363.08 feet to a point for the northeast corner of said Wilpat tract and the southeast corner of the tract of land described in deed to WRC Frisco 380 Partnership recorded in Document No. 200703090032470 Official Public Records, Collin County, Texas;
THENCE with the east line of said WRC Frisco 380 Partnership, North 00°46'54" West a distance of 1703.74 to a point in the centerline of U.S. Highway No. 380 (a variable width right-of-way);
THENCE with the centerline of said State Highway No. 380, North 89°58'07" East a distance of 3720.32 feet to the intersection of the centerline of U.S. Highway No. 380 and the centerline of the Dallas North Tollway (variable width right-of-way) for a point for corner;
THENCE South with the centerline of said Dallas North Tollway, the following courses and distances to wit:
South 00°25'44"East a distance of 3371.69 feet to the beginning of a non-tangent curve to the right with a radius of 3272.26 feet, a central angle of 38°23'38" and a chord bearing and distance of South 18°44'51" West, 2151.95 feet;
Southwesterly with said curve, an arc distance of 2192.74 feet to a point for corner;
THENCE with the south line of said Mahard 2003 Partnership. L.P. tract, a part of the way and the north line of said Fields tract, South 89˚15'11" West a distance of 1251.08 feet to the **POINT OF BEGINNING** and containing 356.39 acres of land.

Bearing system based on the Texas State Plane Coordinate System per City of Frisco Monument System.

This document was prepared under 22 TAC ξ 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.

EXHIBIT "A-1"

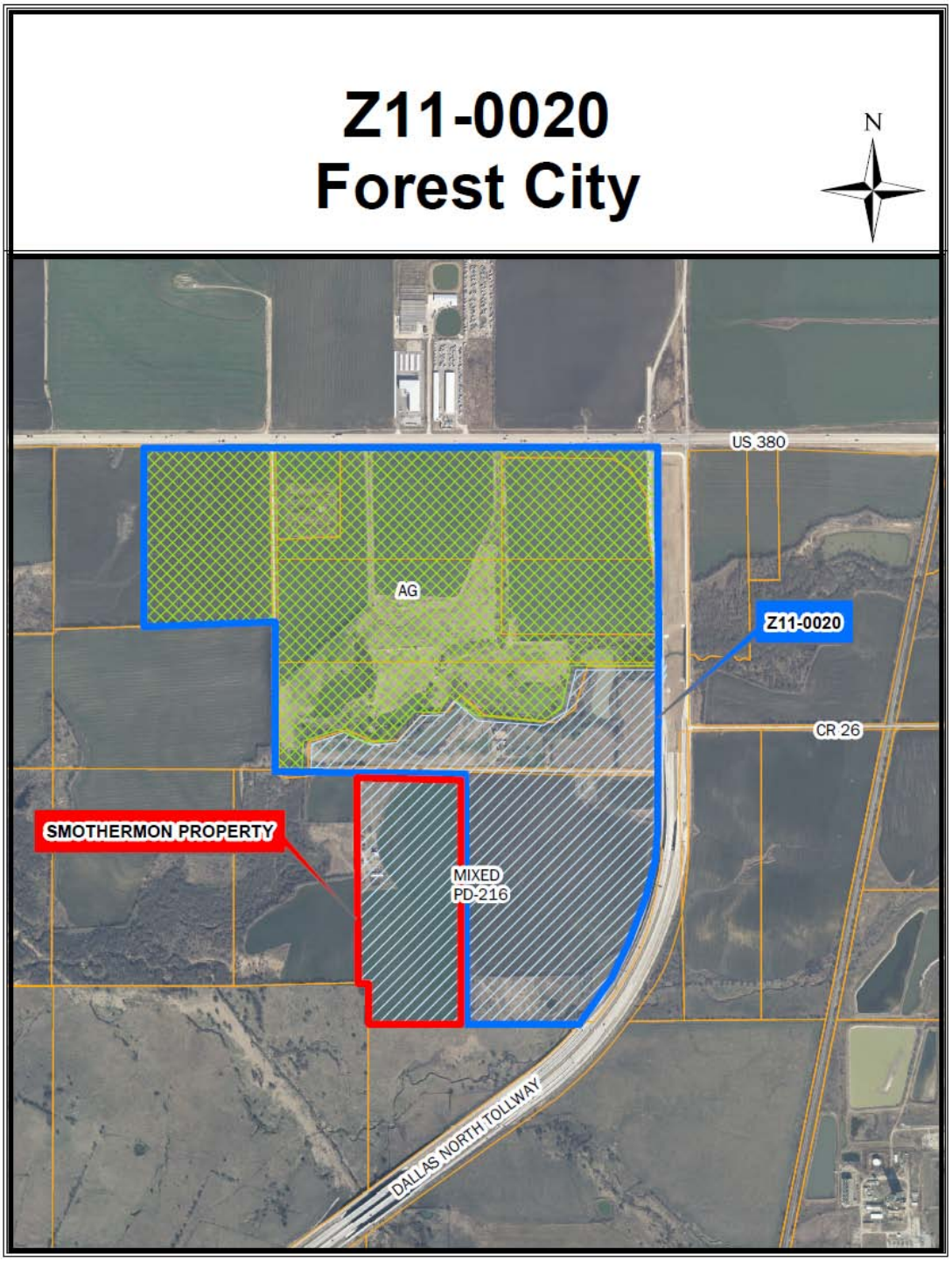

Z11-0020
Forest City
N
US 380
AG
Z11-0020
CR 26
SMOTHERMON PROPERTY
MIXED
PD-216
DALLAS NORTH TOLLWAY

EXHIBIT "B"

"The purpose of this Planned Development request is to establish standards that will allow the subject property to develop in accordance with the Future Land Use Plan. The property is currently zoned Agricultural and Planned Development-216; the Future Land Use Plan designates this property as Mixed-Use, Non-Residential, Mixed-Use, Residential, and Retail."

EXHIBIT "C"
Z11-0020
PLANNED DEVELOPMENT STANDARDS

The North Frisco Planned Development shall develop in general conformance with the Zoning Exhibit attached hereto as Exhibit "D" as well as the Illustrative Diagrams and Streetscape Typologies outlined in Exhibit "E". In addition, the following sections of the Form Based Codes Manual shall apply:

1. G-2 Landmark Commercial Buildings
2. G-5 Neighborhood Oriented Open Space
3. LU-2 Retail At-Grade Standards
4. LU-3 Residential At-Grade Standards
5. S-2 Site Layout – Retail Centers
6. B-5 Commercial Building Form

Additional Standards

1. Permitted Uses – Uses permitted by-right or with approval of a Specific Use Permit in the Retail and Office-2 Districts, subject to the following:
    a. Automotive-related uses are only permitted in the Highway Corridor Zone.
    b. Urban-style multifamily permitted in general conformance with Exhibit "D".
    c. Townhome – areas shown on Exhibit "D" as multifamily may develop as townhome in accordance with Form Based Codes Sections LU-3 Residential At-Grade Standards and PR-3 Special Street Types – Townhome Alley.

2. Parking.

    a. Due to the mixed-use nature of this development, parking reductions may be considered at the time of development, based on recognized standards from the Urban Land Institute, Institute of Transportation Engineers, or other standards as approved by the Director.

3. Multifamily Parking – Multifamily parking shall be calculated at a rate of 1.5 spaces per unit. Adjacent on-street parking may be used to meet the required parking.

    a. South of Rockhill Road – Surface parking is permitted within the interior of the block for multifamily as depicted on the zoning exhibit, with the condition that a minimum of twenty (25%) percent of the required parking be provided as tuck under or structured parking. The surface, tuck under or structured parking shall be located internally within the development whereby there is no direct access to a parking space within the development from the street.
    b. North of Rockhill Road – A minimum of eighty (80%) percent of the required parking for multifamily shall be within structured or tuck under parking.

Exhibit D
&
Exhibit E

ATTACHED

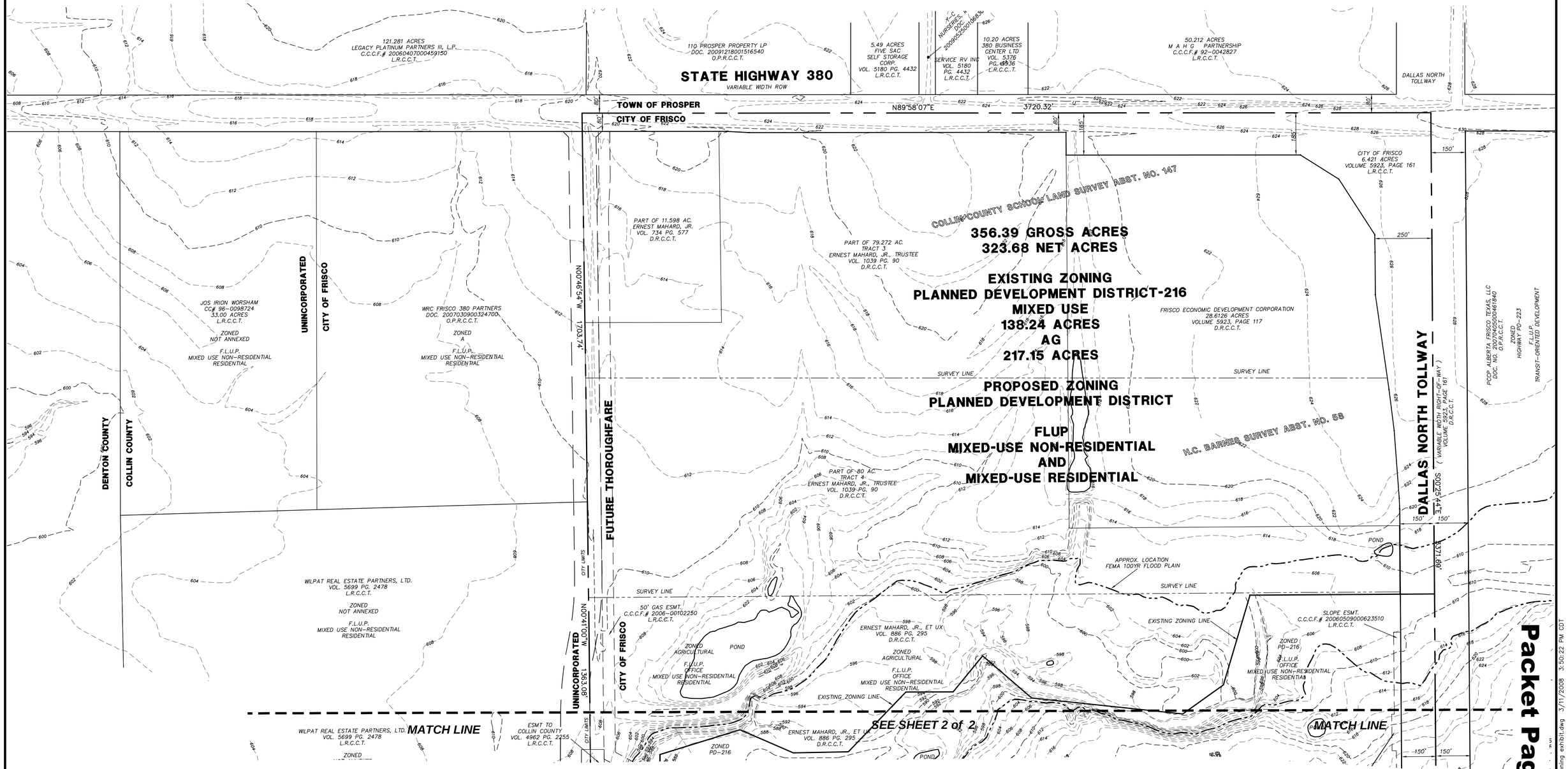


EXHIBIT "A" FOR Z # 11-0020

NORTH FRISCO

BEING 356.39 ACRES OUT OF THE
COLLIN COUNTY SCHOOL LAND SURVEY ABSTRACT NO. 148,
COLLIN COUNTY SCHOOL LAND SURVEY ABSTRACT NO. 147
and the H.C. BARNES SURVEY, ABSTRACT NO. 58
CITY OF FRISCO, COLLIN COUNTY, TEXAS

N
W E
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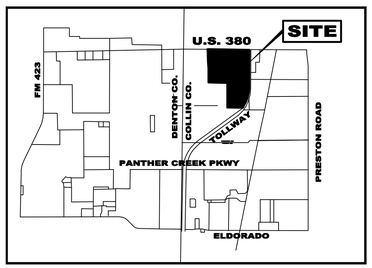
GRAPHIC SCALE IN FEET

200' 0 100' 200' 400'

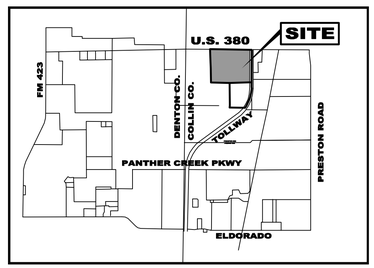
1" = 200' @ 24" X 36"

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LOCATION MAP
NTS



KEY MAP
NTS



ZONING LEGEND

A: AGRICULTURAL DISTRICT
TH: TOWNHOME DISTRICT
MF: MULTIFAMILY RESIDENTIAL DISTRICT
O-1: OFFICE DISTRICT-1
O-2: OFFICE DISTRICT-2
R: RETAIL DISTRICT
OTC: ORIGINAL TOWN COMMERCIAL
C-1: COMMERCIAL DISTRICT-1
C-2: COMMERCIAL DISTRICT-2
IT: INFORMATION & TECHNOLOGY DISTRICT
I: INDUSTRIAL DISTRICT
PD: PLANNED DEVELOPMENT

OWNER
Frisco Economic Development Corporation
6801 Gaylord Parkway, Suite 200
Frisco, Texas 75034
Contact : Jim Gandy

OWNER
Ernest Mahard, Jr.
c/o Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034
Tel. No. 817-835-0345
Contact: Terry Taylor

OWNER
Mahard Egg Farm, Inc.
c/o Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034
Tel. No. 817-835-0345
Contact: Terry Taylor

OWNER
The Mahard 2003 Partnership, LP
c/o Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034
Tel. No. 817-835-0345
Contact: Terry Taylor

APPLICANT
Forest City West
949 S. Hope Street
Suite 200
Los Angeles, CA 90015
(213) 488-0010 (P)
(213) 488-9308 (F)
Contact : Jeff Isenstadt

REPRESENTATIVE
Kimley Horn and Associates, Inc.
12700 Park Central Drive
Suite 1800
Dallas, Texas 75251
Tel. No. 972-770-1300
Fax No. 972-239-3820
Contact: Kevin Gaskey

SURVEYOR :
Kimley-Horn and Associates, Inc.
12700 Park Central Drive
Suite 1800
Dallas, Texas 75251
Tel. No. 972-770-1300
Fax No. 972-239-3820

DATE : February 6, 2012 | KHA JOB NO. 68180002 | SHEET 1 OF 2

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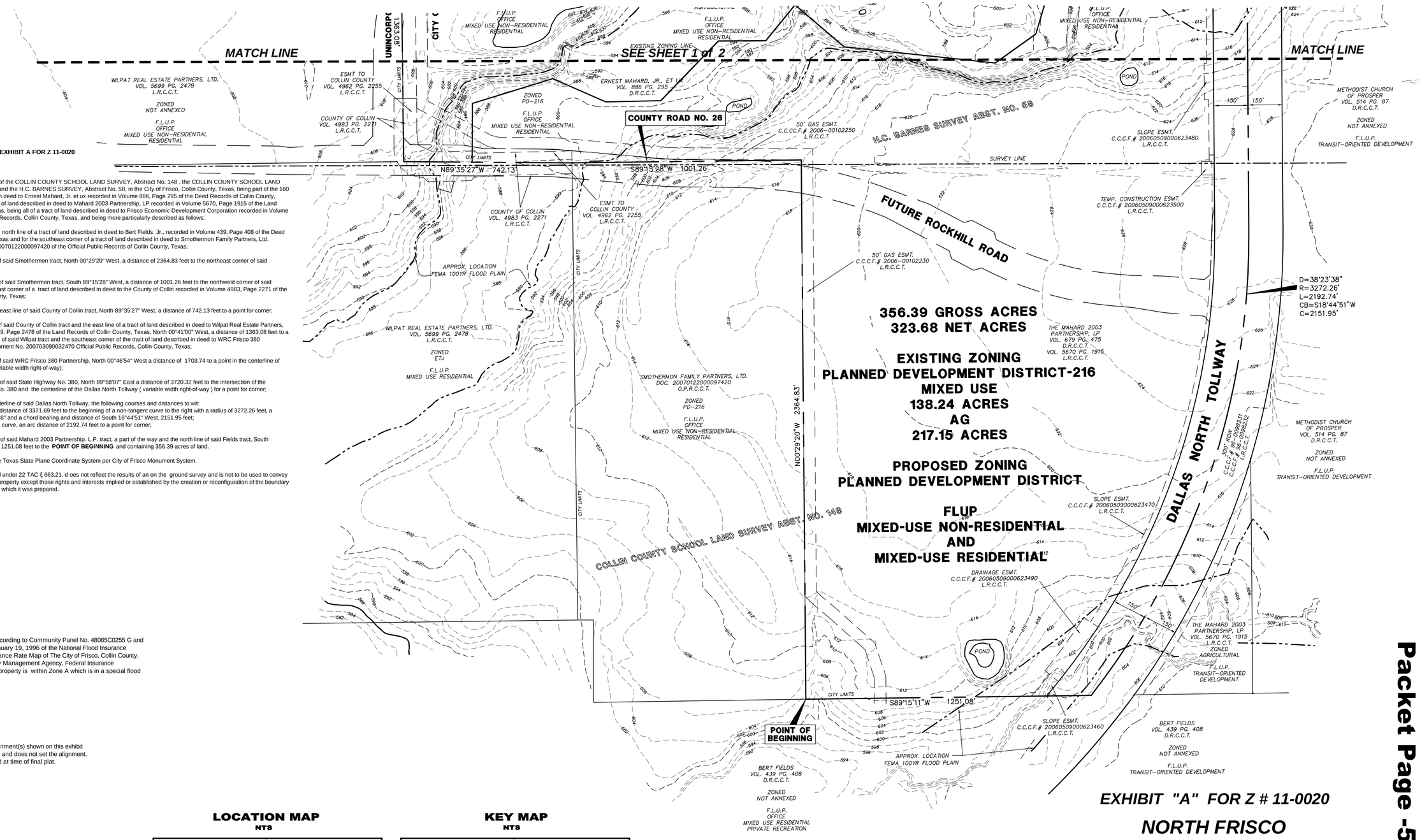


EXHIBIT A FOR Z 11-0020

LEGAL DESCRIPTION
356.39 ACRES

BEING of a tract of land out of the COLLIN COUNTY SCHOOL LAND SURVEY, Abstract No. 148 , the COLLIN COUNTY SCHOOL LAND SURVEY, Abstract No. 147 and the H.C. BARNES SURVEY, Abstract No. 58, in the City of Frisco, Collin County, Texas, being part of the 160 acre tract of land described in deed to Ernest Mahard, Jr. et ux recorded in Volume 886, Page 295 of the Deed Records of Collin County, Texas, being part of the tract of land described in deed to Mahard 2003 Partnership, LP recorded in Volume 5670, Page 1915 of the Land Records, Collin County, Texas, being all of a tract of land described in deed to Frisco Economic Development Corporation recorded in Volume 5923, Page 117 of the Land Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a point in the north line of a tract of land described in deed to Bert Fields, Jr., recorded in Volume 439, Page 408 of the Deed Records of Collin County, Texas and for the southeast corner of a tract of land described in deed to Smothermon Family Partners, Ltd. recorded in Document No. 20070122000097420 of the Official Public Records of Collin County, Texas;

THENCE with the east line of said Smothermon tract, North 00°29'20" West, a distance of 2364.83 feet to the northeast corner of said Somthermon tract;

THENCE with the north line of said Smothermon tract, South 89°15'28" West, a distance of 1001.26 feet to the northwest corner of said Somthermon and the northeast corner of a tract of land described in deed to the County of Collin recorded in Volume 4983, Page 2271 of the Land Records of Collin County, Texas;

THENCE with the north and east line of said County of Collin tract, North 89°35'27" West, a distance of 742.13 feet to a point for corner;

THENCE with the east line of said County of Collin tract and the east line of a tract of land described in deed to Wilpat Real Estate Partners, Ltd., recorded in Volume 5699, Page 2478 of the Land Records of Collin County, Texas, North 00°41'00" West, a distance of 1363.08 feet to a point for the northeast corner of said Wilpat tract and the southeast corner of the tract of land described in deed to WRC Frisco 380 Partnership recorded in Document No. 20070309003247O Official Public Records, Collin County, Texas;

THENCE with the east line of said WRC Frisco 380 Partnership, North 00°46'54" West a distance of 1703.74 to a point in the centerline of U.S. Highway No. 380 (a variable width right-of-way);

THENCE with the centerline of said State Highway No. 380, North 89°58'07" East a distance of 3720.32 feet to the intersection of the centerline of U.S. Highway No. 380 and the centerline of the Dallas North Tollway (variable width right-of-way) for a point for corner;

THENCE South with the centerline of said Dallas North Tollway, the following courses and distances to wit:
South 00°25'44"East a distance of 3371.69 feet to the beginning of a non-tangent curve to the right with a radius of 3272.26 feet, a central angle of 38°23'38" and a chord bearing and distance of South 18°44'51" West, 2151.95 feet;
Southwesterly with said curve, an arc distance of 2192.74 feet to a point for corner;

THENCE with the south line of said Mahard 2003 Partnership. L.P. tract, a part of the way and the north line of said Fields tract, South 89°15'11" West a distance of 1251.08 feet to the **POINT OF BEGINNING** and containing 356.39 acres of land.

Bearing system based on the Texas State Plane Coordinate System per City of Frisco Monument System.

This document was prepared under 22 TAC ξ 663.21. d oes 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.

FLOOD STATEMENT: According to Community Panel No. 48085C0255 G and 48085C0260 G , dated January 19, 1996 of the National Flood Insurance Program Map, Flood Insurance Rate Map of The City of Frisco, Collin County, Texas, Federal Emergency Management Agency, Federal Insurance Administration, part of this property is within Zone A which is in a special flood hazard area.

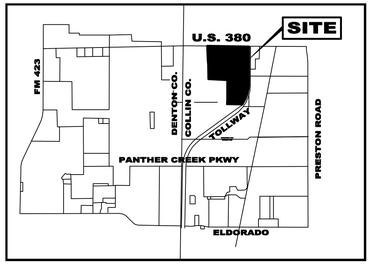
Note: The thoroughfare alignment(s) shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of final plat.

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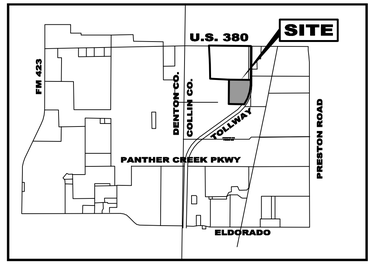
GRAPHIC SCALE IN FEET
200' 0 100' 200' 400'
1" = 200' @ 24" X 36"

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LOCATION MAP
NTS



KEY MAP
NTS



ZONING LEGEND

A: AGRICULTURAL DISTRICT
TH: TOWNHOME DISTRICT
MF: MULTIFAMILY RESIDENTIAL DISTRICT
O-1: OFFICE DISTRICT-1
O-2: OFFICE DISTRICT-2
R: RETAIL DISTRICT
OTC: ORIGINAL TOWN COMMERCIAL
C-1: COMMERCIAL DISTRICT-1
C-2: COMMERCIAL DISTRICT-2
IT: INFORMATION & TECHNOLOGY DISTRICT
I: INDUSTRIAL DISTRICT
PD: PLANNED DEVELOPMENT

OWNER
Frisco Economic Development Corporation
6801 Gaylord Parkway, Suite 200
Frisco, Texas 75034
Contact : Jim Gandy

OWNER
Ernest Mahard, Jr.
c/o Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034
Tel. No. 817-835-0345
Contact: Terry Taylor

OWNER
Mahard Egg Farm, Inc.
c/o Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034
Tel. No. 817-835-0345
Contact: Terry Taylor

OWNER
The Mahard 2003 Partnership, LP
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4812 Cranbrook Drive West
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Tel. No. 817-835-0345
Contact: Terry Taylor

APPLICANT
Forest City West
949 S. Hope Street
Suite 200
Los Angeles, CA 90015
(213) 488-0010 (P)
(213) 488-9308 (F)
Contact : Jeff Isenstadt

REPRESENTATIVE
Kimley Horn and Associates, Inc.
12700 Park Central Drive
Suite 1800
Dallas, Texas 75251
Tel. No. 972-770-1300
Fax No. 972-239-3820
Contact: Kevin Gaskey

SURVEYOR :
Kimley-Horn and Associates, Inc.
12700 Park Central Drive
Suite 1800
Dallas, Texas 75251
Tel. No. 972-770-1300
Fax No. 972-239-3820

EXHIBIT "A" FOR Z # 11-0020

NORTH FRISCO

BEING 356.39 ACRES OUT OF THE
COLLIN COUNTY SCHOOL LAND SURVEY ABSTRACT NO. 148,
COLLIN COUNTY SCHOOL LAND SURVEY ABSTRACT NO. 147
and the H.C. BARNES SURVEY, ABSTRACT NO. 58
CITY OF FRISCO, COLLIN COUNTY, TEXAS

DATE : February 6, 2012 KHA JOB NO. 68180002 SHEET 2 OF 2



SITE DATA SUMMARY TABLE

ZONING: PD
LAND USE: RETAIL/RESTAURANT, OFFICE, HOTEL, AND RESIDENTIAL

TOTAL LOT AREA	356.4 ACRES (15,524,784 S.F.)
DALLAS NORTH TOLLWAY R.O.W.	22.0 (958,320 S.F.)
FUTURE THOROUGHFARE R.O.W.	10.7 ACRES (466,092 S.F.)
NET ACREAGE	323.7 ACRES (14,100,372 S.F.)
MIN. OPEN SPACE REQUIRED (10%)	32.4 ACRES (1,411,344 S.F.)
	APPROXIMATE AREA
GENERAL OFFICE	7,000,000 S.F.
RETAIL	4,000,000 S.F.
HOTEL	1,000 ROOMS
RESIDENTIAL	4,000 UNITS

1. REFERENCE "EXHIBIT C: PLANNED DEVELOPMENT STANDARDS" FOR BUILDING HEIGHT DISTRICTS.
2. REFERENCE "EXHIBIT C: PLANNED DEVELOPMENT STANDARDS" FOR PARKING RATIOS. REQUIRED PARKING WILL BE BASED ON THE PARKING RATIOS IN "EXHIBIT C: PLANNED DEVELOPMENT STANDARDS". AS MIXED-USE DEVELOPMENT EVOLVES ON-SITE, SHARED PARKING WILL BE UTILIZED ACCORDING TO URBAN LAND INSTITUTE SHARED PARKING FORMULAS.
3. 10% OPEN SPACE WILL BE PROVIDED FOR THE OVERALL TRACT (NORTH AND SOUTH COMBINED).

LEGEND

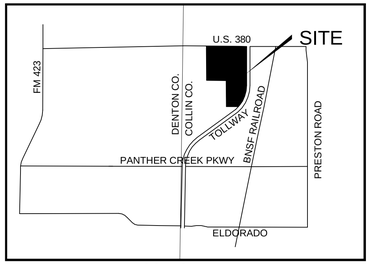
- EXISTING TREE MASS AREAS
- PROPOSED DETENTION BASIN
- FLOODPLAIN RECLAMATION AREAS
- FIRE LANE

NOTE

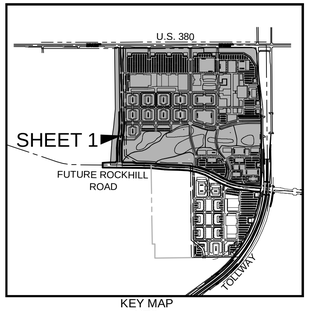
THE THOROUGHFARE ALIGNMENTS SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DO NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT.

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GRAPHIC SCALE IN FEET
200' 0 100' 200' 400'
1"=200' @ 24"X36"



LOCATION MAP
NTS



KEY MAP
NTS

NORTH FRISCO

BEING 356.39 ACRES OUT OF THE
COLLIN COUNTY SCHOOL LAND SURVEY ABST. 148
COLLIN COUNTY SCHOOL LAND SURVEY ABST. 147
H.C. BARNES SURVEY, ABSTRACT NO. 58
CITY OF FRISCO, COLLIN COUNTY, TEXAS

OWNER
Ernest Mahard, Jr.
c/o The Stockbridge Corporation
1820 Preston Park, Suite 1650
Plano, Texas 75093
Tel. No. 972-943-9300
Fax No. 972-943-9301
Contact: G. Gipp DuPree

OWNER
Mahard Egg Farm, Inc.
c/o Terry Taylor
Taylor Advisors, P.C.
4812 Cranbrook Drive West
Colleyville, Texas 76034

APPLICANT
Forest City West
949 S. Hope Street
Suite 200
Los Angeles, California 90015
Tel. No. 213-488-0010
Fax No. 213-488-9308
Contact : Jeff Isenstadt

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Kimley Horn and Associates, Inc.
12700 Park Central Dr., Suite 1800
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Fax No. 972-239-3820
Contact: Dana Brown

THIS EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY.

No.	REVISIONS	DATE	BY

Kimley-Horn and Associates, Inc.
5750 GENESIS COURT, SUITE 200, FRISCO, TX 75034
PHONE: 972-335-3580 FAX: 972-335-3779
WWW.KIMLEY-HORN.COM
FIRM NO. F-928

KHA PROJECT 068180001
DATE 2/3/12
SCALE AS SHOWN
DESIGNED BY: TBB
DRAWN BY: GSC
CHECKED BY: KSG

NORTH FRISCO
CITY OF FRISCO
TEXAS

EXHIBIT D
FOR Z#1[illegible]

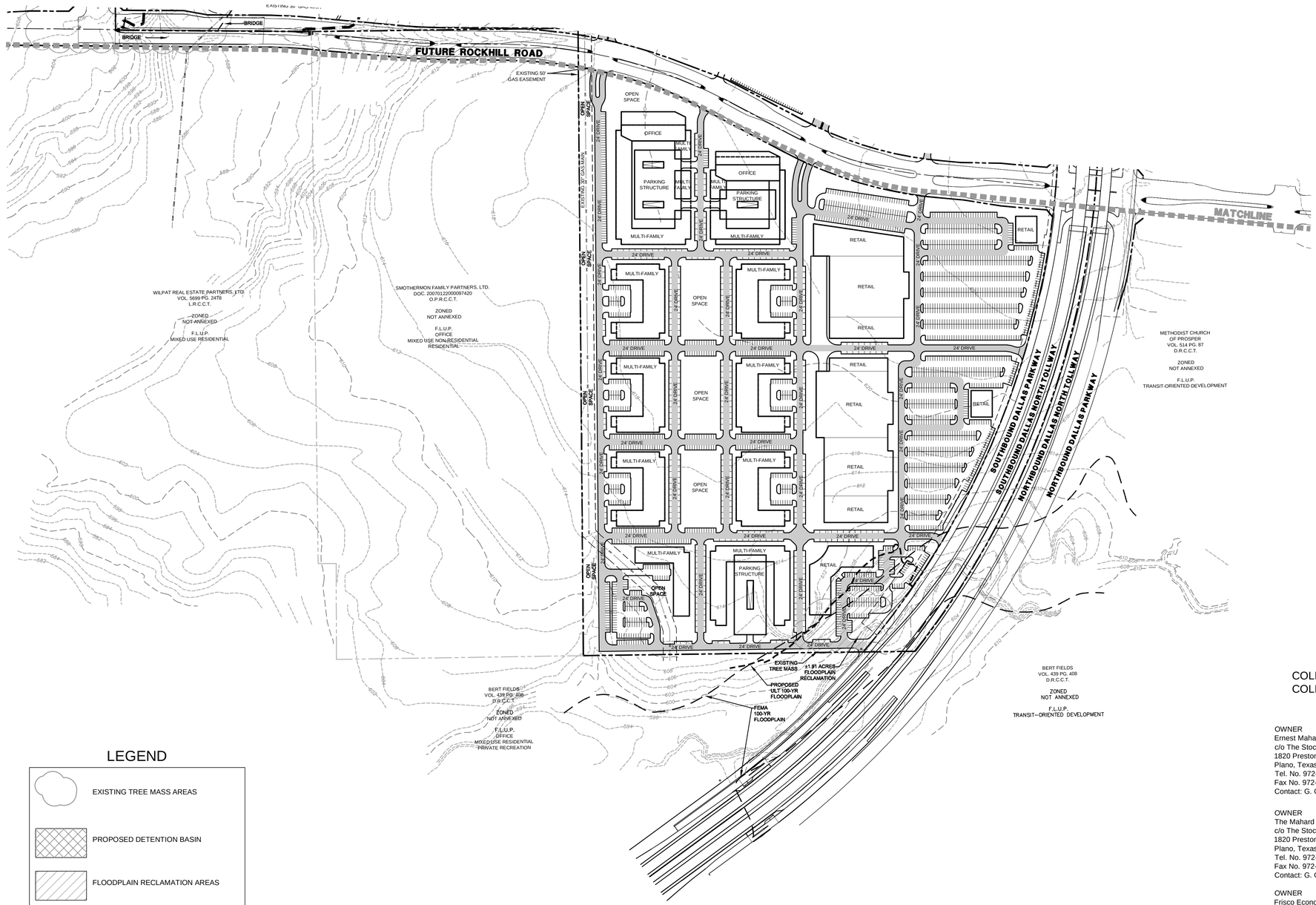
SHEET NUMBER
1 of 2

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Packet Page -600-

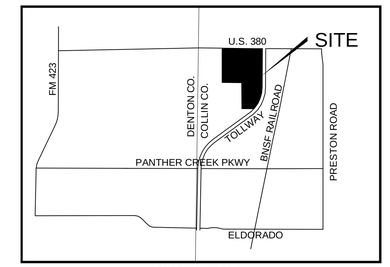
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AGENDA ITEM #32.

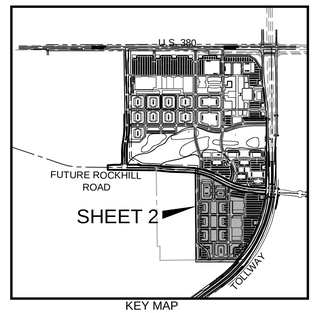


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GRAPHIC SCALE IN FEET
200' 0 100' 200' 400'
1"=200' @ 24"X36"



LOCATION MAP
NTS



KEY MAP
NTS

LEGEND

- EXISTING TREE MASS AREAS
- PROPOSED DETENTION BASIN
- FLOODPLAIN RECLAMATION AREAS
- FIRE LANE

NOTE

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NORTH FRISCO

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Kimley-Horn and Associates, Inc.
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PHONE: 972-335-3580 FAX: 972-335-3779
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FIRM NO. F-928

KHA PROJECT 068180001
DATE 2/3/12
SCALE AS SHOWN
DESIGNED BY: TBB
DRAWN BY: GSC
CHECKED BY: KSG

NORTH FRISCO
CITY OF FRISCO TEXAS

EXHIBIT D
FOR Z#1[illegible]

Packet Page -601-

SHEET NUMBER
2 of 2

NORTH FRISCO

EXHIBIT E:
ILLUSTRATIVE DIAGRAMS & STREETSCAPE TYPOLOGIES

FEBRUARY 03, 2012



FORESTCITY OMNIPLAN Kimley-Horn and Associates, Inc.

AGENDA ITEM #32.

TABLE OF CONTENTS

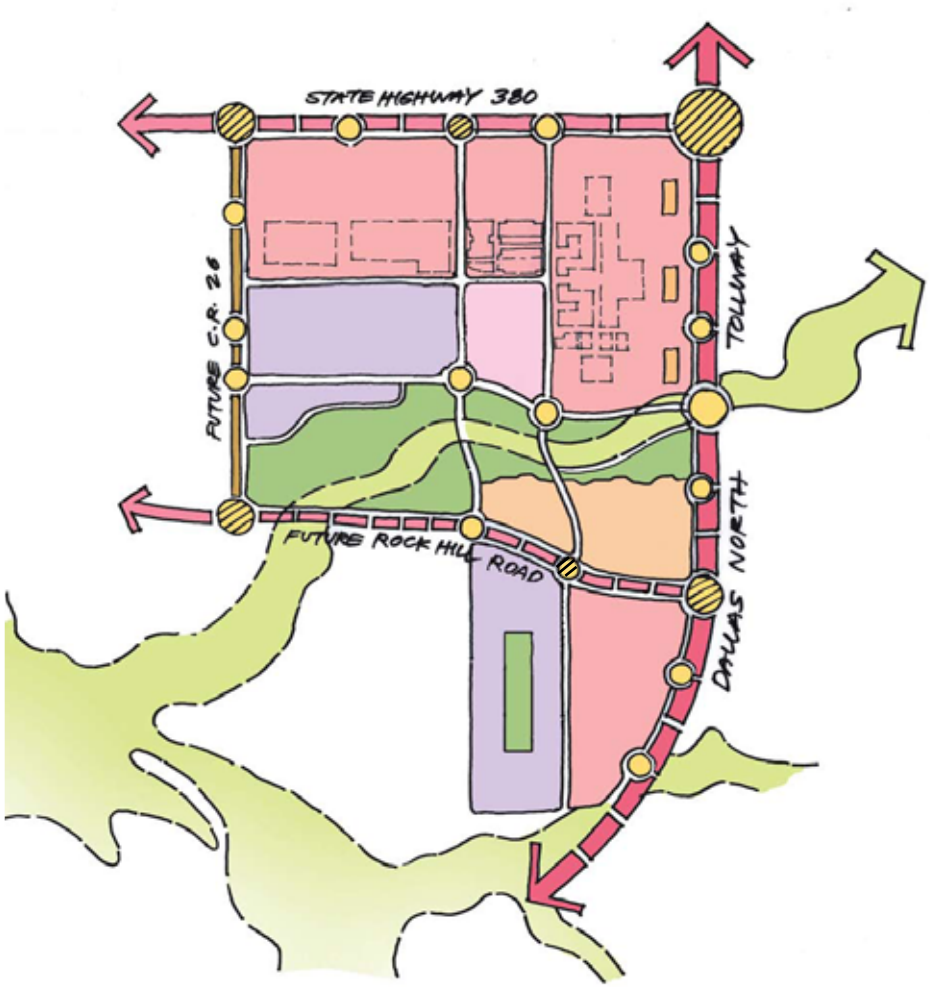
General

G-1. Illustrative Diagrams 3 - 7

Public Realm

PR-1. Streetscape Typology 8 - 14

Packet Page -603-



GENERAL

G-1. ILLUSTRATIVE DIAGRAMS

1. DOMINANT LAND USE*

- Signalized Intersection
- Non-signalized Intersection
- Retail
- Office
- Mixed-Use
- Multi-Family
- Green Zone / Open Space

*Plan is illustrative in nature and subject to change
NOTE: All districts are Mixed-Use and may contain either retail, office/ commercial or residential components. Shown is the expected primary use within the district.

GENERAL

G-1. ILLUSTRATIVE DIAGRAMS

2. HEIGHT LIMITS DIAGRAM*



- 500’ Height Limit
- 300’ Height Limit
- 200’ Height Limit
- 100’ Height Limit

*Plan is illustrative in nature and subject to change

G-1. ILLUSTRATIVE DIAGRAMS

3. URBAN DESIGN DIAGRAM*



- Signalized Intersection**
- Non-signalized Intersection
- Dallas North Tollway (limited access)
- US 380 (limited access)
- Primary Arterial (Rock Hill Rd.)
- Secondary Arterial
- Vehicular Access Point
- Green Zone/Open Space

*Plan is illustrative in nature and subject to change
** Proposed signalized intersection subject to Traffic Analysis

GENERAL

G-1. ILLUSTRATIVE DIAGRAMS

4. ULTIMATE BUILD OUT DIAGRAM*



- Retail
- Retail (Pad Sites)
- Office
- Hotel
- Multi-Family

* Plan is illustrative in nature and subject to change
** Location of Fire Station to be identified at a future date at the time of site plan approval.

NOTE: Highway Corridor Zone: On perimeter site locations automotive-related uses shall be permitted by right at the Highway Corridor Zone. Internal site locations subject to site plan submitt

G-1. ILLUSTRATIVE DIAGRAMS

5. ON-SITE GREEN SPACE*



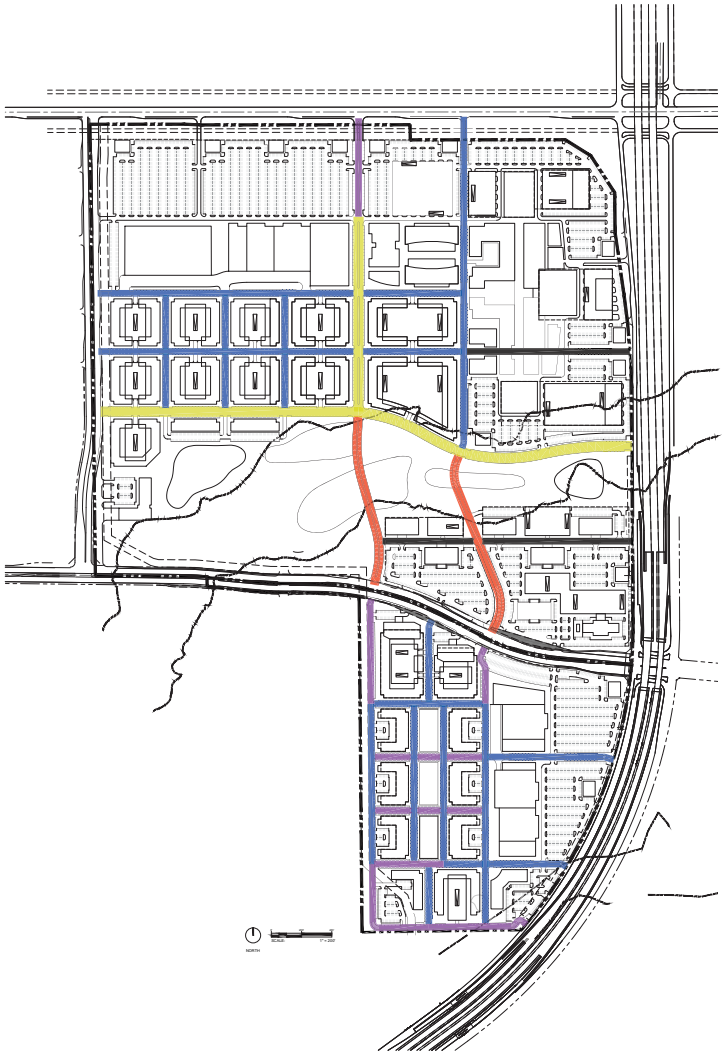
- Hike & Bike Trail (Final location to be determined)
- Scenic Open Space (Floodplain)
- Retention Basin Green Space
- Landscape Setback
- Landscape Treatment
- Plaza Open Space

*Plan is illustrative in nature and subject to change

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

1. CIRCULATION - ROAD HIERARCHY SYSTEM*



- Streetscape Section A
- Streetscape Section B
- Streetscape Section C
- Streetscape Section D
- Streetscape Section E
- Fire Lane: Refer to Exhibit D

*Plan is illustrative in nature and subject to change

NOTE:

1. Where applicable, angled parking shall be permitted. If angled parking is used, the median will be narrowed, subject to Director approval.
2. Streetscape types A & B developed as residential may include higher ground level ceiling heights to allow for future adaptable retail use.

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

2. PUBLIC AND PRIVATE STREETS EXHIBIT



Public Streets
Private Streets

*Plan is illustrative in nature and subject to change

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

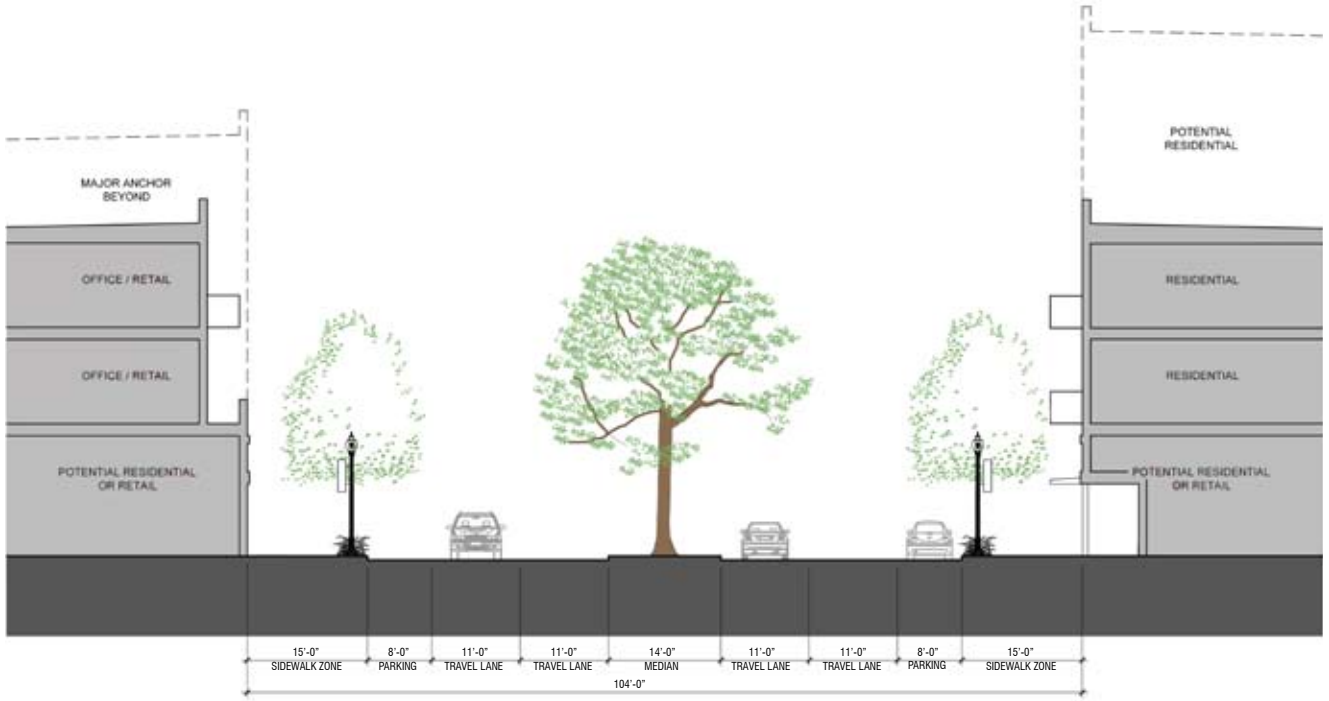
3. STREETSCAPE SECTION 'A' - 4 LANE DIVIDED WITH PARALLEL PARKING

INTENT

To create sidewalks which will be shaded, attractive and provide a feeling of safety in order to encourage pedestrian use.

SIDEWALK ZONE

Including sidewalks, trees/landscape areas, seating, outdoor dining, and 6' minimum pedestrian clear zone for retail or residential sidewalks.



- Angle Parking Permitted Where Applicable

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

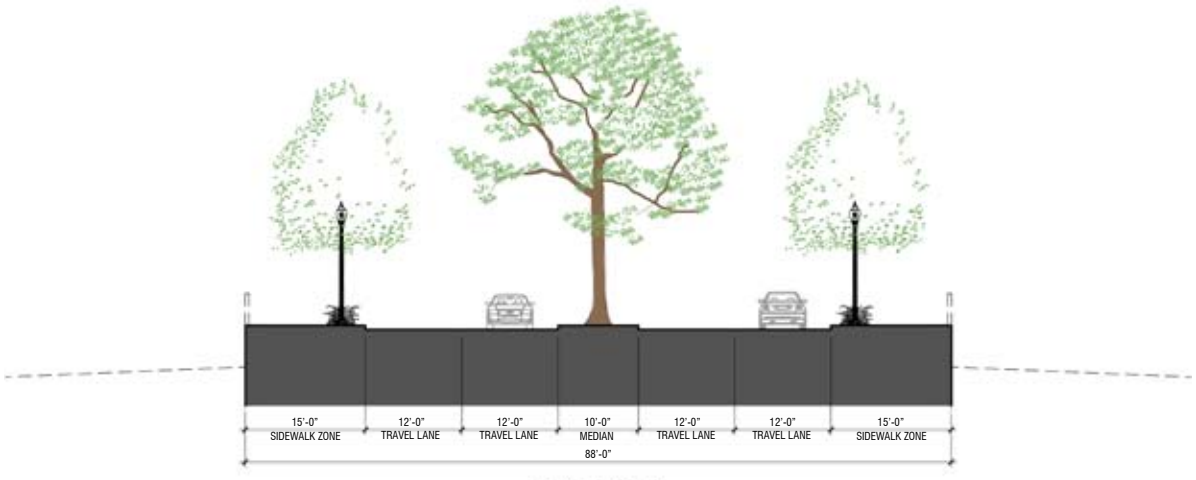
4. STREETSCAPE SECTION 'B' - 4 LANE DIVIDED

INTENT

To create sidewalks which will be shaded, attractive and provide a feeling of safety in order to encourage pedestrian use.

SIDEWALK ZONE

Including sidewalks, trees/landscape areas, seating, outdoor dining, and 6' minimum pedestrian clear zone for retail or residential sidewalks.



- Parallel Parking Permitted Where Applicable

Packet Page -612-

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

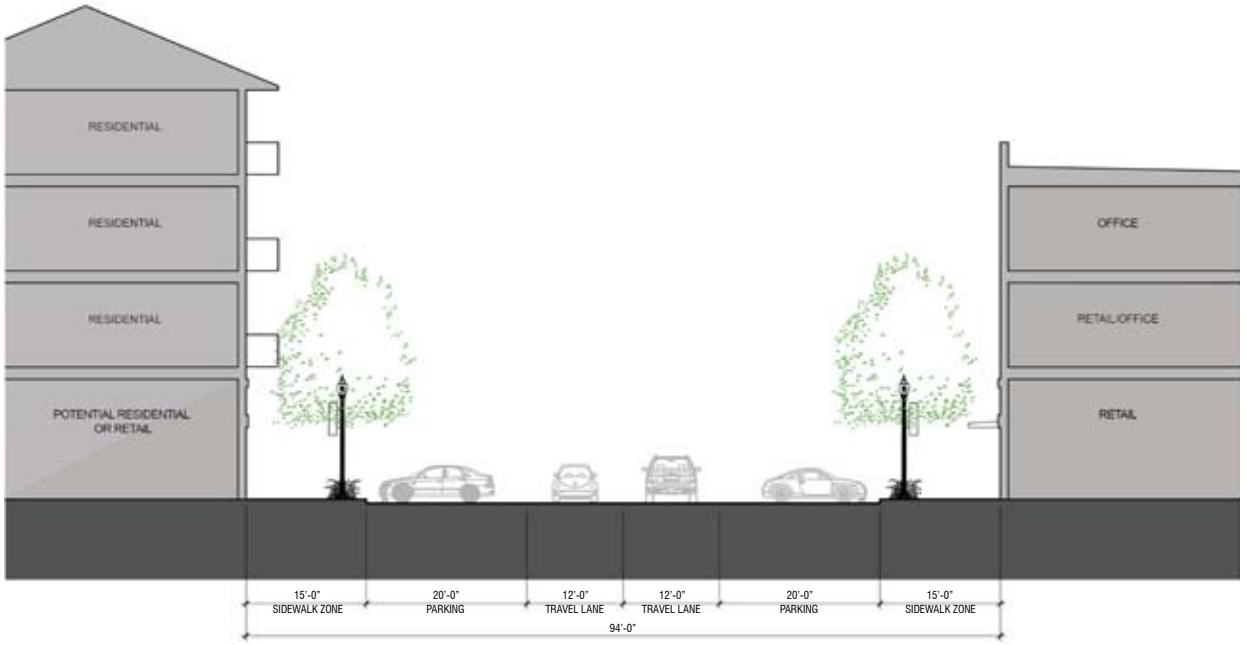
5. STREETSCAPE SECTION 'C' - 2 LANE WITH HEAD-IN PARKING

INTENT

To create sidewalks which will be shaded, attractive and provide a feeling of safety in order to encourage pedestrian use.

SIDEWALK ZONE

Including sidewalks, trees/landscape areas, seating, outdoor dining, and 6' minimum pedestrian clear zone for retail or residential sidewalks.



- Angle Parking Permitted Where Applicable

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

6. STREETSCAPE SECTION 'D' - 2 LANE WITH PARALLEL PARKING

INTENT

To create sidewalks which will be shaded, attractive and provide a feeling of safety in order to encourage pedestrian use.

SIDEWALK ZONE

Including sidewalks, trees/landscape areas, seating, outdoor dining, and 6' minimum pedestrian clear zone for retail or residential sidewalks.



- Parallel Parking Permitted Where Applicable

Packet Page -614-

PUBLIC REALM

PR-1. STREETSCAPE TYPOLOGY

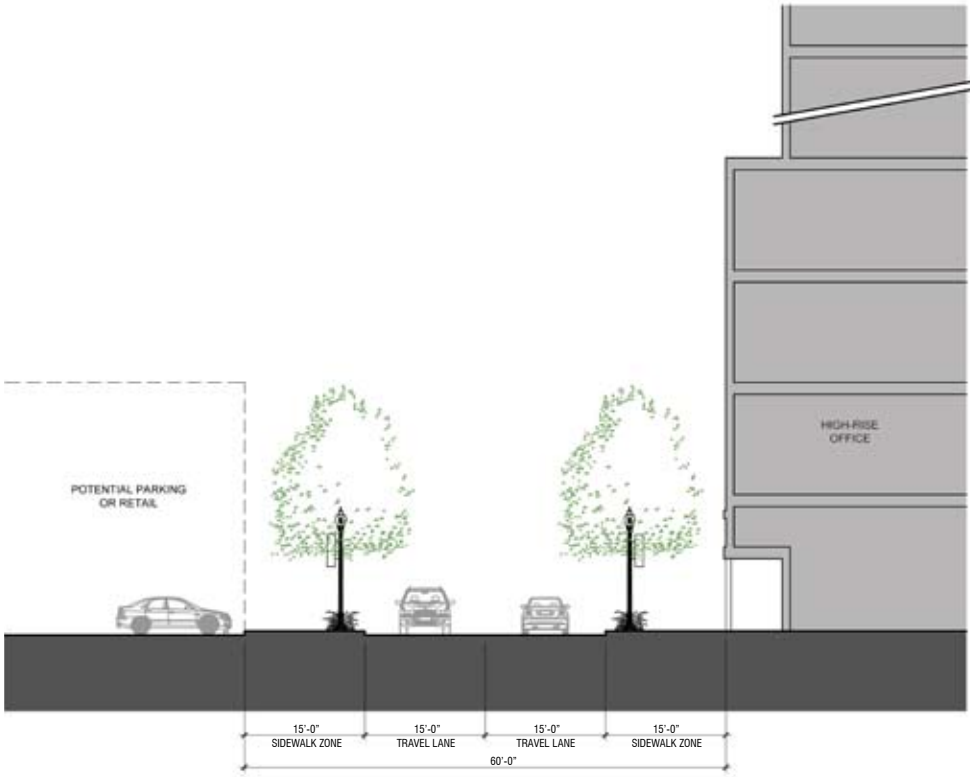
7. STREETSCAPE SECTION 'E' - 2 LANE

INTENT

To create sidewalks which will be shaded, attractive and provide a feeling of safety in order to encourage pedestrian use.

SIDEWALK ZONE

Including sidewalks, trees/landscape areas, seating, outdoor dining, and 6' minimum pedestrian clear zone for retail or residential sidewalks.



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 53.78 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 148, CITY OF FRISCO, COLLIN COUNTY, TEXAS, HERETOFORE ZONED PLANNED DEVELOPMENT-216-MIXED USE (PD-216-MXD) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-RETAIL/MULTIFAMILY (PD-R/MF); 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 ("ZO") should be amended; and

WHEREAS, Forest City West (the "Applicant") initiated a request to rezone 53.78 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 148, 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.

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 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 53.78 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 148, 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-Retail/Multifamily (PD-R/MF). 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 standards and uses for the Property in this Planned Development District shall conform to the Planned Development Standards attached hereto as Exhibit "B". Exhibit "B" attached hereto is 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 (3) original, official and identical copies of the zoning exhibit map 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; and

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 amendment 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 feet (200') of the specific area to 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 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 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 thereof, shall be fined a sum not exceeding Two Thousand Dollars ($2,000.00). Each continuing day's 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 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, 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 Frisco City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 15th day of May, 2012.

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"
Z11-0020 (Smothermon Tract)

BEING of a tract of land out of the COLLIN COUNTY SCHOOL LAND SURVEY, Abstract No. 148, Collin County, Texas, being all of the tract of land described in deed to Diana Smothermon recorded in Collin County Clerk's File No. 97-0041900 of the Land Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod found in the north line of a tract of land described in deed to Bert Fields, Jr., recorded in Volume 439, Page 408 of the Deed Records of Collin County, Texas and for the southwest corner of a the tract of land described in deed to Mahard 2003 Partnership, LP recorded in Volume 5670, Page 1915 of the Land Records of Collin County, Texas ;

THENCE with said north line, the following courses and distances to wit:
South 89°06'42" West, a distance of 931.18 feet to a 5/8" iron rod set with a red plastic cap stamped "KHA" (hereinafter called 5/8" iron rod set) for corner;
North 00°04'09" West, a distance of 361.65 feet to a 5/8" iron rod set for corner;
South 89°55'51" West, a distance of 68.21 feet to a 5/8" iron rod found for the southeast corner of a tract of land described in deed to Wilpat Real Estate Partners, Ltd. recorded in Volume 5699, Page 2478 of the Land Records of Collin County, Texas;

THENCE with the east line of said Wilpat tract, North 00°44'00" West, a distance of 2004.83 feet to a 5/8" iron rod found for corner in the south line of the tract of land described in deed to Ernest Mahard, Jr. et ux recorded in Volume 886, Page 295 of the Deed Records of Collin County, Texas;

THENCE with said south line, the following courses and distances to wit;
South 89°35'27" East, a distance of 4.03 feet to a 5/8" iron rod found for corner;
North 89°15'28" East, a distance of 1001.26 feet to a 5/8" iron rod found for corner;

THENCE leaving said south line, South 00°29'20" East, a distance of 2364.83 feet to the **POINT OF BEGINNING** and containing 53.78 acres of land.

EXHIBIT "A-1"

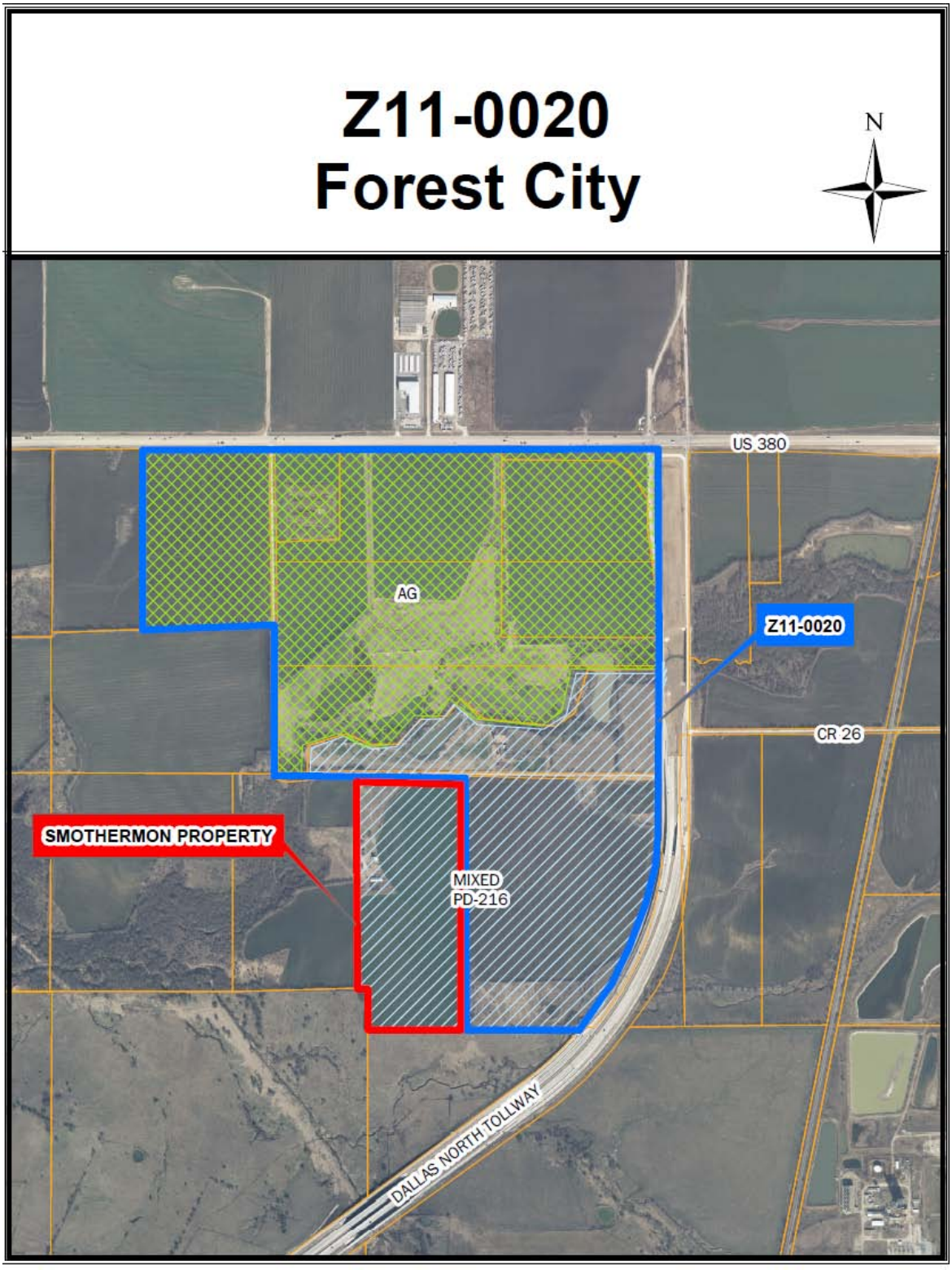

Z11-0020
Forest City
N
US 380
AG
Z11-0020
CR 26
SMOTHERMON PROPERTY
MIXED
PD-216
DALLAS NORTH TOLLWAY

Exhibit B
Development Standards

The Smothermon Tract Planned Development shall develop in general conformance with the following conditions:

1. Retail uses shall be permitted on the northern portion of the property comprising of 27.0± acres.
2. Multifamily uses shall be permitted on the southern portion of the property comprising of 27.0± acres. Multifamily uses shall be developed with the following standards:
    a. Maximum height – four (4) stories;
    b. Structured parking is required for 100% of the required parking for multifamily uses;
    c. Ground floor retail is permitted for transitional buildings adjacent to retail uses; and
    d. Form Based Codes Standards shall apply.

AGENDA ITEM #33.

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: **5/1/2012**

Agenda Caption: **Public Hearing: Annexation Case A12-0003. A proposed voluntary annexation of 5.0± acres in the MEP & PRR Company No. 5 Survey, Abstract No. 941, Denton County, Texas, generally located on the south side of Gloryview Road, 1,300± east of Teel Parkway. Neighborhood #52.**

Action Requested: The City Council should hold the second public hearing and hear any comments regarding the proposed annexation.

Background Information: This is a voluntary annexation case submitted by the Frisco Community Development Corporation. The property is directly adjacent to the City's corporate limits on the east, south, and west, and is vacant.

Board Review/Citizen Input: The City Council approved the resolution setting the public hearing dates on Tuesday, April 3, 2012. The first public hearing was held on Tuesday, May 1, 2012.

Alternatives: Not applicable.

Financial Considerations: Not applicable.

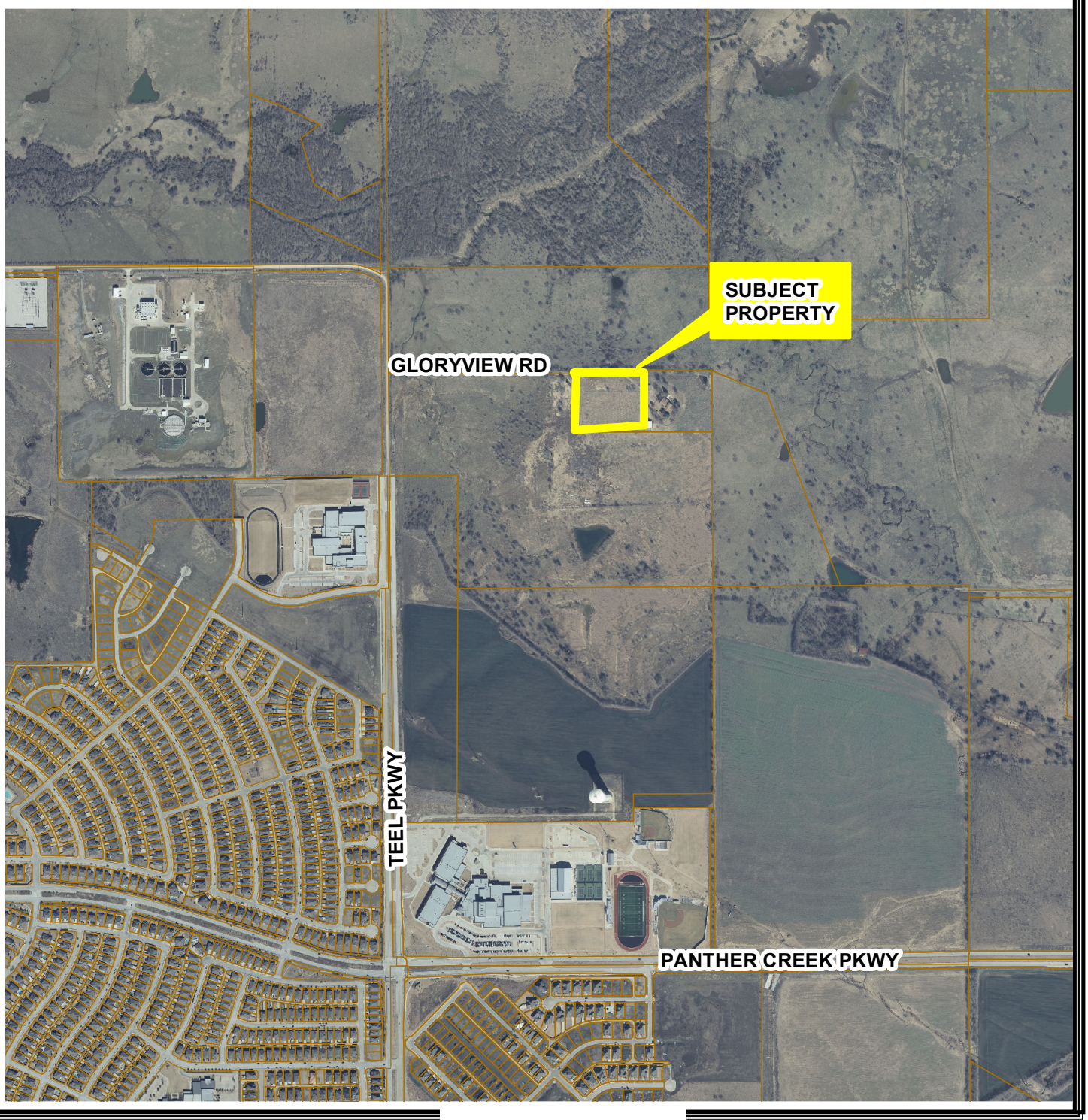
Legal Review: The City Attorney's Office will prepare the annexation ordinance if that is the City Council's direction.

Supporting Documents:

- Location Map

Staff Recommendation: The City Council should hold the public hearing and hear any comments on the proposed annexation.

A12-0003
MEP & PRR Company No. 5 Survey, Abstract No. 941



AGENDA ITEM #34.

FRISCO
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: **5/1/2012**

Agenda Caption: **Public Hearing: Annexation Case A12-0004. A proposed voluntary annexation of 363.4± acres in the Samuel Whittenberg Survey, Abstract No. 1510; the J.L. Saling Survey, Abstract No. 1675; the J. Bates Survey, Abstract No. 1620; the A.W. Robertson Survey, Abstract No. 1487; the F. Hawkins Survey, Abstract No. 582; and the W.P. Bates Survey, Abstract No. 73, Denton County, Texas, generally located on the south side of US Highway 380, 1,150± feet east of FM 423. Neighborhood #51.**

Action Requested: The City Council should hold the second public hearing and hear any comments regarding the proposed annexation.

Background Information: This is a voluntary annexation case submitted by Eland Energy. The property is adjacent to the City's corporate limits on the west and is vacant.

Board Review/Citizen Input: The City Council approved the resolution setting the public hearing dates on Tuesday, April 3, 2012. The first public hearing was held on Tuesday, May 1, 2012.

Alternatives: Not applicable.

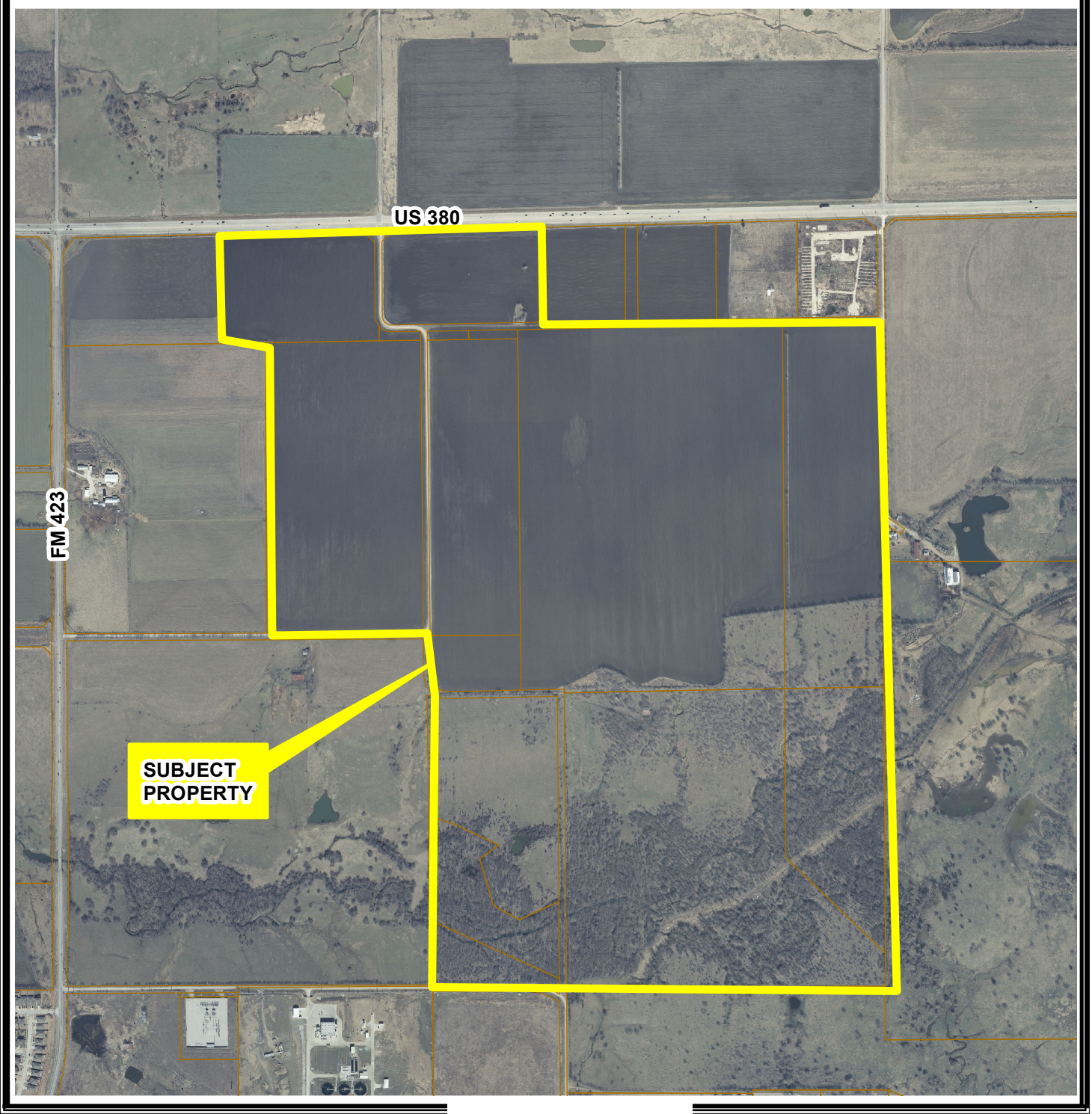
Financial Considerations: Not applicable.

Legal Review: The City Attorney's Office will prepare the annexation ordinance if that is the City Council's direction.

Supporting Documents:
- Location Map

Staff Recommendation: The City Council should hold the public hearing and hear any comments on the proposed annexation.

A12-0004
Eland Energy Tract



AGENDA ITEM #35.

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: **5/1/2012**

Agenda Caption: **Public Hearing: Annexation Case A12-0005. A proposed voluntary annexation of 2,816.04± acres in the Collin County School Land Survey, Abstract No. 148; the B.J. Naugle Survey, Abstract No. 669; the C. Rogers Survey, Abstract No. 1133; the W. Bates Survey, Abstract No. 90; the W. Bates Survey, Abstract No. 83; the MEP & PRR Survey, Abstract No. 921; the MEP & PRR Survey, Abstract No. 941; the C. Jackson Survey, Abstract No. 665; the Samuel Whittenberg Survey, Abstract No. 1510; the C. Jackson Survey, Abstract No. 665; the L. Neatherly Survey, Abstract No. 962; the L. Landrum Survey, Abstract No. 764; the J. Hogue Survey, Abstract No. 1714; and the C.L. Smith Survey, Abstract No. 1185, Denton and Collin Counties, Texas, generally located north of Panther Creek Parkway, south of US Highway 380, between FM 423 and Preston Road. Neighborhood Nos. 3, 48, 51, 52, & 53.**

Action Requested: The City Council should hold the second public hearing and hear any comments regarding the proposed annexation.

Background Information: This is a voluntary annexation case submitted by Bert Fields, Jr. The property is adjacent to the City's corporate limits on the south, east, and west and is vacant.

Board Review/Citizen Input: The City Council approved the resolution setting the public hearing dates on Tuesday, April 3, 2012. The first public hearing was held on Tuesday, May 1, 2012.

Alternatives: Not applicable.

Financial Considerations: Not applicable.

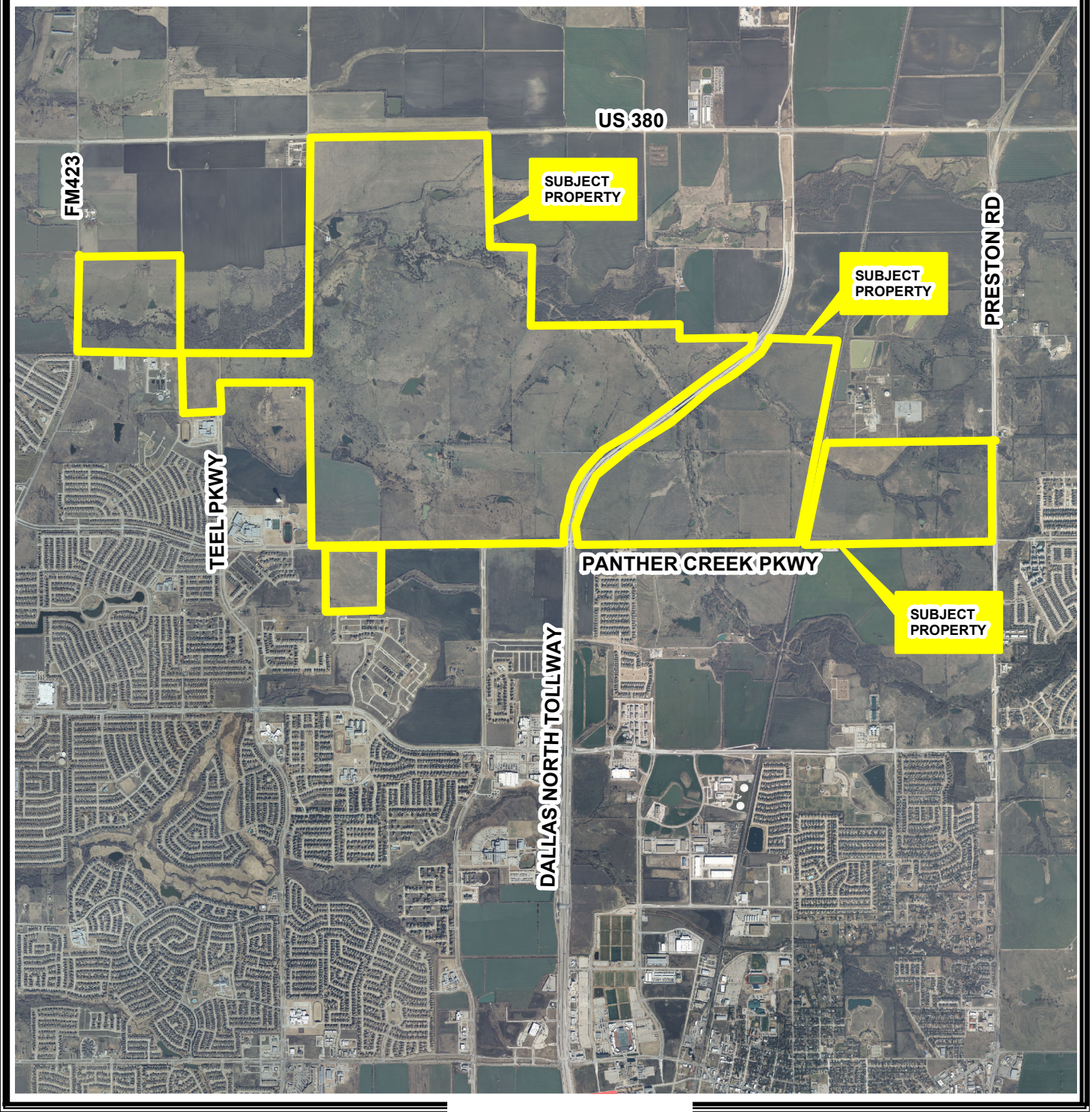
Legal Review: The City Attorney's Office will prepare the annexation ordinance if that is the City Council's direction.

Supporting Documents:

- Location Map

Staff Recommendation: The City Council should hold the public hearing and hear any comments on the proposed annexation.

A12-0005
Bert Fields Tract



AGENDA ITEM #36.

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: **5/1/2012**

Agenda Caption: **Public Hearing: Specific Use Permit SUP12-0005. A request for a Specific Use Permit for the expansion of a funeral home on four lots on 1.1± acres located on the north side of Main Street between Berkshire Drive and Hillside Drive and consider and act to direct staff to prepare an Ordinance of the same. Neighborhood #11. Zoned: Single Family-7.**

Action Requested: Hold the public hearing direct staff on preparation of an Ordinance.

Background Information: The applicant is requesting a Specific Use Permit to allow the expansion of a mortuary/funeral home. The applicant is proposing to utilize the lot immediately west of the funeral home for parking expansion.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on this request at their April 24, 2012 meeting and voted 5-0 to recommend approval of 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: The City Attorney's Office will prepare the Ordinance if that is the City Council's direction.

Supporting Documents:

- Planning & Zoning Commission Outcome Memo dated April 25, 2012.
- Staff report.
- Location Map
- Exhibits

Staff Recommendation: Recommended for approval as submitted.

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

April 25, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, April 24, 2012

Public Hearing -
Specific Use Permit: Crestview Addition - Third Installment, Block 6, Lots 5-8 (SUP12-0005)
Owner(s): Turrentine-Jackson-Morrow, Inc.

Description:
A request for a Specific Use Permit for the expansion of a funeral home on four lots on 1.1± acres located on the north side of Main Street between Berkshire Drive and Hillside Drive. Neighborhood #11. Zoned: Single Family-7. MW

Result/Action:

Approved: 5-0 (Trykoski & Dodson absent)
Denied:
Tabled:

ACTION:

The item was recommended for approval as submitted. Final approval requires action by the City Council.

MW/kj

cc:

Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	

April 24, 2012

Public Hearing -
Specific Use Permit: Crestview Addition - Third Installment, Block 6, Lots 5-8 (SUP12-0005)
Owner(s): Turrentine-Jackson-Morrow, Inc.

DESCRIPTION:

A request for a Specific Use Permit for the expansion of a funeral home on four lots on 1.1± acres located on the north side of Main Street between Berkshire Drive and Hillside Drive. Neighborhood #11. Zoned: Single Family-7. MW

HISTORY:

Ordinance No. 93-07-11 – This property was zoned Single Family-7 upon adoption of the 1993 Zoning Ordinance and Zoning Map. The property was platted in 1970.

Ordinance No. 11-08-29 – On August 1, 2011, the City Council adopted an ordinance amending the Zoning Ordinance to permit funeral homes in single family districts upon approval of Specific Use Permit with special conditions.

CASE OVERVIEW:

The applicant is requesting a Specific Use Permit to allow the expansion of a mortuary/funeral home. The applicant is proposing utilizing the lot immediately to the west of the funeral home for parking expansion. The surrounding land uses are as follows:

Direction	Land Use	Zoning	Comprehensive Plan
North	Residential	Single Family-7	Residential
East	Church	Single Family-7 w/SUP for a church	Residential
South	Central Fire Station	Planned Development-51-Retail	Residential
West	Church	Single Family-7	Residential

COMPATIBILITY CONSIDERATIONS:

When considering an application for a Specific Use Permit, the Planning & Zoning Commission may recommend and the City Council may establish conditions and regulations necessary to protect the health, safety, morals, and general welfare of the neighborhood and/or the City. These conditions include, but are not limited to:

- Means of ingress and egress to public streets –

  These items are shown on the preliminary site plan and comply with the Thoroughfare Standards.
- Provisions for drainage –

  Considerations have been made for a detention area on the expansion lot. Amount of detention required will be determined at the time of development.
- Adequate off-street parking –

  The additional parking being proposed will alleviate parking restraints for the funeral home and will allow for better circulation on the site.
- Protective screening, landscaping, and open space –

  Screening is not required between adjacent residential zoning; however, a new six-foot screening fence will screen the parking area from the residential development to the north. The applicant has also proposed a low masonry wall with landscaping consisting of shrubs along Main Street.

SUMMARY:

Staff is in support of this request as it is allowed in residential zoning with a Specific Use Permit and is a compatible use for the surrounding properties.

RECOMMENDATION:

Recommended for approval as submitted.

SUP12-0005
Turrentine-Jackson-Morrow Expansion
Block 6, Lots 5-8

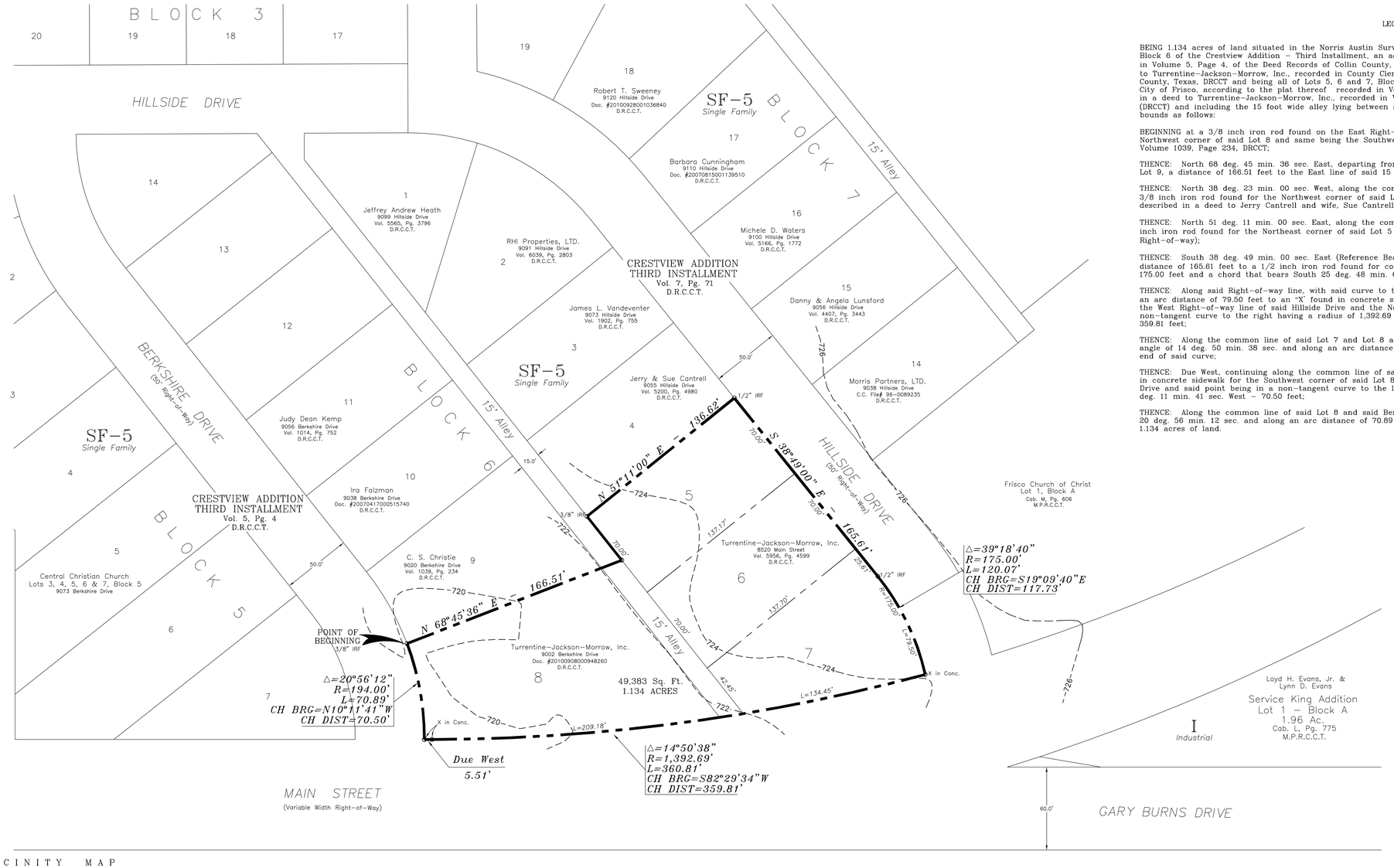


N

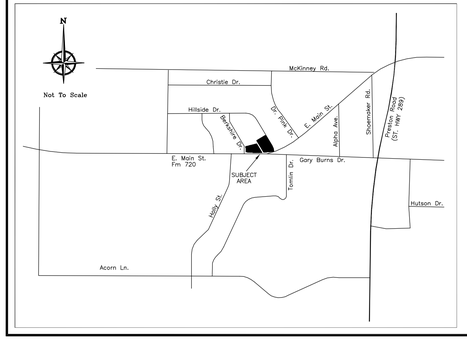
SCALE: 1" = 40'

FLOOD PLAIN STATEMENT

It is the opinion of this Surveyor, that no part of the subject property shown hereon lies within the 100 Year Flood Plain according to the information given in the Map No. 48085C045 J of Federal Emergency Management Insurance Rate Map, Effective Date: June 2, 2009.



VICINITY MAP



LEGAL DESCRIPTION

BEING 1.134 acres of land situated in the Norris Austin Survey, Abstract No. 5 of Collin County, Texas and being all of Lot 8, Block 6 of the Crestview Addition - Third Installment, an addition to the City of Frisco, according to the plat thereof recorded in Volume 5, Page 4, of the Deed Records of Collin County, Texas (DRCCT) and being that same tract of land described in a deed to Turrentine-Jackson-Morrow, Inc., recorded in County Clerk's Document No. 20100908000948260, of the Deed Records of Collin County, Texas, DRCCT and being all of Lots 5, 6 and 7, Block 6 of the Crestview Addition - Third Installment, an addition to the City of Frisco, according to the plat thereof recorded in Volume 7, Page 71, DRCCT and being that same tract of land described in a deed to Turrentine-Jackson-Morrow, Inc., recorded in Volume 5956, Page 4599, of the Deed Records of Collin County, Texas (DRCCT) and including the 15 foot wide alley lying between said parcels and being more particularly described by metes and bounds as follows:

BEGINNING at a 3/8 inch iron rod found on the East Right-of-way line of Berkshire Drive (50' wide Right-of-way), for the Northwest corner of said Lot 8 and same being the Southwest corner of Lot 9 as described in a deed to C.S. Christie, recorded in Volume 1039, Page 234, DRCCT;

THENCE: North 68 deg. 45 min. 36 sec. East, departing from said Berkshire Drive and along the common line of said Lot 8 and Lot 9, a distance of 166.51 feet to the East line of said 15 foot wide alley and the West line of said Lot 5, Block 6;

THENCE: North 38 deg. 23 min. 00 sec. West, along the common line of said Lot 5 and said alley, a distance of 40.38 feet to a 3/8 inch iron rod found for the Northwest corner of said Lot 5 and same being the Southwest corner of Lot 4, Block 6 as described in a deed to Jerry Cantrell and wife, Sue Cantrell, recorded in Volume 5200, Page 4980, DRCCT;

THENCE: North 51 deg. 11 min. 00 sec. East, along the common line of said Lot 4 and Lot 5, a distance of 136.62 feet to a 1/2 inch iron rod found for the Northeast corner of said Lot 5 on the West Right-of-way line of Hillside Drive (50' wide Right-of-way);

THENCE: South 38 deg. 49 min. 00 sec. East (Reference Bearing), along the West Right of-way line of said Hillside Drive, a distance of 165.61 feet to a 1/2 inch iron rod found for corner at the beginning of a curve to the right, having a radius of 175.00 feet and a chord that bears South 25 deg. 48 min. 08 sec. East - 78.82 feet;

THENCE: Along said Right-of-way line, with said curve to the right, through a central angle of 26 deg. 01 min. 43 sec. and along an arc distance of 79.50 feet to an "X" found in concrete sidewalk for the Southeast corner of said Lot 7 at the intersection of the West Right-of-way line of said Hillside Drive and the North Right-of-way line of Main Street and said point also being in a non-tangent curve to the right having a radius of 1,392.69 feet and a chord that bears South 82 deg. 29 min. 34 sec. West - 359.81 feet;

THENCE: Along the common line of said Lot 7 and Lot 8 and said Main Street, with said curve to the right, through a central angle of 14 deg. 50 min. 38 sec. and along an arc distance of 360.81 feet to an "X" found for corner in concrete sidewalk at the end of said curve;

THENCE: Due West, continuing along the common line of said Lot 8 and said Main Street, a distance of 5.51 feet to an "X" found in concrete sidewalk for the Southwest corner of said Lot 8 on the East Right-of-way line of the above mentioned Berkshire Drive and said point being in a non-tangent curve to the left, having a radius of 194.00 feet and a chord that bears North 10 deg. 11 min. 41 sec. West - 70.50 feet;

THENCE: Along the common line of said Lot 8 and said Berkshire Drive, with said curve to the left, through a central angle of 20 deg. 56 min. 12 sec. and along an arc distance of 70.89 feet to the POINT OF BEGINNING and containing 49,383 square feet or 1.134 acres of land.

SPECIFIC USE PERMIT

EXHIBIT A: for SUP# 12-0005

1.134 Acres
Being
LOTS 5, 6, 7 and 8 BLOCK 6
CRESTVIEW ADDITION-THIRD INSTALLMENT
CITY OF FRISCO
NORRIS AUSTIN SURVEY, ABST. No. 5
COLLIN COUNTY, TEXAS

OWNER	SURVEYOR	APPLICANT
Turrentine-Jackson-Morrow, Inc.	Lawrence H. Ringley, R.P.L.S.	Turrentine-Jackson-Morrow, Inc.
P.O. Box 1007	410 N. Tennessee St.	P.O. Box 1007
McKinney, Texas 75070	McKinney, Texas 75069	McKinney, Texas 75070
972-542-2601	972-562-1266	972-542-2601

RINGLEY & ASSOCIATES, INC.
SURVEYING • MAPPING • PLANNING
COMPUTER AIDED DRAFTING & DESIGN
701 S. Tennessee - McKinney, Texas 75069
972-542-1266

Drawn by	Date	Scale	Job	Title	Sheet
Mark Stab	04/10/12	1" = 40'	11118	11118-SUP.DWG	1 of 1

AGENDA ITEM #36.

SF-7
SINGLE FAMILY

12

11

CRESTVIEW ADDITION
THIRD INSTALLMENT
Vol. 5, Pg. 4
D.R.C.C.T.

BLOCK 6

10

Ira Falzman
9038 Berkshire Drive
Doc. #20070417000515740
D.R.C.C.T.

15' ALLEY

BERKSHIRE DRIVE
(50' RIGHT-OF-WAY)

9

C. S. Christie
9020 Berkshire Drive
Vol. 1039, Pg. 234
D.R.C.C.T.

7

James L. Vandeventer
9073 Hillside Drive
Vol. 1902, Pg. 755
D.R.C.C.T.

3

CRESTVIEW ADDITION
THIRD INSTALLMENT
Vol. 7, Pg. 71
D.R.C.C.T.

Jerry & Sue Cantrell
9055 Hillside Drive
Vol. 5200, Pg. 4980
D.R.C.C.T.

4

SF-7
SINGLE FAMILY

5

Turrentine-Jackson-Morrow, Inc.
Vol. 5956, Pg. 4599
D.R.C.C.T.

15

Danny & Angela Lunsford
9056 Hillside Drive
Vol. 4407, Pg. 3443
D.R.C.C.T.

14

Morris Partners, LTD.
9038 Hillside Drive
C.C. File# 96-0089235
D.R.C.C.T.

Frisco Church of Christ
Lot 1, Block A
Cab. M, Pg. 606
M.P.R.C.C.T.

HILLSIDE DRIVE
(50' RIGHT-OF-WAY)

1/2" IRF

3/8" IRF

N 51°11'00" E - 136.62'

S 39°40'00" E - 185.61'

N 38°23'00" W - 227.92'

S 38°23'00" E - 138.21'

N 68°45'36" E - 150.80'

TRACT 1 = 0.676 AC

3603 SQ. FEET
0.083 ACRES

6

8520 W. Main St.
EXISTING FUNERAL HOME = 4,417 GSF

7

8

TOTAL NEW PARKING
SPACES = 33

TRACT 2 = 0.411 AC

Turrentine-Jackson-Morrow, Inc.
Doc. #20100908000948260
D.R.C.C.T.

9002 Berkshire Drive

PROPOSED
RETENTION BASIN

FIRE LANE

EX. ASPHALT

ASPHALT

CONCRETE

CONCRETE SIDEWALK

CONCRETE SIDEWALK

EX. CONCRETE
SIDEWALK

CONCRETE SIDEWALK

CONCRETE SIDEWALK

NEW PARKING LOT
STRIPING

EXISTING GARAGE
ACCESS

REMOVE EXISTING
WOOD FENCE

NEW 6'-0" HIGH
SCREENING FENCE

RELOCATE EXISTING
GUARD RAIL AND
DOUBLE CHECK VALVE

REMOVE EXISTING
BUILDING

HEDGE SCREEN

WATER
RESOURCE
ZONE

LOW MASONRY
WALL W/ LANDSCAPING

LOW MASONRY
WALL W/ LANDSCAPING

REMOVE EXISTING WOOD FENCE

REMOVE EXISTING WOOD FENCE

REMOVE EXISTING WOOD FENCE

NOTE: NO CURBING
IN ALLEY

DEDICATED 10'X10'
ROW CORNER

DEDICATED 15'X15'
ROW CORNER

ONE WAY

ONE WAY

CONCRETE SIDEWALK

2-A/C UNITS
INSIDE WOOD FENCE

GRATE INLET
(G)

8" LIVE OAK

8" OAK

8" LIVE OAK

8" LIVE OAK

8" LIVE OAK

8" OAK

12' MIN. DRIVE

INLET

INLET

INLET

INLET

SANITARY SEWER
MANHOLE

GAS
MARKER

GAS
MARKER

MAILBOX

MAILBOX

TRAFFIC
SIGNAL BOX

CITY OF FRISCO
FOC MARKER

3' BURIED
ELECTRIC
CONDUIT

ELECTRIC
METER

ELECTRIC
METER

EX.
BFR

BFR

BFR

AGENDA ITEM #37.

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: **5/1/2012**

Agenda Caption: **Public Hearing: Specific Use Permit SUP12-0006. A request for a Specific Use Permit for an automobile dealership on one lot on 7.3± acres on the northwest corner of SH 121 and Ohio Drive and consider and act to direct staff to prepare an Ordinance of the same. Neighborhood #29. Zoned: Highway.**

Action Requested: Hold the public hearing and direct staff in the preparation of an Ordinance.

Background Information: The applicant is requesting a Specific Use Permit for the development of an automobile dealership.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on the request at their April 24, 2012 meeting and voted 5-0 to recommend approval of 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: The City Attorney's Office will prepare the Ordinance if that is the City Council's direction.

Supporting Documents:

- Planning & Zoning Commission Outcome Memo dated April 25, 2012.
- Staff report.
- Location Map
- Exhibits

Recommendation: Recommended for approval as submitted.

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

April 25, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, April 24, 2012

Public Hearing -
Specific Use Permit: George Mixon Addition, Block A, Lot 16R (SUP12-0006)
Owner(s): Frisco Summit LP

Description:
A request for a Specific Use Permit for an automobile dealership on one lot on 7.3± acres on the northwest corner of SH 121 and Ohio Drive. Neighborhood #29. Zoned: Highway. MW

Result/Action:

Approved: 5-0 (Trykoski & Dodson absent)
Denied:
Tabled:

ACTION:

The item was recommended for approval as submitted. Final approval requires action by the City Council.

MW/kj

cc:

Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
Paul Knippel	Phillip Climer	Poly Birika	

April 24, 2012

Public Hearing -
Specific Use Permit: George Mixon Addition, Block A, Lot 16R (SUP12-0006)
Owner(s): Frisco Summit LP

DESCRIPTION:

A request for a Specific Use Permit for an automobile dealership on one lot on 7.3± acres on the northwest corner of SH 121 and Ohio Drive. Neighborhood #29. Zoned: Highway. MW

HISTORY:

Ordinance No. 93-07-11 – This property was zoned Highway upon adoption of the 1993 Zoning Ordinance and Zoning Map. Prior to 1993, the property was zoned Light Commercial.

CASE OVERVIEW:

The applicant is requesting a Specific Use Permit to allow the development of an automobile dealership. The surrounding land uses are as follows:

Direction	Land Use	Zoning	Comprehensive Plan
North	Vacant	Highway	Retail
East	Vacant	Highway	Retail
South	Retail	(City of Plano) Regional Commercial	(City of Plano) Major Corridor Development
West	Restaurant	Highway	Retail

COMPATIBILITY CONSIDERATIONS:

When considering an application for a Specific Use Permit, the Planning & Zoning Commission may recommend and the City Council may establish conditions and regulations necessary to protect the health, safety, morals, and general welfare of the neighborhood and/or the City.

Automobile Dealerships are considered an appropriate use along highways. There are no residential uses adjacent to the site. The applicant has worked with staff to provide the necessary access and compatibility with adjacent properties. The applicant has also provided preliminary façade plans with the Specific Use Permit application that will be attached to the Ordinance.

SUMMARY:

Staff is in support of this request as it is allowed under the Highway zoning with a Specific Use Permit and is a compatible use for the surrounding properties.

RECOMMENDATION:

Recommended for approval as submitted.

SUP12-0006
Pat Lobb Dealership
Block A, Lot 16R



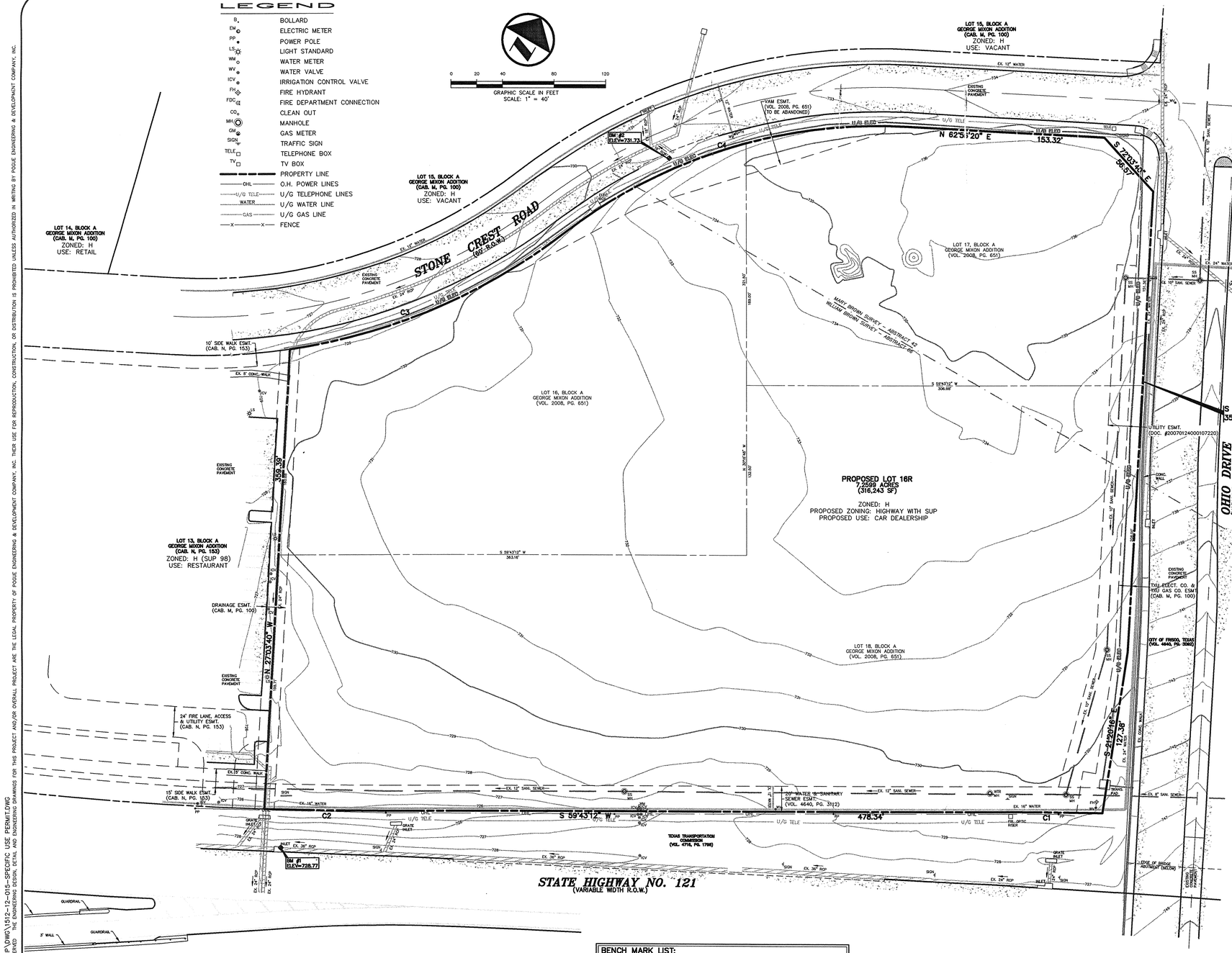
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TWILLIAMS - 04/10/2012 - 8:56AM
N:\USER\TWILLIAMS\PROJECTS\PAT LOBB DEALERSHIP\DWG\1512-12-015-SPECIFIC USE PERMIT.DWG
LAST SAVED BY: TWILLIAMS

LEGEND

B	BOLLARD
EM	ELECTRIC METER
PP	POWER POLE
LS	LIGHT STANDARD
WM	WATER METER
WV	WATER VALVE
ICV	IRRIGATION CONTROL VALVE
FH	FIRE HYDRANT
FDC	FIRE DEPARTMENT CONNECTION
CO	CLEAN OUT
MH	MANHOLE
GM	GAS METER
SIGN	TRAFFIC SIGN
TELE	TELEPHONE BOX
TV	TV BOX
	PROPERTY LINE
OHL	O.H. POWER LINES
U/G TELE	U/G TELEPHONE LINES
WATER	U/G WATER LINE
GAS	U/G GAS LINE
X X	FENCE

GRAPHIC SCALE IN FEET
SCALE: 1" = 40'



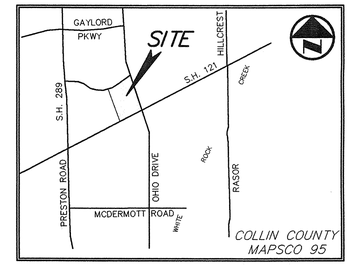
CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C1	01°30'51"	2912.79'	76.98'	38.49'	S 60°28'37" W	76.97'
C2	01°55'22"	2816.79'	94.53'	47.27'	N 60°40'53" E	94.52'
C3	29°37'18"	455.00'	235.23'	120.31'	N 36°37'15" E	232.62'
C4	41°07'44"	395.00'	283.54'	148.19'	N 42°22'28" E	277.50'

BENCH MARK LIST:

BENCHMARK #1
SQUARE CUT ON CONCRETE INLET LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 121. 700'± WEST OF THE INTERSECTION OF THE CENTERLINE OF OHIO DRIVE AND STATE HIGHWAY 121.
ELEVATION = 728.77

BENCHMARK #2
SQUARE CUT ON CONCRETE INLET LOCATED ON THE SOUTH SIDE OF STONE CREST ROAD. 450'± WEST OF THE INTERSECTION OF OHIO DRIVE AND STONE CREST ROAD.
ELEVATION = 731.73

BENCHMARK #3 (CITY OF FRISCO STATION #22)
STANDARD CITY OF FRISCO MONUMENT LOCATED APPROXIMATE. 275' EAST OF THE INTERSECTION OF DALLAS PKWY AND WARREN PKWY IN THE CENTER MEDIAN OF WARREN PKWY
ELEVATION = 707.13



VICINITY MAP
NOT TO SCALE

DESCRIPTION OF PROPERTY SURVEYED

DESCRIPTION, of a 7.2599 acre tract of land situated in the Mary Brown Survey, Abstract No. 42 and the William Brown Survey, Abstract No. 66, Collin County, Texas; said tract being all of Lots 16, 17 & 18, Block A, George Mixon Addition, an addition to the City of Frisco, Texas according to the plat recorded in Volume 2008, Page 651 of the Plat Records of Collin County, Texas; said 7.2599 acre tract being more particularly described as follows:

BEGINNING, at a 5/8-inch iron rod with "Pogue Eng & Dev" cap set for corner at the east end of a right-of-way corner clip at the intersection of the southwest right-of-way line of Ohio Drive (a variable width right-of-way) and the southeast right-of-way line of Stone Crest Road (a 60-foot wide right-of-way);

THENCE, along the said southwest line of Ohio Drive and the northeast line of said George Mixon Addition, the following two (2) calls:

South 27 degrees, 03 minutes, 40 seconds East, at a distance of 151.36 feet passing the easternmost corner of said Lot 17, Block A and the northernmost corner of said Lot 18, Block A, continuing in all a total distance of 359.36 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found at an angle point;

South 21 degrees, 20 minutes, 16 seconds East, a distance of 127.38 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner at the intersection of the said southwest line of Ohio Drive and the northwest right-of-way line of State Highway No. 121 (a variable width right-of-way); said point also being the easternmost corner of said Lot 18, Block A and the beginning of a non-tangent curve to the left;

THENCE, departing the said southwest line of Ohio Drive and the said northeast line of said George Mixon Addition and along the said northwest line of State Highway No. 121 and the southeast line of said Lot 18, Block A, the following three (3) calls:

In a southwesterly direction, along said curve to the left, having a central angle of 01 degrees, 30 minutes, 51 seconds, a radius of 2912.79 feet, a chord bearing and distance of South 60 degrees, 28 minutes, 37 seconds West, 76.97 feet, an arc distance of 76.98 feet to a point at the end of said curve, from which a brass disk found bears South 33 degrees, 08 minutes West, a distance of 1.1 feet;

South 59 degrees, 43 minutes, 12 seconds West, a distance of 478.34 feet to a point at the beginning of a tangent curve to the right, from which a brass disk found bears South 49 degrees, 54 minutes West, a distance of 1.3 feet;

In a southwesterly direction, along said curve to the right, having a central angle of 01 degrees, 55 minutes, 22 seconds, a radius of 2816.79 feet, a chord bearing and distance of South 60 degrees, 40 minutes, 53 seconds West, 94.52 feet, an arc distance of 94.53 feet to a point for corner, from which a 5/8-inch iron rod found bears South 47 degrees, 07 minutes West, a distance of 0.4 feet; said point also being the southernmost corner of said Lot 18, Block A and the easternmost corner of Lot 13, Block A, George Mixon Addition, an addition to the City of Frisco, Texas according to the plat recorded in Cabinet N, Page 153 of the said Plat Records;

THENCE, North 27 degrees, 03 minutes, 40 seconds West, departing the said northwest line of State Highway No. 121 and the said southeast line of Lot 18, Block A and along the common line between said Lot 18, Block A and said Lot 13, Block A, at a distance of 198.71 passing the westernmost corner of said Lot 18, Block A and the southernmost corner of said Lot 16, Block A, continuing along the common line between said Lot 16, Block A and said Lot 13, Block A, in all a total distance of 359.39 feet to a 5/8-inch iron rod with "Bury & Partners" cap found for corner in the said southeast line of Stone Crest Road; said point also being the westernmost corner of said Lot 16, block A, the northernmost corner of said Lot 13, Block A and the beginning of a non-tangent curve to the left;

THENCE, departing the said common line between Lot 16, Block A and Lot 13, Block A and along the said southeast line of Stone Crest Road and the northwest line of first referenced George Mixon Addition, the following three (3) calls:

In a northeasterly direction, along said curve to the left, having a central angle of 29 degrees, 37 minutes, 18 seconds, a radius of 455.00 feet, a chord bearing and distance of North 36 degrees, 37 minutes, 15 seconds East, 232.62 feet, an arc distance of 235.23 feet to a 1/2-inch iron rod with "Mcak Assoc." cap found at the end of said curve; said point being the beginning of a reverse curve to the right;

In a northeasterly direction, along said curve to the right, having a central angle of 41 degrees, 07 minutes, 44 seconds, a radius of 395.00 feet, a chord bearing and distance of North 42 degrees, 22 minutes, 28 seconds East, 277.50 feet, at an arc distance of 157.63 feet passing the northernmost corner of said Lot 16, Block A and the westernmost corner of said Lot 17, Block A, continuing in all a total arc distance of 283.54 feet to a 1/2-inch iron rod found at the end of said curve;

North 62 degrees, 56 minutes, 20 seconds East, a distance of 153.32 feet to a 5/8-inch iron rod [illegible] Eng & Dev" cap set for corner; said point also being at the west end of said right-of-way corner c

THENCE, South 72 degrees, 03 minutes, 40 seconds East, departing the said southeast line of Stone Cr [illegible] the northwest line of first referenced George Mixon Addition and along the said right-of-way corner clip, [illegible] 56.57 feet to the POINT OF BEGINNING;

CONTAINING, 316,243 square feet or 7.2599 acres of land, more or less.

STATE OF TEXAS
REGISTERED
ROMAN L. GROYSMAN
5864
PROFESSIONAL
LAND SURVEYOR

R. Groysman
Roman L. Groysman
Registered Professional Land Surveyor
No. 5864

EXHIBIT A: SUP12-0006
SPECIFIC USE PERMIT
LOTS 16, 17 & 18, BLOCK A
GEORGE MIXON ADDITION
AN ADDITION TO THE CITY OF FRISCO, TEXAS
AND BEING OUT OF THE
MARY BROWN SURVEY, ABSTRACT No. 42 AND
WILLIAM BROWN SURVEY, ABSTRACT No. 66
COLLIN COUNTY, TEXAS

NO.	DATE	REVISION / DESCRIPTION		
DESIGN	DRAWN	DATE	PI NUMBER	
AWS	WTW	04-10-2012	1512-12-015	

OWNER
FRISCO SUMMIT LP
8901 GOVERNORS ROW
DALLAS, TEXAS 75247
MR. STAN GRAFF
(214) 951-7434 PHONE

DEVELOPER
PAT LOBB CHRYSLER DODGE JEEP RAM
3350 S. CENTRAL EXPRESSWAY
McKINNEY, TEXAS 75070
MR. PAT LOBB

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P.E. No.: 95871
Date: 04-10-2012
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ENGINEERING & DEVELOPMENT COMPANY, INC.
1512 BRAY CENTRAL DRIVE
SUITE 100
McKINNEY, TEXAS 75069
(214) 544-8880 PHONE
(214) 544-8882 FAX
www.PogueEngineering.com
TX BOARD PROF. ENGINEERS, CERT. #F-000481; TX BOARD PROF. LAND SURVEYING, CERT. 100421-00

SPECIFIC USE PERMIT	SHEET NO.
PAT LOBB DEALERSHIP BLOCK A, LOT 16R, GEORGE MIXON ADDITION MARY BROWN SURVEY, ABSTRACT NO. 42 AND THE WILLIAM BROWN SURVEY, ABSTRACT NO. 66 CITY OF FRISCO, TEXAS	SUP

DWG NO: 1512-12-015-SPECIFIC USE PERMIT.DWG

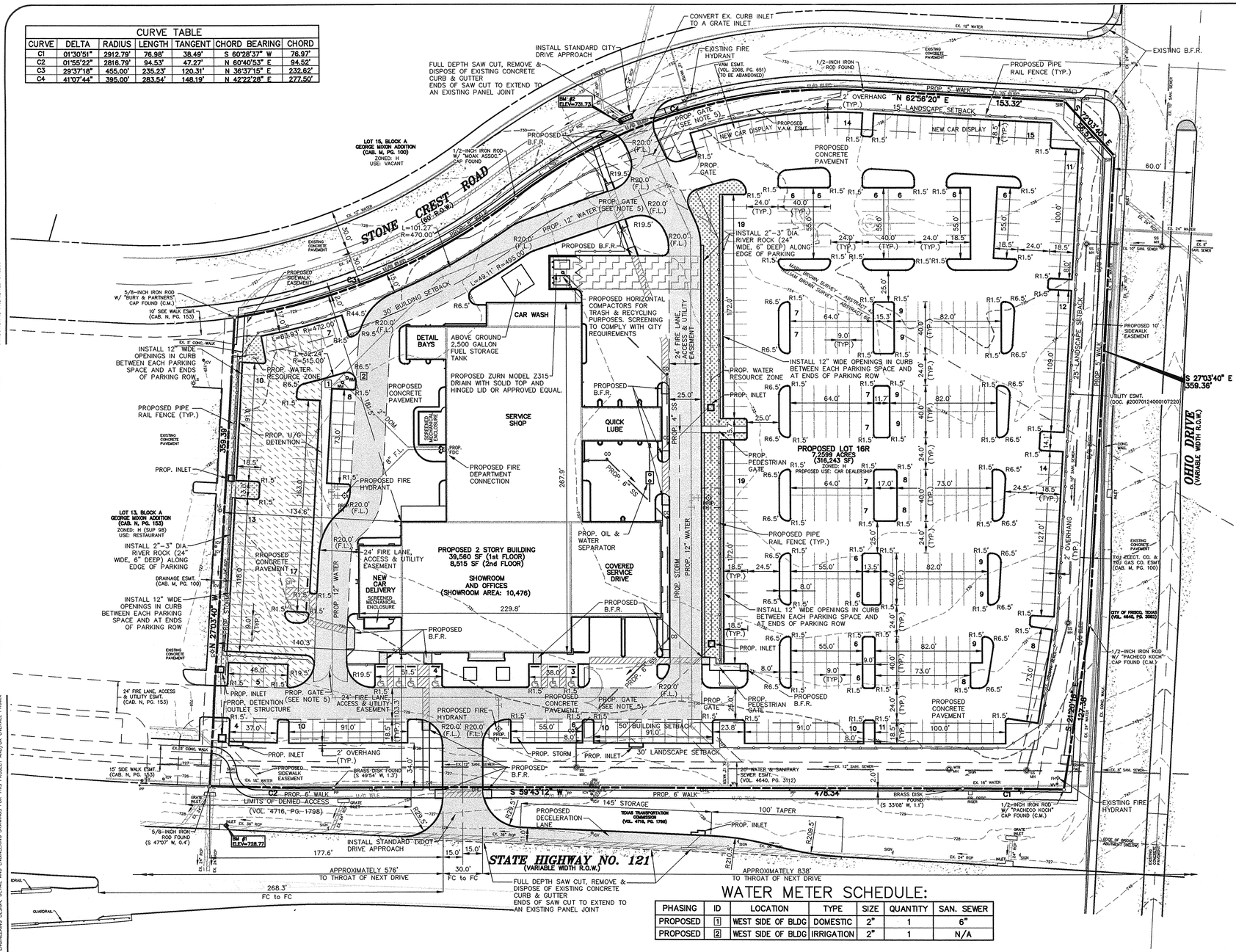
PAT LOBB DEALERSHIP - FRISCO

Packet Page -654-

AGENDA ITEM #37.

Packet Page -655-

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C1	01°30'51"	2912.79'	76.98'	38.49'	S 60°28'37" W	76.97'
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WATER METER SCHEDULE:

PHASING	ID	LOCATION	TYPE	SIZE	QUANTITY	SAN. SEWER
PROPOSED	1	WEST SIDE OF BLDG	DOMESTIC	2"	1	6"
PROPOSED	2	WEST SIDE OF BLDG	IRRIGATION	2"	1	N/A

BENCH MARK LIST:

BENCHMARK #1
SQUARE CUT ON CONCRETE INLET LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 121. 700'± WEST OF THE INTERSECTION OF THE CENTERLINE OF OHIO DRIVE AND STATE HIGHWAY 121.
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BENCHMARK #3 (CITY OF FRISCO STATION #22)
STANDARD CITY OF FRISCO MONUMENT LOCATED APPROXIMATE. 275' EAST OF THE INTERSECTION OF DALLAS PKWY AND WARREN PKWY IN THE CENTER MEDIAN OF WARREN PKWY
ELEVATION = 707.13

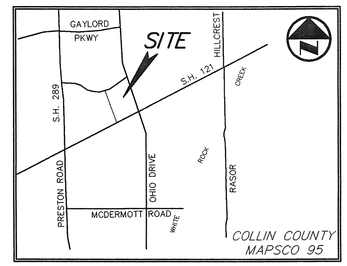
NOTES:
1. ALL DIMENSIONS ARE FROM BACK OF CURB TO BACK OF CURB, UNLESS OTHERWISE NOTED.
2. NO PROTECTED TREES EXIST ON SITE. SEVERAL EXISTING HACKBERRY TREES WILL BE REMOVED.
3. NO 100-YR FEMA FLOODPLAIN EXISTS ON THIS SITE.
4. ALL PARKING STALLS ARE 9'x20' UNLESS OTHERWISE NOTED. STALLS 18' DEEP HAVE A 2' OVERHANG OFFSET.
5. ANY GATES INSTALLED ACROSS THE FIRE LANE MUST BE INSTALLED IN ACCORDANCE TO THE APPLICABLE FIRE CODE. GATES MUST HAVE AN OPTICOM RECEIVER, A KS-2 SWITCH AND A MANUAL RELEASE TO ALLOW FOR ADEQUATE FIRE DEPARTMENT ACCESS.

CITY OF FRISCO SITE PLAN NOTES
1. Any revision to this plan will require city approval and will require revisions to any corresponding plans to avoid conflicts between plans.
2. Open storage, where permitted, shall be screened in accordance with the Comprehensive Zoning Ordinance.
3. Buildings of 5,000 square feet or greater shall be 100% fire sprinkled. Alternative fire protection measures may be approved by the Fire Department.
4. All signage is subject to Building Inspection Division approval.
5. All fences and retaining walls shall be shown on the site plan and are subject to Building Inspection Division approval.

SITE DATA SUMMARY TABLE

ITEM	LOT 16R
ZONING	HIGHWAY WITH SUP
PROPOSED USE	AUTOMOBILE SALES/LEASING
LOT AREA (SF/ACRES)	316,243 / 7.2599
BUILDING (SF)	48,075
BUILDING HT (FT/STORIES)	34 MAX / 2
LOT COVERAGE (%)	13% (MAX 60%)
FLOOR AREA RATIO	0.15 : 1 (MAX 0.60 : 1)
REQUIRED PARKING FOR SHOWROOM	1 / 500 SF = 10,476 / 500 = 21
REQUIRED PARKING FOR CAR LOT	1 / 1000 SF = 316,243 / 1000 = 316
TOTAL PARKING REQUIRED	21 + 316 = 337
CUSTOMER PARKING PROVIDED	42
NEW CAR DISPLAY PROVIDED	322
EMPLOYEE/SERVICE PARKING PROVIDED	55
TOTAL PARKING PROVIDED	419
HANDICAPPED PARKING REQUIRED	9
HANDICAPPED PARKING PROVIDED	9
OPEN SPACE PROVIDED (REQUIRED)	8.2% (7%)
WATER RESOURCE ZONE REQUIRED	172,914 SF * 5% = 8,646 SF
WATER RESOURCE ZONE PROVIDED (SF)	8,870
IMPERVIOUS AREA (SF)	246,209

NOTE: HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS



VICINITY MAP
NOT TO SCALE

GRAPHIC SCALE IN FEET
SCALE: 1" = 40'

LEGEND

B	BOLLARD
EM	ELECTRIC METER
PP	POWER POLE
LS	LIGHT STANDARD
WM	WATER METER
WV	WATER VALVE
ICV	IRRIGATION CONTROL VALVE
FH	FIRE HYDRANT
FDC	FIRE DEPARTMENT CONNECTION
CO	CLEAN OUT
MH	MANHOLE
GM	GAS METER
TSC	TRAFFIC SIGNAL CONTROL
TSP	TRAFFIC SIGNAL POLE
SIGN	TRAFFIC SIGN
TELE	TELEPHONE BOX
TV	TV BOX
FP	FLAG POLE
L.A.	LANDSCAPE AREA
	PROPERTY LINE
OHL	O.H. POWER LINES
U/G TELE	U/G TELEPHONE LINES
WATER	U/G WATER LINE
GAS	U/G GAS LINE
x—x	FENCE
(C.M.)	CONTROLLING MONUMENT
SIR	5/8-INCH IRON ROD WITH "POGUE ENG & DEV" CAP SET

PAVEMENT LEGEND
- STANDARD PAVEMENT
- FIRE LANE PAVEMENT
- DUMPSTER PAD AND APRON
- UNDERGROUND DETENTION
- WATER RESOURCE ZONE

NOTE:
ALL DIMENSIONS ARE FROM BACK OF CURB TO BACK OF CURB, UNLESS OTHERWISE NOTED.

EXHIBIT B SUP: SUP12-0006
SPECIFIC USE PERMIT
LOTS 16, 17 & 18, BLOCK A
GEORGE MIXON ADDITION
AN ADDITION TO THE CITY OF FRISCO, TEXAS
AND BEING OUT OF THE
MARY BROWN SURVEY, ABSTRACT No. 42 AND
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NO.	DATE	REVISION / DESCRIPTION		
DESIGN	DRAWN	DATE	PI NUMBER	
AWS	WTW	04-16-2012	1512-12-015	

OWNER
FRISCO SUMMIT LP
8901 GOVERNORS ROW
DALLAS, TEXAS 75247
MR. STAN GRAFF
(214) 951-7434 PHONE

DEVELOPER
PAT LOBB CHRYSLER DODGE JEEP RAM
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McKINNEY, TEXAS 75070
MR. PAT LOBB

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Engineer: ARLYN W. SAMUELSON, P.E.
P.E. No.: 95877
Date: 04-16-2012

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SUITE 100
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TX BOARD PROF. ENGINEERS, CERT. #F-000481; TX BOARD PROF. LAND SURVEYING, CERT. 100421-00

EXHIBIT B SUP
PAT LOBB DEALERSHIP
BLOCK A, LOT 16R, GEORGE MIXON ADDITION
MARY BROWN SURVEY, ABSTRACT NO. 42 AND THE
WILLIAM BROWN SURVEY, ABSTRACT NO. 66
CITY OF FRISCO, TEXAS

SHEET NO. SUP

DWG NO: 1512-12-015-SITE PLAN.DWG

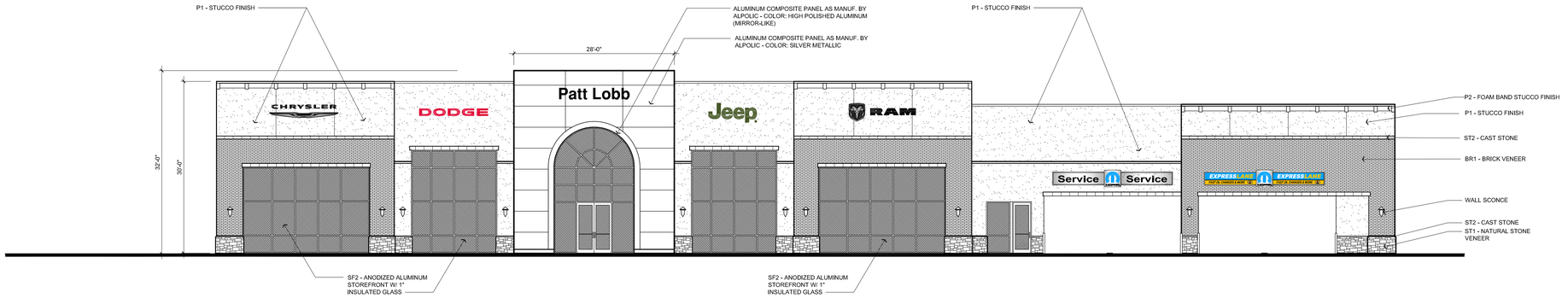
PAT LOBB DEALERSHIP - FRISCO

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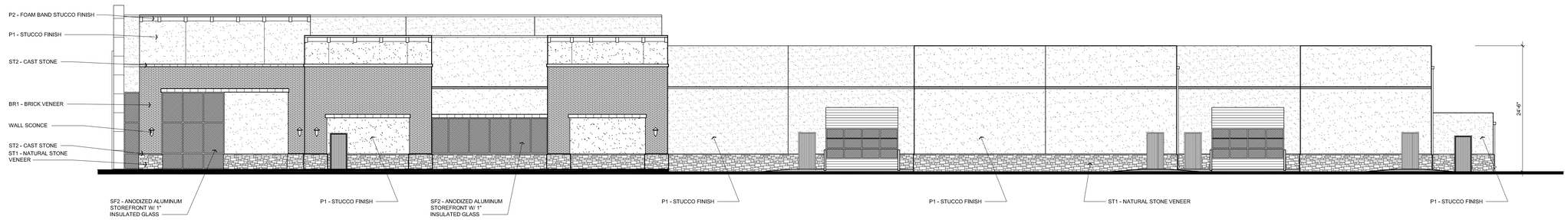
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AGENDA ITEM #37.

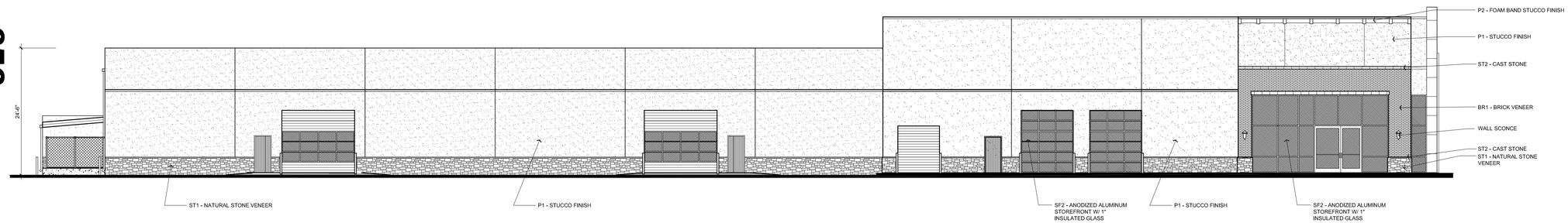
Packet Page -656-



PROPOSED EAST ELEVATION 3/32" = 1'-0" 04

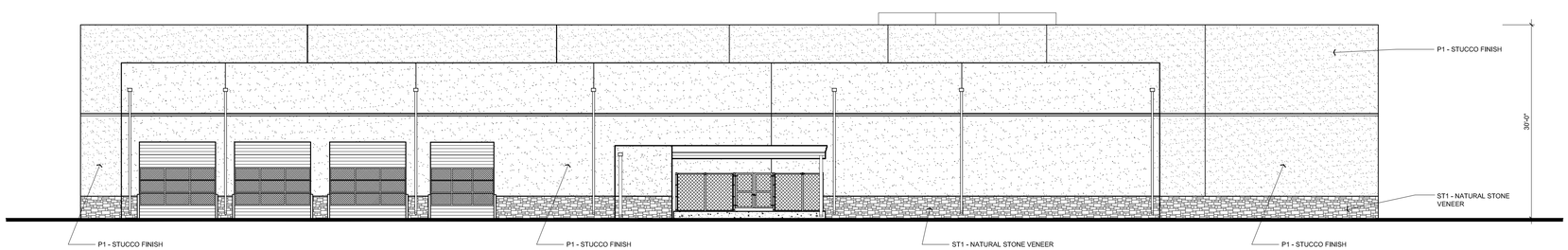


PROPOSED NORTH ELEVATION 3/32" = 1'-0" 03



BR-1	BRICK
MANUFACTURER: ACME BRICK VENDOR CONTACT: JUSTIN STERNA 972.739.2007	
COLOR: SHADOWBROOK TEXTURE: VELOUR MORTAR: STANDARD BUFF MORTAR - - -	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	
P-1	PAINT
MANUFACTURER: BENJAMIN WILLIAMS VENDOR CONTACT:	
COLOR: ACCESSIBLE BEIGE MODEL NUMBER: BATH'S6 - - -	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	
P-2	PAINT
MANUFACTURER: BENJAMIN WILLIAMS VENDOR CONTACT:	
COLOR: TONY BEIGE MODEL NUMBER: BATH'S6 - - -	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	
RM	ROOFING
MANUFACTURER: US TILE VENDOR CONTACT:	
DESCRIPTION: CLAY ROOFING TILES MODEL: MONARCH COLOR: MADERA - - -	
LOCATION: ROOF INSTALLATION NOTES:	

PROPOSED SOUTH ELEVATION 3/32" = 1'-0" 02



AP-1	SPECIAL FINISH
MANUFACTURER: SUNBRELLA VENDOR CONTACT: DAVID TOSKAS 214.800.7184	
COLOR: 8408 BLACK - - - -	
LOCATION: AWNINGS INSTALLATION NOTES:	
SF-2	SPECIAL FINISH
MANUFACTURER: KAWNEER VENDOR CONTACT:	
DESCRIPTION: ANODIZED ALUMINUM STOREFRONT SYSTEMS COLOR: DARK BRONZE - - -	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	
ST-1	STONE
MANUFACTURER: BLACKSTONE BRICK CO. VENDOR CONTACT: BURT SHOKEN 214.699.3031	
DESCRIPTION: NATURAL STONE VENEER COLOR/BLEND: LEDGING CARAMEL 50%, LEDGING BUFF 50% PATTERN: RANDOM TYPE: CHOPPED SIZE: VARIES 4", 6", 8", 10", 12" MORTAR: STANDARD BUFF MORTAR	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	
ST-2	STONE
MANUFACTURER: BLACKSTONE BRICK CO. VENDOR CONTACT: BURT SHOKEN 214.699.3031	
DESCRIPTION: CAST STONE COLOR: CARAMEL FINISH: SYNDOTM MORTAR: STANDARD BUFF MORTAR - -	
LOCATION: SEE ELEVATIONS INSTALLATION NOTES:	

PROPOSED WEST ELEVATION 3/32" = 1'-0" 01

CDI
Douglass • Pye
5120 WOODWAY DR.
SUITE #7050
HOUSTON, TEXAS 77056
TEL: (713) 783.5900
FAX: (713) 783.6066
www.cdi-douglass-pye.com

ISSUE	DATE	NO.
REVIEW	03/14/12	

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JEEP RAM
PAT LOBB CHRYSLER DODGE JEEP

STATE HIGHWAY 121
FRISCO, TEXAS 75034

ISSUED FOR CONCEPT REVIEW

PROPOSED ELEVATIONS

SHEET NO. A-4 OF 4

PROJECT NO. 1020.26

AGENDA ITEM #38.

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: **5/1/2012**

Agenda Caption: **Public Hearing: Zoning Case Z12-0006. A request to amend Planned Development-62 regarding gated entry restrictions and consider and act to direct staff to prepare an Ordinance of the same. The property is located on the north side of Town & Country Boulevard, east of Spring Creek Parkway. Zoned Planned Development-62-Single Family-8.5. Neighborhood #33.**

Action Requested: Hold the public hearing and direct staff in the preparation of an Ordinance.

Background Information: The Stonebriar Country Club Estates Homeowners Association is requesting an amendment to the Planned Development regarding the gated entry restrictions. The PD requires that the entry gates remain open between the hours of 7:00 AM and 6:00 PM every day.

The HOA has worked with staff to incorporate an “open-on-approach” system that would allow the gates to be closed during the day, but open as vehicles approach the gate. Between the hours of 6:00 PM and 7:00 AM, visitors to the neighborhood would be required to use a call box to gain entry.

Board Review/Citizen Input: The Planning & Zoning Commission held a public hearing on the request at their April 24, 2012 meeting and voted 5-0 to recommend approval of 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: The City Attorney's Office will prepare the Ordinance if that is the City Council's direction.

Supporting Documents:

- Planning & Zoning Commission Outcome Memo dated April 25, 2012.
- Staff report.
- Location Map

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

April 25, 2012

TO: Applicant

FROM: John Webb, AICP *JW*
Zoning & Subdivision Administrator

SUBJECT: Results of the Planning & Zoning Commission, April 24, 2012

Public Hearing - Zoning: Stonebriar Country Club Estates (Z12-0006)
Owner(s): Multiple Property Owners

Description:
A request to amend Planned Development-62 regarding gated entry restrictions. The property is located on the north side of Town & Country Boulevard, east of Spring Creek Parkway. Zoned Planned Development-62-Single Family-8.5. Neighborhood #33. MW

Result/Action:

Approved: 5-0 (Trykoski & Dodson absent)
Denied:
Tabled:

ACTION:

The item was recommended for approval with the following development standards. Final approval requires action by the City Council. Deletions are in ~~strikethrough~~, new text is in **bold**.

Exhibit C
Planned Development Standards

The tract shall be developed under the regulations of the Single Family-8.5 (SF-8.5) District, subject to the following additional conditions:

a. Private streets and a gated entrance are permitted.
~~b. Entry gates shall remain open and the community accessible to the public between 7:00 a.m. and 6:00 p.m. every day.~~
b. During the hours between 7:00 a.m. and 6:00 p.m., gates are allowed to be closed and open automatically upon approach, provided that:

- **Gates swing away from approaching vehicle**
- **A sign shall be installed on the gate that has a minimum of three-inch (3") letters that read:**

BETWEEN THE HOURS OF
7:00 AM AND 6:00 PM
PULL UP AND STOP
GATE WILL OPEN
AUTOMATICALLY

- **A smaller sign shall be installed on the callbox that reads:**

Between the hours of
7:00 a.m. and 6:00 p.m.
Pull up to gate for it
To open automatically

MW/kj

cc:	Danny Carroll	Deanna Quigley	Dudley Raymond	Steve Covington
	Gary Hartwell	Umberto Allori	Jim Cottone	Rick Wieland
	Mack Borchardt	Michael Crain	Michele Wood	Michelle Ortega
	Paul Knippel	Phillip Climer	Poly Birika	

April 24, 2012

Public Hearing - Zoning: Stonebriar Country Club Estates (Z12-0006)
Owner(s): Multiple Property Owners

DESCRIPTION:

A request to amend Planned Development-62 regarding gated entry restrictions. The property is located on the north side of Town & Country Boulevard, east of Spring Creek Parkway. Zoned Planned Development-62-Single Family-8.5. Neighborhood #33. MW

HISTORY:

Ordinance No. 99-11-17. In 1999, a zoning request Z99-42 was initiated by Shaddock Developers, Ltd. to rezone 38.6± acres to allow a private street development. The Ordinance was adopted by City Council on November 16, 1999.

CASE OVERVIEW:

The Stonebriar Country Club Estates Homeowners Association has requested an amendment to the Planned Development regarding the gated entry restrictions. The PD requires that the entry gates remain open between the hours of 7:00 AM and 6:00 PM every day. The City requires that if the gates are not manned by a guard during the day, the gates must remain open. This is necessary to ensure that delivery, service and lawn maintenance vehicles do not queue into the thoroughfares while awaiting access through the gates.

The HOA has worked with staff to incorporate an “open-on-approach” system that would allow the gates to be closed during the day, but open as vehicles approach the gate. Between the hours of 6:00 PM and 7:00 AM, visitors to the neighborhood would be required to use a call box to gain entry.

RECOMMENDATION:

Recommend for approval with the following development standards. Deletions are in ~~strikethrough~~, new text is in **bold**.

Exhibit C
Planned Development Standards

The tract shall be developed under the regulations of the Single Family-8.5 (SF-8.5) District, subject to the following additional conditions:

a. Private streets and a gated entrance are permitted.
~~b. Entry gates shall remain open and the community accessible to the public between 7:00 a.m. and 6:00 p.m. every day.~~
b. During the hours between 7:00 a.m. and 6:00 p.m., gates are allowed to be closed and open automatically upon approach, provided that:
- **Gates swing away from approaching vehicle**
- **A sign shall be installed on the gate that has a minimum of three-inch (3") letters that read:**

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AUTOMATICALLY

- **A smaller sign shall be installed on the callbox that reads:**

Between the hours of
7:00 a.m. and 6:00 p.m.
Pull up to gate for it
To open automatically

Z12-0006
Stonebriar Country Club Estates
Amend PD-62 (Ord. 99-11-17)



AGENDA ITEM #39.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS A RESOLUTION ENDORSING AND SUPPORTING THE COLLIN COUNTY ANIMAL SHELTER.

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

SECTION 1:

WHEREAS, the City of Frisco entered into a partnership with Collin County and eight other municipalities to build an animal shelter, and

WHEREAS, the Collin County Animal Shelter was designed and built as an intake facility and adoptions were to be handled by the SPCA, and

WHEREAS, the SPCA terminated its agreement to handle adoptions from the Collin County Animal Shelter increasing the workload for the Collin County Animal Shelter that it wasn't designed for, and

WHEREAS, the Collin County Animal Shelter is in a remote location and hard for some residents to locate, and

WHEREAS, the City of Frisco, Texas, recognizes the importance of finding loving homes for all animals brought in to the Collin County Animal Shelter and would like to place as many animals as possible back into the community, and

WHEREAS, the Collin County Animal Shelter and Collin County have been researching methods to improve their operational capabilities, and

WHEREAS, the Collin County Animal Shelter has determined that it is necessary to increase staffing with reclassifying a current position to a full time Adoption/Rescue Coordinator, and the addition of a full time Adoption/Rescue Tech, a part time Adoption/Rescue Tech, a full time Veterinary Tech, and a part time Veterinary Tech, and

WHEREAS, Frisco's share of the additional personnel cost, should the budget be approved is approximately $31,000, and

WHEREAS, the Frisco City Council supports the Collin County Animal Shelter in its efforts to improve operational efficiency with an increase in staff, and

WHEREAS the Frisco City Council supports the Collin County Animal Shelter in its efforts to improve the ability for residents to locate the facility by improving signage especially along US 380, and

WHEREAS the Frisco City Council supports the Collin County Animal Shelter in its efforts to improve pet adoption by working with the shelter in holding adoption events.

THEREFORE, BE IT RESOLVED that the Frisco City Council does hereby officially pledge support to the Collin County Animal Shelter by supporting the suggested request for additional staff and operational improvements and cooperative efforts to improve adoptions.

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

RESOLVED THIS _____ day of _____ 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary
City of Frisco, Texas

Reclass Existing -

Adoption/Rescue Coordinator – FT (Already Existing Officer)

HOURS: TUES-SAT 8a-5p or similar (schedule for busiest adoption/rescue days). We would transfer existing Officer to this position. She was hired as one of our Officers, but we lost that functionality when she had to start working full time with all of the rescues and adopters. By moving her to this position, that would then leave a position open for an Officer so we would only need to add one more Officer position to get at least 2 Officers in

New Positions -

Adoption/Rescue Tech – FT

HOURS: MON-FRI 9a-6p or similar. This position could be classed as a clerical position, thereby costing approximately $3/hour less than an Officer position. They could assist at the front desk while waiting for adopters or rescues to come in (as current Officer is doing at this time). Due to the heavy volume of potential

Adoption/Rescue Tech – PT

HOURS: SAT-SUN 9a-6p or similar. This position could be classed as a clerical position, thereby costing approximately $3/hour less than an Officer position. They could assist at the front desk while waiting for adopters or rescues to come in (as current Officer is doing at this time). Due to the heavy volume of potential

Vet Tech – FT

HOURS: MON-FRI 9a-6p or similar. I have priced Vet Techs in the area and it appears that the base salary range is $11-13 an hour and most positions don't offer benefits. With benefits, we could likely offer on the low side of the range and still get viable candidates. The Vet Tech could perform: intake assessments of all animals, vaccinations for all animals, fecals, deworming, medication, medical assessments of animals in the shelters, assist Vet*. Shots upon impoundment and basic, paliative care will decrease the hold times of animals, decrease

Vet Tech – PT

HOURS: SAT-SUN 9a-6p or similar. I have priced Vet Techs in the area and it appears that the base salary range is $11-13 an hour and most positions don't offer benefits. With benefits, we could likely offer on the low side of the range and still get viable candidates. The Vet Tech could perform: intake assessments of all animals, vaccinations for all animals, fecals, deworming, medication, medical assessments of animals in the shelters, assist Vet*. Shots upon impoundment and basic, paliative care will decrease the hold times of animals,

Field Officer – FT

HOURS: WEDS-SAT 8a-7p or similar. This position (in addition to the position gained by reclassing existing Officer to Adoption/Rescue Coordinator) would allow us to have 10/day/7 day/week additional field Officer coverage. We would be able to have 2 Officers in the field again and split the County into north and south

***Vet** - Collin County is currently exploring the possibility of leasing space to a veterinarian that will work with the rescue community to vet their animals. This Veterinarian would work with the animals impounded at the Shelter to assist with rabies vaccinations, basic medical care, basic health and behavioral assessments, etc.

Animal Shelter ONLY - ADDITIONAL ANNUAL CHARGE FOR POSITION(S)

Entity	Population	% of Pop.	Additional $ for Adoption/Rescue Tech (Full Time) - $29,229 annually w/ 20% benefit overhead	Additional $ for Adoption/Rescue Tech (Part Time) - $14,615 annually w/ 20% benefit overhead	Additional $ for Vet Tech (Full Time) - $31,200 annually w/ 20% benefit overhead	Additional $ for Vet Tech (Part Time) - $15,600 annually w/ 20% benefit overhead	Total Amount of Increase with 4 Additional Positions
Anna	8,316	2.44%	$693.39	$346.70	$740.14	$370.07	$2,150.30
Celina	6,079	1.78%	$506.87	$253.44	$541.04	$270.52	$1,571.87
Fairview	7,267	2.13%	$605.92	$302.97	$646.78	$323.39	$1,879.06
Melissa	4,905	1.44%	$408.98	$204.50	$436.56	$218.28	$1,268.31
Princeton	6,897	2.02%	$575.07	$287.54	$613.85	$306.92	$1,783.39
Prosper	10,555	3.09%	$880.07	$440.05	$939.42	$469.71	$2,729.25
Collin County	41,290	12.09%	$3,442.75	$1,721.43	$3,674.90	$1,837.45	$10,676.53
McKinney	132,790	38.90%	$11,071.99	$5,536.18	$11,818.61	$5,909.30	$34,336.08
Frisco	120,000	35.15%	$10,005.56	$5,002.95	$10,680.27	$5,340.13	$31,028.91
Farmersville	3,300	0.97%	$275.15	$137.58	$293.71	$146.85	$853.30
Totals	341,399	100.00%	$28,465.74	$14,233.36	$30,385.27	$15,192.64	$88,277.00

*All totals shown are less the flat rate city increase amounts

Flat Rate* (* 10% Increase)							
Lavon	2,370	0.006942	$202.91	$101.46	$216.59	$108.30	$629.25
Lucas	5,320	0.015583	$455.47	$227.74	$486.19	$243.09	$1,412.50
Nevada	563	0.001649	$48.20	$24.10	$51.45	$25.73	$149.48
New Hope	662	0.001939	$56.68	$28.34	$60.50	$30.25	$175.77
Total			$763.26	$381.64	$814.73	$407.36	$2,367.00

Actual Position Costs			$29,229.00	$14,615.00	$31,200.00	$15,600.00	$90,644.00

Animal Control ONLY - ADDITIONAL ANNUAL CHARGE FOR POSITION(S)

	Population	% of Pop.	Additional $ for Animal Control Officer
Anna	8,316	9.75%	$3,154.58
Celina	6,079	7.13%	$2,306.00
Fairview	7,267	8.52%	$2,756.65
Melissa	4,905	5.75%	$1,860.66
Princeton	6,897	8.08%	$2,616.30
Prosper	10,555	12.37%	$4,003.92
Collin County	41,290	48.40%	$15,662.89
Totals	85,309	100.00%	$32,361.00

*(total shown is less $2,583 for Flat Rate Cities)

Flat Rate* (* 10% Increase)			
Lavon	2,370	10%	$315.00
Lucas	5,320	10%	$1,903.00
Nevada	563	10%	$157.50
New Hope	662	10%	$207.50
Total			$2,583.00

Total Annual Cost of Position (with assumed 20% benefits overhead) - $34,944.00

AGENDA ITEM #40.

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: **5/15/2012**

Agenda Caption: Consider and act upon moving the August 7, 2012 regular City Council meeting date due to conflict with National Night Out

---

Action Requested: City Council consideration and approval of rescheduling the Tuesday, August 7, 2012 Regular City Council Meeting.

Background Information: National Night Out is scheduled for the first Tuesday in August throughout Collin County and Council has historically participated in neighborhood block parties and events, therefore necessitating rescheduling the August 7, 2012 City Council Meeting. Staff would recommend moving the meeting to Monday, August 6, 2012, as Wednesday night is a church night for many individuals.

Alternatives: Council could elect to move the meeting to Wednesday night, August 8, 2012 or leave the meeting as scheduled and do not participate in National Night Out.

Financial Considerations: None

Staff Recommendation: Staff recommends moving the meeting to Monday, August 6, 2012 at 5:00 p.m.