# 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, APRIL 03, 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.
      ii. Receive legal advice concerning the Attorney General's ruling relating to Mr. Jim Mallett's request for public information.

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

      i. Bordered by Main Street on the north, the Dallas North Tollway on

the west, Preston Road on the east and Stonebrook Parkway on the south.

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

i. Deliberation regarding the annual evaluation of Michael Drewry (Municipal Judge).

D. 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, including but not limited to:

A. Consider and possibly act to authorize filing a lawsuit against the Attorney General in Travis County regarding its decision relating to Mr. Mallett's request for public information and authorizing the City Manager to execute any and all documents related thereto.

**INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS**

4. Sexual Assault Awareness and Prevention Month

**REPORTS**

5. Recognition of Parks and Recreation National Accreditation

6. Mayor's Youth Council

7. Veterans Advisory Committee

8. Library report on usage and programming activities

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

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

11. Council Subcommittee reports for current activities of the Legislative, Governance, 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.)

12. Consider and act upon approval of the March 20, 2012 regular City Council meeting minutes. (CSO/JP)

13. Consider and act upon approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and Peloton Land Solutions, LLLP, for design services and preparation of construction documents for Taychas Trail, Phase 2. (Parks / JED)

14. Consider and Act on a Resolution approving the terms and conditions of a grant application to the North Central Texas Council of Governments and Homeland Security Urban Areas Security Initiative (UASI) for funding the purchase of a Hostage Negotiator Vehicle and authorizing the submission of the grant application by the City Manager or his designee. (Police/GW)

15. Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0003. (Development Services/MW)

16. Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0004. (Development Services/MW)

17. Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0005. (Development Services/MW)

18. Consider and act upon approval of a purchase order to L3 Communications for purchase of fifteen (15) Police vehicle DVR system upgrades. (Police/TJ)

19. Consider and act upon approval of a purchase order with Sigma Solutions for NetApp storage system yearly maintenance. (IT/TJ)

20. Consider and act upon approval of a Resolution authorizing the City Manager to execute an Impact Fee Agreement with Yeager Properties, Inc. (CMO/RP)

21. 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.)

22. Consider and act upon adoption of an Ordinance for a Specific Use Permit for a Big Box Retail Development on 6.5± acres on the south side of John Hickman Parkway, 430± feet east of Preston Road. Zoned Commercial-1. Neighborhood #29. Case No. SUP12-0001 (Development Services/RC)

23. Consider and act upon adoption of an Ordinance on the voluntary annexation of 33.0± acres in the Collin County School Land Survey, Abstract No. 147, Collin County, Texas, generally located on the south side of US Highway 380, 1,150± feet west of County Road 26. Neighborhood #53. Annexation Case A12-0002. (Development Services/MW)

## REGULAR AGENDA

24. Consider and act upon authorizing the City Manager to execute a Development Agreement by and between Wanamaker Frisco One, L.P., Shula Netzer, and the City of Frisco, Texas for the construction of John Hickman and related

improvements for the development of an Academy Sports and Outdoor, and retail center. (CMO)

25. Consider and Act on the reappointment of Gary Downey to the North Texas Municipal Water District Board (NTMWD). (CMO/HH)

26. Discussion of Richwoods Subdivision' petition for Frisco Police patrol and traffic enforcement in their gated community and give staff direction. (Police/JB)

27. Discuss lease terms of city property to Premier Vertical Properties for construction and operation of a cell tower. (CAO/RA)

28. Consider and act upon adoption of a Resolution approving of a list of roadway projects to be submitted to Collin County and the Regional Transportation Council for Regional Toll Revenue funding. (Engineering/JB)

29. Discuss and give staff direction concerning sale of property located just southeast of the City Hall parking garage. (CMO)

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

31. 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, March 30, 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 #3.A.

**From:** Jim Mallett [mailto:mallett1943@sbcglobal.net]
**Sent:** Tuesday, December 06, 2011 4:40 PM
**To:** CitySec
**Subject:** Open Records Request: Written statement and comments of Donald Postell

Please provide via email in pdf format the written statement concerning the Murmur Case dealing with amortization of non-conforming Land use and comments of Don Postell as noted on the December 6, 2011 Frisco City Council agenda.

Please also provide in the same format noted above the bill/bills tendered from Mr. Postell to the City of Frisco or Frisco's attorneys for providing the written statement concerning the Murmur Case dealing with amortization of no-conforming land use and/or the comments of Mr. Postell to the Frisco City Council.

Please also provide a time frame for me to review billings from the City of Frisco's attorneys to the City of Frisco from January of 2010 through December 6, 2011 that have in their description or relate to the terms "legal but non-conforming" and/or "amortization".

Please provide a time frame for me to review billings from the City of Frisco's attorneys to the City of Frisco from January of 2010 through December 6, 2011 that have in their description or relate to the Company known as "Exide."

Thank you for your assistance.

James H. Mallett

Mallett1943@sbcglobal.net
972 977-4153

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

RECEIVED
MAR - 8 2012

March 5, 2012

Ms. Rebecca Brewer
For the City of Frisco
Abernathy Roeder Boyd & Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-03273

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 447020.

The City of Frisco (the "city"), which you represent, received a request for a specified written statement, bills from a named individual for providing the written statement, and specified fee bills from the city's attorneys. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code, as well as privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.[1] We have considered the submitted arguments and reviewed the submitted information.

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. This section provides, in pertinent part:

[1]Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you also raise section 552.137 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

> (a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:
>
> . . .
>
> (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]
>
> . . .
>
> (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted documents include information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds, which we have marked, that is subject to subsection 552.022(a)(3). The submitted documents also include attorney fee bills, which are subject to subsection 552.022(a)(16). You claim section 552.103 for the information at issue. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information subject to section 552.022 may not be withheld under section 552.103 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence and the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure for the submitted fee bills. Because section 552.136 of the Government Code makes information confidential under the Act, we will also consider the applicability of section 552.136 for the information subject to section 552.022(a)(3).[2] Finally, we will consider your argument under section 552.103 of the Government Code for the submitted information not subject to section 552.022.

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[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

> A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:
>
> (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
>
> (B) between the lawyer and the lawyer's representative;
>
> (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
>
> (D) between representatives of the client or between the client and a representative of the client; or
>
> (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert portions of the submitted attorney fee bills must be withheld under rule 503. You indicate the information at issue contains privileged attorney-client communications between the city's attorneys and city employees and officials in their capacities as clients. You

indicate the communications at issue were made for the purpose of the rendition of legal services to the city. You further indicate the communications at issue have not been, and were not intended to be, disclosed to third parties. Thus, based on your representations and our review of the information at issue, we find portions of the information at issue, which we have marked, constitute confidential attorney-client communications under rule 503. Accordingly, the city may withhold the information we marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, the remaining information at issue documents communications with individuals who are not identified, and thus you have not demonstrated are clients, client representatives, lawyers, or lawyer representatives, or does not reveal privileged communications. Thus, you have not shown how the remaining information at issue documents privileged attorney-client communications, and none of the remaining information may be withheld under Texas Rule of Evidence 503.

We next address Texas Rule of Civil Procedure 192.5 for the remaining information in the submitted attorney fee bills. Rule 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. *See* Open Records Decision No. 677 at 9-10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue, and (2) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the

exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp.*, 861 S.W.2d at 427.

You assert the submitted attorney fee bills contain attorney core work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. Upon review, we find you have not demonstrated any of the remaining information in the submitted fee bills consists of mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative that were created for trial or in anticipation of litigation. We therefore conclude the city may not withhold any of the remaining information under Texas Rule of Civil Procedure 192.5.

The documents subject to section 552.022(a)(3) of the Government Code include information that is subject to section 552.136 of the Government Code. Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code.

You claim section 552.103 of the Government Code for the remaining submitted information. Section 552.103 provides in relevant part as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
>
> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, *writ ref'd n.r.e.*);

Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated for the purposes of section 552.103, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is "realistically contemplated." *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to section 552.103 and litigation is "reasonably likely to result"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You explain the city is involved in a dispute with Exide Technologies ("Exide") concerning Exide's emissions from its battery recycling plant. You state, and have provided documentation demonstrating, the Texas Commission on Environmental Quality, in cooperation with the city, is in the process of entering into an agreed order requiring Exide to control emissions from its operations. You inform us the order will incorporate federal regulations that would authorize a private lawsuit to enforce Exide's compliance. You state the city may file suit to ensure Exide's compliance. You also state the remaining information is related to the anticipated litigation. Based on your representations and documentation, our review of the submitted information, and the totality of the circumstances, we find the remaining information is related to litigation the city reasonably anticipated on the date it received the instant request for information. Accordingly, we find the city may withhold the remaining information under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the city must release the submitted attorney fee bills pursuant to section 552.022(a)(16) of the Government Code; however, in releasing the attorney fee bills, the city may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The city must also release the information we have marked pursuant to section 552.022(a)(3) of the Government Code; however, in releasing that information, the city must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. The city may withhold the remaining information, which we have marked, under section 552.103 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Claire Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 447020

Enc. Submitted documents

c: Requestor
(w/o enclosures)

# AGENDA ITEM #8.

## Library Report on Programming and Usage Activities - Narrative
## February 2012

### 1) Analysis of Statistical Report

Significant variations or changes in the February and FY2012 cumulative report:

- February 2012 circulation was up 23% over February 2011. This marks the seventh straight month of double-digit circulation increases and is the highest month to month increase since September 2011. Management attributes a high portion of this gain to the 19% increase in patron visits recorded over the previous February.
- Consistent with the large gain in patron visits, the library recorded exceptional increases in on-site activities including program attendance, reference questions, and new borrower cards issued.
- The library continues to outperform its benchmark comparison groups in productivity metrics and lags the benchmark libraries in access to materials as measured by the collection size per capita.

### 2) Upcoming Events

- The library invites patrons age 16 and up to enter our Flash Fiction Contest, with entries due by April 30th. The purpose of this contest is to inspire intellect, curiosity, and imagination through creative writing. Flash fiction is a work of extreme brevity - a strict rule of 500 words or less. This is one of the most difficult and rewarding tasks that a writer can undertake, a challenge to use an economy of words to create an engaging story with a sense of resolution. Flash fiction goes by many names including short short-story, microfiction, and sudden fiction. Additional details are available at the library website at www.friscolibrary.com.
- The library/AARP annual tax assistance program has already assisted over 500 taxpayers with their return. AARP and the library will continue this service through April 7th. AARP tax workshop volunteers will assist with completing individual's taxes. Tax help is given on a first come, first served basis. Participants need to bring a social security card for each person on the tax return form, all necessary tax forms, driver's license, and a copy of last year's tax return. Program times are available at the library website at www.friscolibrary.com.

## February 2012 - Library Report on Usage and Programming Activities

| Statistics - February 2012 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Feb 2012 | Feb 2011 | % Change | | Year - To - Date FY2012 | Year - To - Date FY2011 | % Change | |
| Total In-Library Transactions | **149,276** | 123,653 | 21% | | **701,323** | 619,996 | 13% | |
| Total Circulation | **108,586** | 88,380 | 23% | | **517,300** | 444,995 | 16% | |
| In-House Use | **17,042** | 16,715 | 2% | | **77,447** | 74,622 | 4% | |
| New Cardholders | **1,174** | 852 | 38% | | **6,129** | 4,981 | 23% | |
| Reference Questions | **11,862** | 9,274 | 28% | | **52,795** | 47,945 | 10% | |
| Onsite Computer Users | **4,479** | 4,841 | -7% | | **23,757** | 27,443 | -13% | |
| Program Attendance | **5,415** | 3,266 | 66% | | **21,085** | 18,478 | 14% | |
| Interlibrary Loan | **718** | 325 | 121% | | **2,810** | 1,532 | 83% | |
| | | | | | | | | |
| Total E-Branch Transactions | **64,123** | 37,248 | 72% | | **282,474** | 185,730 | 52% | |
| E-Branch Transactions Per Capita | **0.52** | 0.31 | 68% | | **0.46** | 0.32 | 44% | |
| E-Branch Transactions Per FTE | **1,603** | 980 | 64% | | **1,432** | 969 | 48% | |
| Database Searches | **18,121** | 10,788 | 68% | | **75,832** | 58,677 | 29% | |
| Library Website Sessions | **38,408** | 23,336 | 65% | | **172,365** | 112,410 | 53% | |
| Downloadables Circulation | **7,552** | 2,974 | 154% | | **33,991** | 14,054 | 142% | |
| Downloadables Circ. As % of Total Circ. | **7.0%** | 3.4% | 106% | | **6.6%** | 3.2% | 106% | |
| Online Homework Help | **42** | 150 | -72% | | **286** | 439 | -35% | |
| | | | | | | | | |
| Total Cardholders | **82,647** | 74,797 | 10% | | **82,647** | 74,797 | 10% | |
| Patron Visits | **45,778** | 38,428 | 19% | | **216,852** | 206,707 | 5% | |
| | | | | | | | | |
| Library Assets - Collection | **182,545** | 169,117 | 8% | | **182,545** | 169,117 | 8% | |
| | | | | | | | | |
| Library Volunteer Hours | **436** | 361 | 21% | | **1871** | 1656 | 13% | |
| | | | | | | | | |
| Benchmarked Statistics | | | | | | | | [1] Benchmark Group |
| Total In-Library Transactions Per Capita | **1.20** | | | | **1.13** | | | **0.94** |
| Total In-Library Transactions Per FTE | **3,732** | | | | **3,598** | | | **2,352** |
| Collection Size Per Capita | **1.47** | | | | **1.47** | | | **1.86** |
| Square Feet Per Capita | **0.40** | | | | **0.40** | | | **0.52** |
| Patron Visits Per Capita | **0.37** | | | | **0.35** | | | **0.36** |
| Patron Visits Per FTE | **1,144** | | | | **1,100** | | | **898** |
| | | | | | | | | |
| [1] Benchmark group is Plano, Allen, McKinney, Carrollton, and Denton. Data source is the Texas State Library & Archives Commission. | | | | | | | | |

## February 2012 - Library Report on Usage and Programming Activities

| | Feb 2012 | Feb 2011 | % Change | | Year - To - Date FY2012 | Year - To - Date FY2011 | % Change | |
|---|---|---|---|---|---|---|---|---|
| **Total Heritage Museum Visitors** | **485** | 397 | 22% | | **4,605** | 3,858 | 19% | |
| Total Paid Visitors | **480** | 396 | 21% | | **4,443** | 3,733 | 19% | |
| School Study Trip Visitors | **140** | 184 | -24% | | **2,398** | 2,308 | 4% | |
| Regular Visitors | **340** | 212 | 60% | | **2,045** | 1,425 | 44% | |
| Promotional Ticket visitors | **5** | 1 | 400% | | **162** | 125 | 30% | |
| | | | | | | | | |

# AGENDA ITEM #9.

PARKS & RECREATION DEPARTMENT

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**Parks and Recreation Report: City Council Meeting of April 3, 2012**

## Hike and Bike Trail Projects

### Chapel Creek Hike and Bike Trail Extension

**Description** – This project will provide for additional linkage of the existing trail to the east towards Preston Road, with the expansion of the subdivision.
**Previous Status** – The project continues to be on staff's project list and ready to proceed once movement in the development takes place to move it forward. Based on the period of inactivity, staff will remove this project this next month and bring it back once it becomes active again.
**Current Status** – Even though staff stays in touch with the developer, there has been no immediate movement to begin development that would affect the hike and bike trail project. Hopefully this will change over the next few months time.

### Cottonwood Trail – A-6

**Description** – This project provides for the development of a trail system that will run along Cottonwood Creek from North County Road to Frisco Street.
**Previous Status** – Plans for the proposed H&B trail from North County to Frisco Street have been completed and are currently under review by City staff in Development Services as well as the Engineering Services department. This project should be put out to bid in March, 2012 and is likely to go before the City Council for final consideration at some point in April.
**Current Status** – Staff is currently waiting on an easement agreement to be finalized to allow for construction of this project to begin. We are hopeful that this can occur within the next few weeks.

### Hickory Street Trail

**Description** – This project provides a connection from Preston Road, westward along Hickory Street and connects to the Oakbrook Park site.
**Previous Status** – Final acceptance of the project should take place within the next month. The project is completed except for replacing a panel of sidewalk that was needed to meet ADA requirements. This will be corrected in early March.
**Current Status** – Since this last report, the sidewalk panel was replaced and is awaiting inspection for final approval. Final approval through the Engineering Department should take place within the next 30 days.

### Latera Trail

**Description** – This project would provide a linkage from the existing hike and bike trail corridor, near the Dominion Development in the northeast quadrant of City, through the Latera Development and to Preston Road.

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**Previous Status** – Staff is working with the new property owners of Latera to be sure to communicate the City's desire to move forward with the hike and bike trail project along this development. Park planning staff has walked the proposed trail twice now with new property owners of the subdivision to ensure the viability of the trail as the subdivision develops.
**Current Status** – Indications are that new plans for the area in which the hike and bike trail is located should be submitted soon. Once they are, staff will work with the developer towards getting the trail constructed.

**Main Street – Off Street Trail**
**Description** – This project will entail an off street trail between the Dallas North Tollway (DNT) westward to FM 423.
**Previous Status** – Since the date of the last monthly report, the utility provider has not yet finalized the location of their line along Main Street, which would have an impact on the trail project. Once that has been determined, staff can then move forward with the project.
**Current Status** – Since the time of the last monthly report, the utility provider appears prepared over the next couple of weeks to identify the location of their future line along Main Street. Once that has been confirmed, staff is prepared to work with the contractor to see if they are willing to honor their standing bid on the project that was in effect when the delay with the utility contractor occurred. All indications to date appear that the contractor is ready to move forward and begin obtaining necessary permits and mobilizing for this trail construction.

**United States Corps of Engineers 1135 Project**
**Description** – This project provides for the development of a soft trail system providing a connection from B.F. Phillips Community Park westward to FM 423 and Lake Lewisville.
**Previous Status** – The USACE project continues to be on schedule with the development of design plans. Funding for the project will be considered by Congress at some point in time once this has taken place. A date of completion for these plans has not been identified by the Corps, but staff will continue to stay in touch with them and report any updates as provided. Additionally, the Corps is sending survey crews to set control points in March.
**Current Status** – The project design continues to progress for this USACE project. Work on that design is expected to continue to take place over the next year. Once completed, funding for the project will be pursued by the Corps of Engineers.

**Wade Boulevard – Off Street Trail**
**Description** – This project will entail an off street trail in sections along Wade Boulevard, between Ohio and Preston Road.
**Previous Status** – Since the time of the last report, the contractor was able to move forward with the project and complete the remaining section needed for the trail. All final walk-throughs have been completed and the project should be final accepted by the next report.

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**Current Status** – This project has been final accepted and is totally complete. Staff will remove this project beginning next month.

## Facilities and Capital Projects Highlights

### Senior Center at Frisco Square

**Current Status – February, 2012**

| Senior Center | Previous Month | | Year-To-Date | |
|---|---|---|---|---|
| | FY12 | +/- from FY11 | FY12 | +/- from FY11 |
| Membership Visits | 5,275 | 36.2% | 23,180 | 4.4% |
| Total Members | 1,846 | -0.27% | N/A | N/A |
| Membership Revenue | $424 | 49.79% | $2,299 | 31.5% |
| Program Revenue | $4917 | 19.1% | $30,296 | 32.7% |
| **Total Revenue** | **$5,341** | **7.5%** | **$32,595** | **24.5%** |
| Membership Expense | $26,633 | 11.3% | $131,827 | 13.1% |
| Program Expense | $11,237 | -11.6% | $59,513 | 2.7% |
| **Total Expense** | **$37,870** | **3.4%** | **$191,341** | **9.6%** |

Additional Senior Center February 2012 Facility Updates

- Staff interviewed seven wonderful applicants for the Senior Adult Recreation Programmer position. A candidate has been selected and is going through the hiring process.
- Due to the generosity of our pool players the billiard's room tables were re-felted at no expense to the facility. The cost for the project would have been approximately $640.
- All outside windows of the facility were power washed in early February 2012.
- Ninety-nine Seniors enjoyed the Annual Sweetheart Dance sponsored by the Frisco High School Student Council

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- The Senior Advisory Council hosted their first Hot Dog Day Fundraiser with all $319.50 in proceeds going to assist the Senior Center.

## Frisco Athletic Center

### Current Status – February, 2012

| Frisco Athletic Center | Previous Month | | Year-To-Date | |
|---|---|---|---|---|
| | FY12 | +/- from FY11 | FY12 | +/- from FY11 |
| Membership Visits | 53,101 | 29.7% | 225,457 | 13.7% |
| Total Members | 13,230 | 8.0% | N/A | N/A |
| Total Accounts | 4,389 | 9.6% | N/A | N/A |
| Membership Revenue | $ 205,375 | 13.4% | $1,110,744 | 6.2% |
| Program Revenue | $ 71,344 | 17.7% | $ 272,700 | 0.6% |
| **Total Revenue** | **$ 276,719** | **14.5%** | **$ 1,383,444** | **5.1%** |
| Membership Expense | $ 171,266 | 5.7% | $ 776,172 | 7.4% |
| Program Expense | $ 58,186 | 6.6% | $ 270,841 | 2.7% |
| **Total Expense** | **$ 229,452** | **6.0%** | **$1,047,013** | **6.1%** |

## Ongoing Maintenance of Maturing Areas of the City

### Reinvestment to current park assets

**Bi-Centennial Park**

**Description** – The renovation of this park site will occur in a couple of phases over the next couple of years. The initial phase of work entailed the construction and installation of a water spray ground that opened in the summer of 2009. The next phase of work will include additional parking for the spray ground, as well as other amenities such as landscaping, seating areas, and possible pavilions for this area.
**Previous Status** – Design for the work described for this project will be completed by the end of February. This will allow for the plans to be ready and for project construction to take place after the summer months. That allows for construction activities to take place after wells have been established, which will ensure the necessary water available to establish new landscaping.

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**Current Status** – Staff will publically bid this project in June and submit the bid award for Council's approval in July or early August. This will minimize the effect on the Spray Park season. Construction of the project will take place in the fall and should be completed before the 2013 Spray Park season.

**Oakbrook Park**

**Description** – The scope of this project entails the replacement of the playground system at Oakbrook Park that has been in place for over ten years. Typically, the replacement cycle for a playground system is approximately ten years. That stems from use as well as updated standards that require new updated equipment. Included in the project along with the installation of a new play system will be the replacement of surface material, sidewalk access to the parking area as well as sidewalk access to the existing pedestrian bridge there at the park.

**Previous Status** – Construction started at Oakbrook Park on February 15, 2012 and is expected to take approximately 60-90 days to complete. A trail system, new sign, retaining wall repair and new park benches and tables are being installed as a part of the project.

**Current Status** – Construction of the park elements continue to take place at the park site. Much of the walkway has been completed and the retaining wall has been prepared. Benches and tables should be in place over the next couple of weeks and the installation of sod in areas, along with minor grading, will soon occur. Additionally, four solar lights will be installed at the park within the next month or so. Final completion of the park should occur within the next 45-60 days.

## Park Development

### Neighborhood Parks Currently Being Developed

**Miramonte Park Site**

**Description** – Located north of Panther Creek Parkway, east of Preston Road and west of Hillcrest Parkway, this neighborhood park is located in the Miramonte development and will be adjacent to an elementary school for the Prosper Independent School District. The project will be divided into two separate projects with the first involving the initial development of the park by the subdivision developer. Future development of the park will take place at some undetermined point in time as funding is identified in the Park Development Plan.

**Previous Status** – Staff will present a developers agreement to City Council at their March 6, 2012 meeting for consideration. This agreement will allow the developer to construct Phase One of the park improvements at a value of $168,505, in exchange for the $128,000 worth of park fees owed on this phase of the subdivision. Furthermore, the developer will assist in the maintenance of the area for a period of two years. They will mow the area and keep the playground in good working order. If approved by the City Council, it is anticipated that the project will be completed by the end of the summer.

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**Current Status** – The City Council approved the agreement and the developer is working to get construction plans approved through the City. Work on the project by the contractor should be in a position to begin within the next 60 days and work should continue through the summer.

**Neighborhood Parks being Master Planned**

**Pearson Park Site**
**Description** – Located along and east of Teel Parkway, south of Main Street, this neighborhood park site was acquired in 2010. At the regular meeting of the Parks and Recreation Board in February, the Board recommended that the master planning of this park be funded for 2011.
**Previous Status** – Staff is scheduled to come before the City Council in March for final consideration of the master plan for the Pearson Park site.
**Current Status** – The City Council approved the park's master plan during the month of March. As a result of this action, this project will be removed from the monthly report listing beginning next month.

## Community Park Construction

**Community Parks being Master Planned**
No Community Parks are currently being master planned at this time. Both the Parks and Recreation Board and the Frisco Community Development Corporation will be meeting and discussing which of the two current undeveloped community parks (Northwest and Northeast Community Park) will move forward with master planning.

**Community Parks Currently Being Developed**

**Establishment of Alternative Water Systems at Harold Bacchus, B.F. Phillips, Frisco Commons and Warren Sports Complex**
**Description** – The scope of this overall project is to provide a re-use water system at B.F. Phillips Community Park and provide for the installation of wells for an alternative water source at Warren Sports Complex, Harold Bacchus Community Park and at the Frisco Commons park site.

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**Previous Status** – Work continues to take place on the development of a well at Harold Bacchus Community Park. This is the site begun in February in which the well driller began drilling for the three park sites. The well was scheduled to be 1,650 LF deep, at approximately 1,500 LF the well caved in and the drill bit was stuck. After several days of effort to save the well, the driller had to abandon the well and begin again. A second rig will be moved to Warren Sports Complex in an effort to maintain their schedule. Specifications for the pump design have been completed and are currently out for public bid. Bids should be opened and examined in March. Staff will examine these bids and if found to be acceptable, will bring to the City Council for final consideration. Overall, the three wells are still on target to be completed by the end of June. Parts for the re-use line connection for B.F. Phillips Community Park are on order by the Public Works Department and staff is hopeful that they will be delivered within the next 30-45 days. Once received, Public Works will work with staff from the Parks Division to install all needed elements and to make the line ready for use.

**Current Status** – Work is currently underway at both Harold Bacchus Community Park, as well as Warren Sports Complex. Complications on the Bacchus Community Park well required that another well be dug. That second effort has proven more successful and the contractor is close to logging the well. Work on the Warren Sports Complex well is going as planned, with the Frisco Commons Park site left to begin once these two other wells are completed. Additionally, the work for the re-use line at B.F. Phillips Community Park should begin once the area has a chance to dry out from recent rainfall.

**Warren Sports Complex**

**Description** – The scope of this project is to design and provide for the development of additional permanent parking at Warren Sports Complex, specifically in the northern section of the park nearest the youth football/soccer field area.

**Previous Status** – The park consultant continues to stay on target to complete plans in order for the project to be publically bid in March. City staff has reviewed the plans, which will allow the project to be bid. Staff would then be in a position to take bids for Council review and consideration, hopefully by April.

**Current Status** – Plans for the Warren Sports Complex parking improvements have been completed and the project is currently under public bid to be opened in early April. Staff will then examine these bids and if found within budget, this will be taken to the City Council for final consideration in May. Construction of the project should be done and completed prior to the fall playing season in September.

**Grand Park**

**Description** – Located with boundaries that run north along Cotton Gin Road, from the Dallas North Tollway west to Legacy Parkway, and to the south to Stonebrook Parkway, this 282 ± acre park will serve as the City's primary regional park site. The master plan for the Grand Park was revised in 2011 and work is currently moving forward for the design and permitting of the park's initial development.

**Previous Status** – The Park Consultants have begun working on the revisions and incorporating them into the plans. It is anticipated that the permit will be submitted back to the United States Army Corps of Engineers (USACE) in approximately 6 months. Design work on the park and playground improvements will be progressing simultaneously.

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**Current Status** – Plans for the park's initial development, as well as submittal to the USACE, is continuing to take place and is progressing on schedule.

**Cottonwood Linear Park**

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

**Previous Status** – The project is progressing satisfactorily. The Consultants continue to develop the plans and ascertain the cost of a potential phase one. At this time we do not have enough information to meet with the developer. It is anticipated that we will meet as soon as possible.

**Current Status** – Staff is trying to meet with the developer within the next month to see how this project can begin to move forward with their assistance.

**Special Parks and Facilities**

**B.F. Phillips Community Park**

**Description** – Development of a disc golf course facility.

**Previous Status** – Turf establishment is firmly taking hold due to the amount of rainfall that has occurred over the past sixty days. Based on this, staff is looking to have an opening of the facility in the first week of March. More information about the opening of the park will be found on the department website (www.friscofun.org).

**Current Status** – Dash's Track is the new disc golf course opened to the public at B.F. Phillips Community Park. Since its opening in early March, the course has been a popular attraction. The City will officially dedicate the course on Saturday, April 7, 2012 at 8:00 a.m., followed by a Grand Opening Disc Golf Tournament at 8:30 a.m., sponsored by Leadership Frisco, Class 14. At 1:00 p.m., the course will reopen to the public. Congratulations to Leadership Frisco Class 14 for their work on the course and to all of the volunteers who helped with the development of the course over the past several months.

## Special Events

**Recently completed events:**

**Easter Eggstravaganza** – An estimated crowd of 8,500 boys and girls and their families came out on an absolutely gorgeous day to join the Easter Bunny and all of his friends for the city's 20th Anniversary of Easter Eggstravaganza that took place on Saturday, March 24, 2012 at the FC Dallas Stadium. Good times were had by all that attended this year's event. Along with bounce houses, face painters, and a programs expo, over 70,000 eggs were up for grabs for the Easter egg hunt. Thanks go out to all of the

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volunteers, as well as Parks and Recreation and Communications Department Staff for all of their hard work and planning that went into this great event. Congratulations!

**Upcoming Events:**

**Dive-In Movie Series** – Cool off from the summer heat by bringing the family to the Frisco Athletic Center Outdoor Aquatic Center to one of our summer Dive-In Movies on Friday, June 28 – "Dolphin Tale;" Friday, July 13 (adult's only) – "Jaws;" and Friday, July 27 – "The Adventures of Tin Tin." Participants can enjoy the movie while floating around in the lazy river or bring a towel and relax on the lawn. Tickets are $5 each. Children under 2 are free June 29 and July 27 but must have a ticket for entry.

New this year, adults ages 18 and older can enjoy a well-deserved date night. Friday, July 13, "Jaws" will be showing on the big screen. There will be free childcare for children eight weeks to seven years old available in the Zone and Fun Club for FAC members. Childcare for non-members is $5 per child. Childcare is limited, reservations must be made early. All tickets go on sale April 2 in person at the Frisco Athletic Center.

# AGENDA ITEM #10.

# Engineering Services Monthly Report on Roads, Traffic, Water and Sewer Projects: City Council Meeting- April 3, 2012

## Engineering Highlights – Elizabeth Metting:

- **Construction Inspections** – Construction Inspectors have 199 current projects that are at various stages of construction.

- **Pre-construction Meetings** – Staff held 4 pre-construction meetings for new projects:

    1. Frisco Office Park Block B, Lot 3 – NTTA
    2. Richwoods, Ph 7
    3. Teel Crossing Shopping Center 2
    4. Grayhawk Sec II, Ph VII

- **Project Final Acceptances** – There were 6 projects accepted.

    1. Frisco Lakes by Del Webb Village 13
    2. Rolater Road
    3. Eubanks Street
    4. Miscellaneous Pavement Rehab
    5. Custer-Eldorado Addn (Eckerd's)
    6. 2011 Annual Sidewalk

**Project Reviews** – Staff has completed Forty Eight (48) engineering reviews.

- **American with Disabilities Transition Plan**

    The goals and objectives of the ADA Transition Plan are to improve accessibility for all citizens, encourage participation from the public and disabled community, educate City staff and the public on the requirements of the ADA, develop a comprehensive list of barriers, provide a detailed outline of methods to remove barriers, provide realistic schedule with cost for removal of barriers, and to identify funding sources and opportunities to implement a barrier removal program. This project is anticipated to be complete by December 2012.

    Field audits of city facilities have been conducted. The audits focused on a limited number of locations of each type of city facility

including buildings, signalized intersections, sidewalks, and parks. Future audits will be directed toward remaining unaudited facility locations.The next phase of the project will be to identify any deficiencies and develop a project list and cost estimate to bring these facilities into compliance.

## Roadway Construction Projects

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

**Project Manager:** David L Chacon

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

**Project Update:** *Project will begin construction in April.*

**Construction End: 8/3/2012** **Estimated Construction Cost**: **$869,584**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Construction is 95% complete. Sinacola is completing medians and sidewalks.*

**Construction End: 6/1/2012** **Estimated Construction Cost**: **$179,005**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Contractor is completing grading on northbound lanes. Concrete paving is expected to begin in April.*

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

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

**Project Manager:** Tin Nguyen

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

**Project Update:** *The new northbound lanes on Independence Parkway between Main Street and Roach Middle School has been opened. One lane in each direction of Independence Parkway North of Eldorado will be closed for a time as the contractor completes median work.*

**Construction End: 6/12/2012** **Estimated Construction Cost**: **$3,245,295**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Sinacola is completing turn lanes and sidewalks. Construction is 95% complete.*

**Construction End: 6/29/2012**

**Estimated Construction Cost**: **$10,166,838**

## Roadway Design Projects

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Final plans to be completed in April. Right of way acquisition is underway. Construction will begin once franchise utilities are relocated out of the way of new construction.*

**Construction Begin: 6/4/2012**

**Estimated Construction Cost**: **$5,650,072**

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

**Project Manager:** Toyin Fawehinmi

**Project Description:** *Widen the existing four-lane divided concrete roadway to a six-lane divided roadway from Preston Road to Hillcrest Road and from Fragrant Dr to Custer Road and widen the existing two-lane concrete roadway to a six-lane divided concrete roadway from Hillcrest Road to Fragrant Drive. Also, approximately 700 linear feet of Coit Road north of Eldorado Parkway intersection is included. Project includes paving, drainage, sidewalks, street lights, signals, landcaping and irrigation*

**Project Update:** *Plans are complete. Right of way acquisition is underway. Construction will begin once franchise utilities are relocated out of the way of new construction.*

**Construction Begin: 7/16/2012**

**Estimated Construction Cost**: **$8,908,669**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Final design plans were submitted to TxDOT in January. ROW acquisition by TxDOT is nearly complete and utility relocations are beginning.*

**Construction Begin: 1/7/2013**

**Estimated Construction Cost**: **$0**

John Hickman (CIP11-0028) Preston to Ohio

**Project Manager:** Toyin Fawehinmi

**Project Description:** *Construct new 37' Roadway and intersection at Preston. Project includes grading, paving, drainage, water, illumination, and signal at Preston.*

**Project Update:** *Plans are complete. Right of way acquisition is underway. Franchise utilities relocations will begin in April. Project will bid in April. Construction is expected to begin in June.*

**Construction Begin: 5/21/2012**

**Estimated Construction Cost**: **$1,500,000**

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

**Project Manager:** Art Hartle

**Project Description:** *Construct additional pavement along Lebanon to widen road to match DNT bridge. Project also includes turn lanes at Lebanon/DNT intersection and a traffic signal and right turn lane at Starwood/Lebanon.*

**Project Update:** *Right of way and easement acquisition is on-going. Franchise relocations will begin when property is acquired.*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$1,801,293**

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

**Project Manager:** Jason Brodigan

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

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

**Construction Begin: 8/13/2012** **Estimated Construction Cost**: **$2,640,000**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Design is 60% complete.*

**Construction Begin: 7/9/2012** **Estimated Construction Cost**: **$0**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Design is 90% complete.*

**Construction Begin: 6/11/2012** **Estimated Construction Cost**: **$5,400,000**

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

**Project Manager:** Jason Brodigan

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

**Project Update:** *Design is 90% complete. Construction of the project will begin upon completion of the Preston Road widening project.*

**Construction Begin: 10/15/2012** **Estimated Construction Cost**: **$724,000**

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

**Project Manager:** David L Chacon

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

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

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

Rockhill Road (CIP10-0015) Dallas Parkway to Preston

**Project Manager:** David L Chacon

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

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

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

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

**Project Manager:** David L Chacon

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

**Project Update:** *US Army Corp of Engineers permit pending agency review. BNSF agreement pending BNSF review. Consultant working on project scope changes.*

**Construction Begin: 7/2/2012** **Estimated Construction Cost**: **$14,257,471**

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

**Project Manager:** Art Hartle

**Project Description:** *Scope: Install 36 inch waterline along Dallas Pkwy from south of Lebanon to Stonebrook then along Stonebrook from Dallas Pkwy to Preston; reconstruct westbound Stonebrook pavement to widen roadway to 6 lanes.*

**Project Update:** *Plans have been completed. Right-of-way and easement acquistion is underway.*

**Construction Begin: 7/1/2012** **Estimated Construction Cost**: **$12,152,000**

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

**Project Manager:** Jason Brodigan

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

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

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

## Wastewater Design Projects

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

**Project Manager:** Art Hartle

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

**Project Update:** *Project will be revised to include only emergency generator.*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$740,163**

Panther Creek Sewer Interceptor Phase 2 (CIP10-0013)

**Project Manager:** David L Chacon

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

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

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

## Water Design Projects

Legacy EST (CIP10-0019)

**Project Manager:** Art Hartle

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

**Project Update:** *Easement and site location under review. 60% plans have been reviewed by City.*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$4,007,000**

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

**Project Manager:** David L Chacon

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

**Project Update:** *Easement acquistion continues. Project is expected to begin construction in June.*

**Construction Begin: 6/22/2012** **Estimated Construction Cost**: **$4,137,000**

## Arterial Lighting Design Projects

Gaylord Pkwy (CIP07-0006) Preston Rd to Ohio Dr

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Gaylord between Preston and Ohio.*

**Project Update:** *Design is 95% complete.*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$71,035**

Hillcrest Rd (CIP07-0007) Eldorado Pkwy to Haversham Dr

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Hillcrest between Eldorado and Haversham.*

**Project Update:** *Design is 95% complete*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$76,221**

Lebanon Rd (CIP11-0013) FM 423 to West City Limits

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Lebanon Rd between FM 423 and Frisco's West City Limits.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$254,210**

Legacy Dr (CIP11-0014) Eldorado Pkwy to Crane Ave

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Legacy between Eldorado and Crane.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$53,450**

Ohio Dr (CIP07-0013) SH 121 to Presmont Pl

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Ohio between SH 121 and Presmont.*

**Project Update:** *Design is 95% complete*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$146,160**

Ohio Dr (CIP11-0015) Wade Blvd to Hillcrest Rd

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Ohio between Wade and Hillcrest.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$117,060**

OhioDr/College Pkwy (CIP07-0012) Hillcrest Rd to Coit Rd

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Ohio/College between Hillcrest and Coit.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$266,820**

Parkwood Blvd (CIP07-0015) Lebanon Rd to Stonebrook Pkwy

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Parkwood Blvd between Lebanon Rd and Stonebrook Pkwy.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$200,760**

Preston Rd [SH 289] (CIP07-0017) SH 121 to Gaylord Pkwy

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on SH 289 (Preston) between SH 121 and Gaylord.*

**Project Update:** *Design is 95% complete and is awaiting TxDOT review and approval of plans.*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$123,998**

Preston Road [SH289] (CIP07-0018) Main St to US 380

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting.*

**Project Update:** *Design is 95% complete and is awating TxDOT final approval. Construction of this project will begin upon completion of the Preston Road widening project.*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$1,088,650**

Wade Blvd (CIP07-0023) Collin College to Ohio Dr

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Wade between Collin College and Ohio Dr.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$43,935**

Warren Pkwy (CIP07-0026) Preston Rd to Ohio Dr

**Project Manager:** Shelley Lang

**Project Description:** *Install median lighting on Warren Pkwy between Preston Rd and Ohio Dr.*

**Project Update:** *Design is 95% complete*

**Construction Begin: 6/1/2012** **Estimated Construction Cost**: **$62,250**

## Traffic Signal Construction Projects

FM 423 Middle Section Signal Upgrades (CIP07-0051)

**Project Manager:** Shelley Lang

**Project Description:** *TxDOT project to replace existing temporary traffic signals with permanent traffic signals on FM 423 at Main, Stonebrook, Del Webb and Lebanon. This project also includes upgrading these signalized intersections to City of Frisco standard materials.*

**Project Update:** *The traffic signal work is being done as part of TxDOT's roadway widening project. Please see CIP03-0109 for project status.*

**Construction End: Not Scheduled** **Estimated Construction Cost**: **$170,350**

Preston Rd ADA Improvement Project (CIP11-0027)

**Project Manager:** Shelley Lang

**Project Description:** *Preston Road ADA improvement project to modify the signalized intersections of Gaylord, Warren, Lebanon and Wade.*

**Project Update:** *The early stages of construction began April 2nd, which includes utility locates and project staking.*

**Construction End: 7/31/2012** **Estimated Construction Cost**: **$195,755**

Preston Road Traffic Signal Upgrades (CIP06-0007)

**Project Manager:** Shelley Lang

**Project Description:** *TxDOT project to replace existing temporary traffic signals with permanent traffic signals on Preston Road at Meadowhill, Eldorado and Rockhill. These signalized intersections will also be upgraded to City of Frisco standard materials. This project also includes installing a new temporary and permanent traffic signal on Preston at Panther Creek.*

**Project Update:** *The traffic signal work is being done as part of TxDOT's roadway widening project. Please see CIP05-0031 for project status.*

**Construction End: Not Scheduled** **Estimated Construction Cost**: **$111,005**

Traffic Signal - Main St at Kyser Way (CIP10-0010)

**Project Manager:** Shelley Lang

**Project Description:** *Install a new traffic signal on Main St at Kyser Way. This project also includes the construction of new eastbound and westbound left turn lanes on Main St to provide more efficient operation of the new traffic signal.*

**Project Update:** *The early stages of construction began April 2nd, which includes utility locates and project staking.*

**Construction End: 7/1/2012** **Estimated Construction Cost**: **$410,475**

## Traffic Signal Design Projects

Permanent Traffic Signal (CIP04-0050) Eldorado Pkwy at Wal-Mart

**Project Manager:** Shelley Lang

**Project Description:** *Replace temporary traffic signal with a permanent traffic signal.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$200,000**

Permanent Traffic Signal (CIP05-0036) Eldorado Pkwy at Dallas Pkwy

**Project Manager:** Shelley Lang

**Project Description:** *Project will construct a third lane on the southbound frontage road (between Eldorado and the entrance ramp), which will allow us to provide dual right-turn lanes on eastbound Eldorado at Dallas Parkway. Project will also replace the temporary "span-wire" traffic signal with a permanent traffic signal and construct a third lane on the northbound frontage road between the exit ramp and Eldorado to improve traffic flow approaching the intersection.*

**Project Update:** *Design is 30% complete*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$595,000**

Traffic Signal - Lebanon Rd at Starwood (CIP09-0017)

**Project Manager:** Shelley Lang

**Project Description:** *Install a new traffic signal on Lebanon at Starwood as part of the Lebanon/DNT intersection improvement project.*

**Project Update:** *Construction of the traffic signal will be done as part of the Lebanon/DNT intersection improvement project. Please see CIP05-0026 for status updates.*

**Construction Begin: Not Scheduled** **Estimated Construction Cost**: **$165,000**

## Transportation Highlights: Brian Moen

- **Development/CIP Plan Reviews** – Staff reviewed 72 sets of development and CIP plans this month. Staff also reviewed and processed one TxDOT permit application and reviewed one traffic impact analysis.
- **Citizen Inquiries** – Staff has responded to several citizen inquiries that came into the department by telephone, email, and the Q&A Message Board on the City website.
- **Miscellaneous Traffic Studies** – Staff continues to update the crash database (based on police reports) and uses new software purchased in 2011 to generate reports and proactively analyze the data. Staff is currently overseeing three studies that are analyzing the effectiveness and costs of potential options to change the physical configuration of five intersections (Main & Legacy, Main & Frisco Square Blvd, and Ohio Drive at Gaylord, Warren, and Prestmont). This month staff conducted several neighborhood speed studies at the request of citizens.
- **School Zones** – Staff meets monthly with representatives of FISD to discuss any school zone, crossing guard, or sidewalk issues. This month, staff observed traffic operations on two campuses at the request of citizens and starting planning for temporary school zone signs for summer school.
- **Special Events** – As part of the Special Events Review Committee, staff reviews all pending special event applications for any traffic control needs. Staff continually coordinates with the Police, Fire, Communications, and Public Works Departments regarding any special events that affect traffic flow or parking in the City. Staff also coordinates with FC Dallas Stadium and Dr Pepper Arena staff regarding large events at those venues, which sometimes requires coordination with NTTA. This month, staff provided traffic management support for two FC Dallas soccer games, the U.S.A. vs. Mexico soccer match, and the Paddy Dash 5K.

- **Staff** –Two of our traffic engineer positions are currently frozen.
- **Thoroughfare Standards Ordinance** – Staff has been working on a draft update to the Thoroughfare Standards Ordinance based upon ongoing research, coordination with other departments, and comments received from the Frisco Developers Council (FDC) on an earlier draft. Staff has also been involved in the update of the entire set of Engineering Design Standards and has coordinated changes with the Thoroughfare Standards. In November, the updated Engineering Design Standards (including the Thoroughfare Standards as Section 2) were published on the City website for external review and responses to FDC's comments on the previous draft of the Thoroughfare Standards were sent to the FDC. External comments on the new standards were received in January and this month staff finalized their responses to these comments and incorporated changes into the standards resulting from them. Staff met with the FDC this month to go over some of the comments and responses and incorporated some additional changes. The revised Standards will have their first public hearing at the P&Z Commission on March 27 and a follow-up P&Z meeting to finalize FDC comments will occur in April. The standards expected to be brought to City Council for approval in April or May.
- **Traffic Count Map** – The traffic count map is available on the City's website at maps.friscotexas.gov**.** It provides daily traffic volume counts (and the date of each count) on multiple segments of every major roadway. Staff conducts an annual traffic count program which updates the volumes collected on each major roadway segment every two or three years.
- **Traffic Control** – Each month, staff designs the installation of new and/or replacement signs and pavement markings as needed. Each month, staff reviews the traffic control plans for new and ongoing construction zones. Staff is coordinating with TxDOT on major detours and weekend closures of sections of Preston Road, Custer Road, and FM 423 during those widening projects
- **Traffic Signal System Communications** – The system provides communications to all of the traffic signals in the City, allowing staff to monitor and control their operation remotely. Staff can also view the traffic detection cameras at most of the traffic signals, as well as 65 pan-tilt-zoom (PTZ) traffic cameras that can be controlled remotely. The newest PTZ cameras were installed this month on Main Street at Legacy, Hillcrest at Lebanon and Preston Road at Panther Creek.
- **Traffic Signal Timing** – On an ongoing basis, staff changes the operation of various traffic signals along Preston Road, Custer Road and FM 423 to coincide with TxDOT closures and traffic shifts as part of their widening projects. Monthly travel times on the major corridors are also collected to ensure the coordination between traffic signals is optimized.
- **Flashing Yellow Arrow** – The Flashing Yellow Arrow (FYA) left-turn display is a new federally mandated way of controlling the left-turn movement at traffic signals. Instead of a circular green indication, motorists will now be shown a flashing yellow arrow to indicate when they are permitted to turn left (after yielding to oncoming traffic). Staff presented a video on how FYA will work to the City Council at the March 20 meeting. FYA left-turn displays will be installed beginning the first week of April at the following locations: Preston at Hickory, Legacy at Lakehill, Independence at Rolater and Parkwood at

Lebanon. All new traffic signal installations will have the FYA and four existing intersections per month are planned to be retrofitted, which will take about 2 years to complete. A website has been created to inform citizens about the FYA with a link to the FYA video at www.friscotexas.gov/FYA.

- **Training and Conference Attendance** – Staff attends the monthly local meetings of the Texas District of the Institute of Transportation Engineers (TexITE) and the American Society of Civil Engineers (ASCE). Sean Merrell is an active committee member in both TexITE and the Texas Section of ASCE and is the President Elect of the ASCE Dallas Branch.
- **Traffic Signal Maintenance** – The City of Frisco currently operates and maintains 87 traffic signals within the City of Frisco and one traffic signal on FM 423 outside the city limits, 84 of which have automatic battery backup power. City crews provide on-call maintenance seven days per week with a 45-minute response time.

  A significant part of traffic signal maintenance relates to the 343 video cameras and 19 SmartSensor radar units used to detect vehicles at each signal. Currently, 100% of the video and radar detection is fully operational. Maintaining this video and radar detection is very efficient due to the citywide communication system because diagnosing and troubleshooting detection issues can be performed from our central control center.

  This month City crews programmed and set in place our electronic message boards to direct traffic at numerous special events (the Paddy Dash 5K and the Easter Eggstravaganza).

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

  City crews also operate and maintain 118 school zone flashers, two pedestrian crossing flashers, and two warning sign flashers.

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

| | |
|---|---|
| Total light poles maintained by City | 2295 |
| Total lamp fixtures maintained by City | 3964 |
| Proportion of City lighting currently operating | 99% |

- **Wayfinding Project** – This project will assist staff in meeting the needs of our citizens and visitors who attend events at both public and private operated destinations in Frisco. The first two phases of the project are complete and included input from the consultant, a stakeholder group, TxDOT, and NTTA. The proposed sign design package has been submitted to TxDOT and

NTTA for their comment and approval. We have received comments from TxDOT and NTTA. Staff met with NTTA and TxDOT on February 27, 2012 to address the comments. Phase 3 of the project has now started and is expected to be complete by July 2012. Phase 3 will identify and document all the signs that are needed for implementation. Phase 4, the installation of the signs, could start by the late 2012 depending on the availability of funding.

# AGENDA ITEM #11.

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:** **March 26, 2012**

**Re:** **Council Subcommittee Reports**

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**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

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

The other additional committees that have at least some interaction with Council have not met since your last meeting.

# AGENDA ITEM #12.

# 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, MARCH 20, 2012

## MINUTES

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

## CALL TO ORDER

1. ROLL CALL

Mayor Maso called the meeting to order at 5:04 p.m. with a quorum present. Council has granted Councilman Nelson an excused absence until his return from active duty and Scott Johnson was also absent.

Representing staff: City Manager, George Purefoy; Deputy City Manager, Henry Hill; Assistant City Manager, Nell Lange; Assistant City Manager, Ron Patterson; City Attorney, Richard Abernathy; City Secretary, Jenny Page; Public Works Director, Gary Hartwell; Finance Director, Anita Cothran; Director of Administrative Services, Tom Johnston; Police Chief, Todd Renshaw; CVB Executive Director Marla Roe; Fire Chief Mack Borchardt; Fire Captain Neil Self; Development Services Director, John Lettelleir; Engineering Director, Paul

Knippel; Assistant Director of Engineering Services Brian Moen; and Assistant Finance Director Jenny Hundt.

**CLOSED SESSION**

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

Pat Fallon moved to enter Closed Session at 5:06 p.m. John Keating seconded the motion.

Passed

Vote: 4 - 0

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

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

i. Receive legal advice concerning legal issues regarding Exide and lead issues.
ii. Seek legal advice on a matter regarding the City's Self Funded Insurance Program.

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

i. Bordered by Main Street on the north, the Dallas North Tollway on the west, Preston Road on the east and Stonebrook Parkway on the south.

D. 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.

Pat Fallon moved to reconvene into Regular Session at 6:46 p.m. John Keating seconded the motion.

Passed

Vote: 4 - 0

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

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

**INVOCATION**

Steve Fischer, Associate Pastor of Care Ministries at Stonebriar Community Church led the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Maso introduced John Beard and Hagen Gardner with Hunt Middle School Troup 216 and Grace Avenue Methodist Church who led the United States and Texas Pledges of Allegiance.

**PROCLAMATIONS**

4. Women Veterans Month

Tammy Figueroa, representing Grace Under Fire accepted the proclamation.

5. Recognition of 20 Years of Service for Neil Self

Fire Captain Neil Self was present to accept the proclamation. Mr. Self was joined on stage with his wife and three sons.

6. Recognition of 20 Years of Service for Rick Kvaal

Rick Kvaal was not present and the proclamation will be presented at another time.

7. Texas Fire Chief Association / Fire Chief of the Year Award

Fire Chief Mack Borchardt was joined on stage with members of his staff and City Manager George Purefoy while Mayor Maso presented a proclamation honoring Chief Borchardt as the Texas Fire Chief of the Year for 2012.

Mr. Purefoy thanked the Chief for his many years of service in the Fire Department and also as the City Administrator.

**REPORTS**

8. Development Services Activities Monthly Update February 2012

Development Services Director John Lettelleir presented the activities monthly update for February 2012.

9. Fire Department Monthly Report on Incident Response and Educational Activities, February 2012.

   Fire Chief Mack Borchardt reported on incident response and educational activities for the month of February 2012 and commented on the recent graduates of the Fire Academy.

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

    Public Works Director Gary Hartwell reported on water usage and other monthly activities and reported on a short presentation on activities and water education.

11. Police Department's crime statistics and response times for the month of February 2012.

    Police Chief Todd Renshaw reported on crime statistics and response times for the month of February 2012 and reported on red light camera statistics.

12. Financial Services Department February 2012 Monthly Budget Status Report

    Finance Director Anita Cothran presented the Monthly Budget Status Report for 2012, thru the 5th month of the financial year and presented a draft Audit Report for Council to review.

13. Convention and Visitors Bureau Monthly Report of Activities, Economic Impact and In-Kind Media Values.

    CVB Director Marla Roe reported on project economic impact, CVB activities and in kind media for February 2012 and reported on upcoming events.

14. Council Subcommittee reports for current activities of the Legislative, Governance, Budget and Audit Committee, Be Fit Frisco, Frisco Veteran's Advisory Committee.

    Governance Committee – no report

    Veteran’s Committee – no report

    Legislative Committee – no report

    Be fit Frisco – no report

    Mayor Maso asked that the Veteran’s and Be Fit Frisco committees be removed from the committee reports since they are strictly the Mayor’s committees and not Council.

Mayor Maso moved to Consent Agenda since it was not yet 7:30 p.m.

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

No on wished to speak and Mayor Maso returned to Item 31.

**CONSENT AGENDA**

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

Pat Fallon moved to approve the Consent Agenda. John Keating seconded the motion.

Passed

Vote: 4 - 0

For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;

Against: (None)

15. Consider and act upon approval of the February 16, 2012 Special City Council meeting and the March 6, 2012 Regular City Council meeting minutes. (CSO/JP)

16. Consider and act upon adoption of a Resolution ratifying acquisition by purchase certain property for right-of-way and easements for the construction of and/or improvements to Stonebrook Parkway (Dallas Parkway to Preston Road) (Engineering/AH) **RESOLUTION 12-03-64R**

17. Consider and act upon rejection of bids received for the Fairways Lift Station Improvements Project, Bid No. 1212-026 (Engineering/AH)

18. Consider and act upon a Resolution authorizing the City Manager to execute an Escrow Agreement with Papagolos Properties, Ltd. for the payment of escrow in lieu of constructing the south half of Witt Road adjacent to Stonewater Crossing Phase Two Subdivision (Engineering/TF/JF) **RESOLUTION 12-03-65R**

19. Consider and act upon approval of a Resolution authorizing the City Manager to execute a Professional Services Agreement by and between the City of Frisco and Freese and Nichols, Inc. for Professional Design and Engineering Services for the West Rowlett Creek Wastewater Main Extension. (Engineering/DLC) **RESOLUTION 12-03-66R**

20. Consider and act upon adoption of a Resolution authorizing the City Manager to execute the Agreement for Construction, Maintenance, and Operation of Safety Lighting Systems within Municipalities by and between the City of Frisco and the

Texas Department of Transportation for safety lighting at the US 380 and SH 289 (Preston Road) interchange (Engineering/BM). **RESOLUTION 12-03-67R**

21. Consider and act on a Resolution approving the terms and conditions of a grant application to the U.S. Department of Justice, Office of Community Oriented Policing Services, for funding of one (1) Patrol Officer and authorizing the submission of the grant application by the City Manager or his designee. (Police/GW) **RESOLUTION 12-03-68R**

22. Consider and act upon accepting a bid and approve a Resolution authorizing the City Manager to execute a contract with AND, Inc, for mainline irrigation improvements within Harold Bacchus Park and Warren Sports Complex. (Parks/DR) **RESOLUTION 12-03-69R**

23. Consider and act upon approval of purchase orders to American Tire Distributors, Inc. for the purchase of tires for Fleet Services during the fiscal year 2012. (Fleet/TJ)

24. Consider and act upon award of Bid #1201-036, cooperative bid for Fire personal protective gear, to North American Fire Equipment Company, Inc. (Fire/TJ)

25. Consider and act upon approval of a purchase order to Tallent Roofing, Inc. for the re-roof of the City building at 6891 Main Street. (Facilities/TJ)

26. Consider and act upon approval of purchase orders with Book Wholesalers Incorporated, for the purchase of additional Library materials in the areas of the adult and youth collections during the fiscal year 2012. (Library/TJ)

27. 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)

**REGULAR AGENDA**

28. Public Hearing: Annexation Case A12-0002. A proposed voluntary annexation of 33.0± acres in the Collin County School Land Survey, Abstract No. 147, Collin County, Texas, generally located on the south side of US Highway 380, 1,150± feet west of County Road 26. Neighborhood #53. (Development Services/MW)

Development Services Director John Lettelleir presented the second public hearing on Case A12-0002 to take testimony from citizens and read the

voluntary annexation service plan as required by law.

Bob Allen moved to open the public hearing. Pat Fallon seconded the motion.
Passed
Vote: 4 – 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

No one wished to speak.

Jeff Cheney moved to close the public hearing. Pat Fallon seconded the motion.
Passed
Vote: 4 – 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

29. Public Hearing: 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. (Development Services MW)

At the request of the applicant, Mr. Lettelleir asked Council to table and to continue the public hearing until the next meeting.

Pat Fallon moved to open the public hearing. John Keating seconded the motion.
Passed
Vote: 4 – 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

Pat Fallon moved to table this item and to continue the public hearing until the April 17, 2012 meeting. John Keating seconded the motion.
Passed
Vote: 4 – 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

30. Discuss leases of cell tower sites in the City and discuss, and possibly act upon, calling a public hearing to amend the Zoning Ordinance regarding regulations relating to cell towers. (PF)

Pat Fallon asked for this item to be placed on the agenda and City Attorney

Richard Abernathy addressed the Council for staff.

Mr. Abernathy stated that this issue arose two years ago involving a company that wanted to construct cell towers on city/school property. After evaluation, his opinion at the time was that if it is the City's goal to allow cell towers on City property, then there was already an SUP process. Selecting ahead of time who the contractor would be causes some legal issues. He suggested that the existing ordinance should be modified to expand the SUP to create a regulatory scheme allowing for a process dependent upon tower locations where service is at a certain level. The modification should allow vendors to submit applications with no preapproved process. Mr. Abernathy suggested that if Council was interested in amending the Zoning Ordinance now, they should consider calling a public hearing to allow citizens to comment.

After discussion, Pat Fallon moved to call a public hearing to amend the Zoning Ordinance regarding regulations relating to cell towers. The motion failed due to a lack of a second for the motion.

Failed

Vote: 0 – 4
For: (None)
Against: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;

Council suggested more information before calling a public hearing and Staff will return with more information.

Mayor Maso moved back to Citizen Input at 7:49 p.m.

31. Discussion of the implementation of the flashing yellow arrow (FYA) left turn signal display at selected intersections. (Engineering/BM)

Assistant Director of Engineering Services Brian Moen presented information about a new flashing yellow left turn arrow and stated that there will be four locations, Preston Road at Hickory Street, Legacy Drive at Lakehill Boulevard, Rolater Road at Independence Parkway, and Lebanon Road at Parkwood Boulevard, and continue with all new installations and retrofit existing signals until complete. The process could take about two years. It will be federally mandated in the near future. He suggested visiting www.friscotexas.gov/FYA for more information.

32. Consider and act upon approval of amendment to Ordinance No. 11-09-41 adopting the City of Frisco Fiscal Year 2012 Budget (Financial Services/AC) **ORDINANCE 12-03-14**

Assistant Finance Director Jenny Hundt presented information concerning items that are included in the mid-year budget amendment for the City of Frisco FY 2012 budget.

Jeff Cheney commented that from discussions during the Budget and Audit Committee meetings, there was an EOY positive impact to the budget and the items presented tonight were the first cut items from the budget this past year. Some of this money is being transferred to the Capital Reserve Fund which has been a priority for this Council.

Jeff Cheney moved to approve an amendment to Ordinance No. 11-09-41 adopting the City of Frisco Fiscal Year 2012 Budget. Pat Fallon seconded the motion.

Passed

Vote: 4 – 0

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

33. Consider and act upon approval of amendment to the Ordinance adopting the City of Frisco Economic Development Corporation Fiscal Year 2012 Budget (Financial Services/AC) **ORDINANCE 12-03-15**

Ms. Hundt presented information concerning items that are included as part of the mid-year budget amendment for the FY 2012 FEDC budget. She stated that the amendment had been reviewed by the FEDC board and recommended for approval.

Jeff Cheney moved to approve an amendment to the Ordinance adopting the City of Frisco Economic Development Corporation Fiscal Year 2012 Budget. John Keating seconded the motion.

Passed

Vote: 4 – 0

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

34. Consider and act upon approval of amendment to the Ordinance adopting the City of Frisco Community Development Corporation (FCDC) Fiscal Year 2012 Budget (Financial Services/AC) **ORDINANCE 12-03-16**

Ms. Hundt presented information concerning items that are included as part of the mid-year budget amendment for the FY 2012 FCDC budget. She stated that the amendment had been reviewed by the FCDC board and recommended for approval.

John Keating moved to approve an amendment to the Ordinance adopting the City of Frisco Community Development Corporation (FCDC) Fiscal Year 2012 Budget. Jeff Cheney seconded the motion.

Passed

Vote: 4 – 0

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

35. Consider and act upon approval of purchase orders to Caldwell County Chevrolet for purchase of six (6) Police pursuit sport utility vehicles. (Police/TJ()

Nell Lange explained this item was for six vehicles that were not approved last year and needed to be ordered this cycle to get the order in before the cut off order date. Nine vehicles had been ordered already in the approved budget but this item was for the remaining six that were cut. She added that the previous budget amendment item needed to be approved first before getting approval for the vehicle purchase.

John Keating moved to approve purchase orders to Caldwell County Chevrolet for purchase of six (6) Police pursuit sport utility vehicles. Bob Allen seconded the motion.

Passed
Vote: 4 – 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

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

- Cell Tower Zoning Ordinance information:

  City Manager George Purefoy asked the Mayor for clarification on exactly what kind of information the Council wanted.

  John Keating – wanted to review a proposal for the Zoning Plan.

  Bob Allen - education, what problem are we solving and implications, he wanted to understand the issues better.

  Jeff Cheney – Mr. Abernathy had presented a detailed letter but he wanted to dig into the details more, get a response from entity, review current map and zones, and what would we earn.

  Pat Fallon - bring proposals, do a deal, and move on with a yes or no vote.

- Maher Maso suggested no Mayor's Adhoc Committee Reports just Council committees.

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

Jeff Cheney gave the council a grade of satisfactory.

**ADJOURN**

Bob Allen moved to adjourn at 8:10 p.m. John Keating seconded the motion. Passed

Vote: 4 - 0
For: Pat Fallon, John Keating, Bob Allen, Jeff Cheney;
Against: (None)

*Please note these are preliminary results and are not official until approved at the next scheduled meeting. Approved/signed minutes are available at www.friscotexas.gov/docs.*

_____
Maher Maso, Mayor

ATTEST:

_____
Jenny Page, City Secretary

# AGENDA ITEM #13.

**Department of Parks and Recreation**
City of Frisco, Texas

# MEMORANDUM

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

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

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

**Date:** **May 5, 2012**

**Subject:** **Consider and act upon approving a resolution authorizing the City Manager to execute an agreement by and between the City of Frisco and Peloton Land Solutions, LLLP, for design services and preparation of construction documents for Taychas Trail, Phase 2.**

---

**Action Requested:** Staff requests that Council consider and act upon approving a resolution authorizing the City Manager to execute an agreement for design services and preparation of construction documents for Taychas Trail, Phase 2, in the amount of $100,740, lump sum fee.

**Background Information:** Taychas Trail, Phase1 exists just short of Hwy. 121 heading northward along West Rowlett Creek through the Hunter's Creek, Turnbridge Manor subdivisions and Limestone Quarry Neighborhood Park.

Taychas Trail, Phase 2 is part of the Six Cities Hike and Bike Master Plan, a regional linkage plan for Allen, Frisco, Garland, McKinney, Plano and Richardson. Phase 2 will commence at Independence and follow the creek corridor connecting with Harold Bacchus Community Park and Cypress Creek sub-division to the west of the park. A portion of this project will also include an off-street Hike and Bike Trail along

Independence southward to Rolater, then east on Rolater connecting with Centennial High School and the existing trail. It is anticipated that the trail will follow along the creek in this area, once those properties develop.

The 'Scope of Services' will include a topographic survey, platting, construction documents (basic design services) and structural engineering study of existing bridges and abutments.

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

**Alternatives:**

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

**Financial Considerations:** Funding will be from the Collin County Parks and Open Space Funding Assistance Program in the amount of ($13,865) and from Park Dedication Funds in the amount of ($86,875), totaling $100,740.

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

**Supporting Documents:**

- Agreement
- Resolution
- Site Map

**Staff Recommendation:** Approve agreement for design services and preparation of construction documents for Taychas Trail, Phase 2.


COIT RD
INDEPENDENCE PKWY
Rowlett Creek
West Rowlett Creek
MAIN ST
HILLCREST RD
Taychas Trail Phase 2
Approximately 3500 Feet
ROLATER RD
COIT RD
CUSTER RD
SH 121
Proposed Trails
Existing Trails
1 inch = 0.5 miles
0 0.25 0.5 1
Miles
N
Taychas Trail Phase 2
FRISCO
CITY OF FRISCO, TEXAS
Parks & Recreation Department
FRISCO


MAIN ST
Harold Bacchus Community Park
INDEPENDENCE PKWY
West Rowlett Creek
Taychas Trail Phase 2
Approximately 3500 Feet
1 inch = 750 feet
0 375 750 1,500
Feet
N
ROLATER RD
Taychas Trail Phase 2
FRISCO
CITY OF FRISCO, TEXAS
Parks & Recreation Department
FRISCO

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 BETWEEN THE CITY OF FRISCO AND PELOTON LAND SOLUTIONS, LLLP, FOR DESIGN SERVICES AND PREPARATION OF CONSTRUCTION FOR TAYCHAS TRAIL, PHASE 2.

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, by and between Peloton Land Solutions, LLLP, for design services and preparation of construction documents for Taychas Trail, Phase 2, 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

# PELOTON LAND SOLUTIONS, LLLP (CONSULTANT)

# FOR

# LANDSCAPE ARCHITECTURAL AND ENGINEERING

# DESIGN SERVICES AGREEMENT

Made as of the 12th day of March in the year Two Thousand Twelve:

**BETWEEN** the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5000
Facsimile: (972) 292-5122

and the Consultant: **Peloton Land Solutions, LLLP**
5751Kroger Drive, Suite 185
Keller, Texas 76244
Telephone: (817) 562-3350

for the following Project: **Taychas Trail - Phase 2**

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 **Peloton Land Solutions, LLLP**, hereinafter referred to as "Consultant", to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

**WHEREAS**, the City desires to engage the services of the Consultant to design and/or prepare construction documents for **Taychas Trail - Phase 2**, hereinafter referred to as "Project;" and

**WHEREAS**, the Consultant desires to render such landscape architectural and 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 landscape architectural and engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.

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

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

1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.

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

## ARTICLE 2
## THE CITY'S RESPONSIBILITIES

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

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

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

## ARTICLE 3
## CONSULTANT'S COMPENSATION

3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum Fee, for an amount not to exceed **One Hundred Thousand Seven Hundred and Forty and 00/100 Dollars ($100,740.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."

3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of Five Hundred and 00/100 Dollars ($500.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and 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 twenty (20) 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 prior to payment of Five Hundred and 00/100 Dollars ($500.00) shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project.

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

3.3.7

**Hourly Billable Rates by Position**

| *Name* | *Position* | *Hourly Rate* |
|---|---|---|
| -- | Project Director | $190.00 |
| -- | Project Manager / Senior Engineer | $145.00 |
| -- | Project Manager / Senior Landscape Architect | $145.00 |
| -- | Project Engineer | $135.00 |
| -- | Senior Environmental Scientist | $160.00 |
| -- | Environmental Scientist | $105.00 |
| -- | Landscape Architect | $ 90.00 |
| -- | Design Engineer | $ 85.00 |
| -- | Design Technician | $ 75.00 |
| -- | Clerical | $ 80.00 |

3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to

exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth ($10^{th}$) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

## ARTICLE 4
## OWNERSHIP OF DOCUMENTS

4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8,

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

4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

## ARTICLE 5
## CONSULTANT'S INSURANCE REQUIREMENTS

5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s),

authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars ($1,000,000.00) for each claim, and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars ($2,000,000.00). 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. If City so desires, copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

## ARTICLE 7
## AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

## ARTICLE 8
## TERMINATION OF AGREEMENT / REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports,

photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

## ARTICLE 9
## DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

## ARTICLE 10

## INDEMNITY

**CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSBILE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS,**

DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY; CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A

WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

## ARTICLE 11
## NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

**John E. Doshier**
Parks Project Manager
Parks and Recreation Department
City of Frisco – Administration Office
6726 Walnut Street
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

**Patrick Smith**
Peloton Land Solutions, LLLP
5751 Kroger Drive, Suite 185
Keller, Texas 76244

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.

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**
Peloton Land Solutions, LLLP

By: Peloton Land Solutions GP (LLC)
its general partner
By: _____
Patrick Smith

Title: PARTNER

By: _____ Richard Payne

Title: Partner

**APPROVED AS TO FORM:**

Courtney A. Kuykendall

Abernathy, Roeder, Boyd, & Joplin, P.C.
Courtney A. Kuykendall, City Attorneys

**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 _____:**

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED Pat Smith, 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 23 DAY OF March, 2012.

Stacy A. Jeanes
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 3/8/14

STACY A. JEANES
My Commission Expires
March 08, 2014

**EXHIBIT "A"**
**SCOPE OF SERVICES**

**Agreement by and between the City of Frisco (City) and Peloton Land Solutions, LLLP (Consultant) for**

**TAYCHAS TRAIL - PHASE 2**

## I. PROJECT DESCRIPTION

Peloton Land Solutions, LLLP ("Peloton") will perform professional design services for the City of Frisco ("City") for developing construction documents for the trail improvements for Taychas Trail Phase 2 in Frisco Texas. Peloton will prepare final construction documents for the trail improvements for the purpose of bidding the work in accordance with City standards and budgets, as well as federal, state and local laws.

This scope of work includes professional landscape architectural, surveying and engineering design services. The program for the trail improvements, scope of work and fee schedule is based upon an approved program and approximate construction budget of $750,000.00 as identified by the City on February 14, 2012 in a meeting with Peloton.

## II. TOPOGRAPHIC SURVEY AND PLATTING

### A. TOPOGRAPHIC SURVEY

1. Peloton will be provided from the City a current boundary survey and any information for the existing site, if readily available.

2. Peloton will perform a topographic survey for the site, including all manmade structures, trees with 8" caliper or greater, and above ground site features & visible utilities.

3. Peloton will prepare a digital topographic survey map at 1' contour intervals for use as the existing site conditions. This map will also include spot elevations for items listed in #2 as needed to accurately depict the site.

### B. PLATTING

1. Boundary Verification with Easement Estate

   a. The boundary survey will be based on the following items: current deed of record, current-adjoining deeds, right-of-way maps and title commitment together with all identified easements and listed exceptions of record shown on schedule "B" of the title commitment as provided by the City.

   b. The easements listed in Schedule "B" or found by research will be located based on the descriptions of record provided

to Peloton. The correction or resolution of erroneous, deficient or ambiguous easement descriptions is not included within this scope. Peloton will not responsible for the location and or mapping of easements which may affect the site if no title commitment is provided.

c. The resolution of boundary conflicts or gaps discovered during the course of this survey is not included within this scope.

d. Peloton will not produce a boundary survey map in conjunction with the work described above.

e. Peloton assumes the City will provide a copy of the previous survey, and that sufficient boundary markers are in place to allow reconstruction of the boundary.

2. Final Plat

a. The Final Plat will be prepared in accordance with the current City of Frisco Platting and Subdivision Regulations and Requirements. The plats will represent the above surveyed boundary.

b. City review comments will be addressed to achieve a Final Plat that is acceptable to the City.

c. This scope and fee does not include council meetings that may be required by the City in association with this plat.

## III. CONSTRUCTION DOCUMENTS

### A. BASE MAPPING AND FINAL PROGRAM DEVELOPMENT

1. Peloton will utilize the topographic survey information for Taychas Trail Phase 2, as prepared by Peloton in this scope of services. The City will also provide Peloton any readily available information required to perform this Scope of Services for on-site and off-site conditions including, but not limited to: above and below ground utilities; easements; property lines; right-of-ways, subdivision layouts, roadways, vegetation, soils/geotechnical information, hydrology/drainage information, etc. Based upon the existing survey and additional information provided by the City, Peloton will prepare an existing conditions base map(s) for use in Design Development and Final Construction Documents. Should any additional site survey information be necessary, the City will be responsible for providing this information.

**EXHIBIT "A"**
**SCOPE OF SERVICES**

2. During the base mapping, Peloton will meet with the City staff to discuss the trail improvement development Program and specifically define the City's goals for the trail development. This meeting will also confirm the final budget allocation by the City for the construction of the trail improvements.

**Task A Deliverables:**

Existing conditions base maps
Written summary for Park Development Program
Preliminary Program & Budget Projections

B. PRELIMINARY DESIGN CONCEPT

1. Peloton will prepare a Preliminary Design Concept Plan for the proposed trail improvements. The Concept will be based upon the current City approved program items, and the estimated construction budget of $750,000.00.

2. Based upon the approved Preliminary Design Concept Plan, Peloton will prepare a Preliminary Cost Estimate for the proposed improvements.

3. Peloton will attend one (1) meeting with the City to review the approved Preliminary Design Concept Plan and Cost Estimate to confirm the overall design and obtain City approval before proceeding into the Design Development phase of work. If the City substantially, as solely determined by the City, increases the program and construction budget, Peloton will review with the City the required additional fees necessary to cover the increase in scope of work. Peloton will not proceed into the Design Development phase until the final program, cost estimates, and consultant design fees have been approved in writing by both Peloton and the City.

**Task B Deliverables:**

Preliminary Design plan for trail improvements
Preliminary Cost Estimate

C. DESIGN DEVELOPMENT

1. Based upon approval of the Preliminary Design Concept plan from the City, Peloton will prepare Design Development drawings for the proposed Trail improvements. The Design Development drawings will be prepared at an approximate 50% level of completion of Construction Documents.

EXHIBIT "A"
SCOPE OF SERVICES

2. The City will provide to Peloton all front end documents, contracts, insurance requirements, general conditions, etc. for use by Peloton in preparing the specifications and contract documents.

3. Based upon the Design Development drawings, Peloton will prepare a 50% completion cost estimate for the proposed Trail improvements.

4. Peloton will prepare a preliminary Table of Contents for the specifications and contract documents.

5. Peloton will submit the Design Development drawings, Cost Estimate and Table of Contents for the specifications and contract documents to the City for review and approval.

6. The City will forward, in writing, to Peloton all review comments for the Design Development drawings submittal. Peloton will obtain these comments and approval from the City prior to proceeding into the final construction documents.

**Task C Deliverables:**

- Design Development drawings
- Table of Contents for specifications and contract documents booklet
- Design Development Cost Estimate

D. FINAL CONSTRUCTION DOCUMENTS

1. Based upon approval from the City for the Design Development drawings submittal, Peloton will prepare final Construction Documents at an approximate 95% level of completion. The Construction Documents will be comprised of both the drawings and the specifications and contract documents.

2. Based upon the 95% Construction Documents, Peloton will prepare a final cost estimate for all the proposed Trail improvements.

3. Peloton will submit the 95% Construction Documents and cost estimate to the City for final review and comments. The City will provide Peloton final, written comments for all revisions requested to the Final Construction Documents.

4. Based upon the final written comments received from the City, Peloton will prepare final 100% Construction Documents for the City to utilize in bidding the project.

5. Peloton will submit the final Construction Documents to the Texas Department of Licensing and Regulation (TDLR) for the State required accessibility review. The accessibility review will include

compliance with TAS and ADA requirements. Fees associated with this review will be included as a reimbursable expense.

**Task D Deliverables:**

- 95% Construction Documents
- Final Cost Estimate
- 100% Construction Documents
- Submission of Construction Documents for TDLR review

E. BID PHASE

1. Peloton will attend a pre-bid meeting with City representatives and the potential bidders.

2. Peloton will prepare addendum(s), if required, during the bid phase.

3. Peloton will assist the City in reviewing the Contractor's bids and providing a Bid Tabulation and a recommendation to the City for award of contract.

**Task E Deliverables:**

- Bid Tabulation
- Review of contractor's bids and letter of recommendation for award of contract

F. CONSTRUCTION ADMINISTRATION

1. Peloton will assist the City by attending a pre-construction meeting, and a maximum of three (3) 2-hour progress meetings during construction to evaluate completion of work by the Contractor. Should the number of required meetings or amount of meeting time increase, such time can be provided by Peloton as an additional service as requested and approved by the City in writing. The City will be responsible for the day-to-day administration of the construction contract.

2. Peloton will prepare a written Field Report as necessary for meetings attended during the construction of the project.

3. Peloton will process submittal and shop drawing reviews as submitted by the Contractor during the construction process. Pay applications will also be reviewed each month by Peloton and will then be forwarded to the City with the appropriate recommendation.

4. Peloton will assist the City in attending one (1) final project walk-through meeting with the Contractor and his subcontractors to review the completion of work. Peloton will provide written

comments to the City for the preparation of a final "punch list" for work to be completed by the Contractor.

**Task F Deliverables:**

- Field reports for progress meetings/reviews as necessary
- Processing of submittals and RFI's
- Field report from the final project walk-thru

G. STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

1. In conjunction with the completion of the Final Construction Documents, Peloton will prepare a Storm Water Pollution Prevention Plan (SWPPP) for the proposed site. Any other environmental engineering services would be considered additional services.

H. STRUCTURAL ENGINEERING STUDY OF EXISTING BRIDGES AND ABUTMENTS

1. There are two existing bridges spanning the creek which appear to be constructed of I-beams and flatbed railroad cars. Charles Gojer & Associates, as a sub-consultant to Peloton, will study the existing bridges and abutments to verify their safety and load bearing capabilities and capacity. It is understood that the bridges need to be able to support a 10,000 lb. emergency vehicle. Should these bridges be determined to be acceptable, new architectural enhancements will be provided within the basic design services of this scope of work. Should the bridges be determined to be unsafe for use as pedestrian bridges, then the results of this study will be reviewed with the city. Any structural design work necessary to bring the bridges to acceptable structural load bearing conditions will be based on a mutually agreed scope of work and fee. Fees for new structural integrity design work are not included in this scope of services. In order to better verify the integrity of the existing structure, Charles Gojer and Associates will work with a specialist to perform a visual inspection of the existing welds on the two bridges. This specialist will also perform UT scans on the welds used to splice the main structural bridge I-beams together.

## EXHIBIT "A"
## SCOPE OF SERVICES

### IV. ASSUMPTIONS

A. The City has designated a construction budget of approximately $750,000.00 for the Taychas Trail Phase 2 improvements. Should this construction budget substantially, as solely determined by the City, increase or decrease, or the City should require a significant number of alternate bid items be included in the construction document package, Peloton and the City staff will re-evaluate this scope of work and determine the basis of compensation in accordance with revisions to the design services.

B. The City will provide as expeditiously as possible all readily available base information, that it currently has in its possession, necessary to complete the Scope of Services described herein. Should Peloton need any additional survey information, the City will provide this information to Peloton. ALL INFORMATION PROVIDED BY THE CITY IS ASSUMED TO BE ACCURATE AND COMPLETE, unless indicated otherwise by the City. Any information required to complete this Scope of Services that cannot be readily provided by the City will remain the responsibility of the City. All such information shall be provided to Peloton and any costs associated with acquisition of information will be borne by the City.

C. This Scope of Services does not include water permitting related to the following agencies: U.S. Army Corps of Engineers 404 Permitting; Federal Emergency Management Agency (FEMA) map revision preparation and processing; Texas Commission on Environmental Quality (TCEQ) permits or applications.

D. Any services for environmental engineering such as an Environmental Assessment (E.A.) or Environmental Impact Statement (E.I.S.) are not included in this Scope of Services and would be considered additional services.

E. Other than those identified in this contract, no additional public meetings and/or presentations are provided within this Scope of Services

F. The City will pay for all required governmental processing fees and public notice advertising costs.

G. This Scope of Services does not include additional mass grading studies other than the required site grading for the proposed trail improvements.

H. It is anticipated that the trail design will be prepared as one bid package. If additional bid packages are required by City for phasing breakouts, Peloton will re-evaluate the scope of services to address additional fees not covered in this scope of work.

**EXHIBIT "B"**
**COMPENSATION SCHEDULE**

**Agreement by and between the City of Frisco (City) and Peloton Land Solutions, LLLP (Consultant) for**

**TAYCHAS TRAIL PHASE 2**

## I. BASIS OF COMPENSATION

The cost for performing these services set forth herein is based upon an approximate construction budget of $750,000 and will be as follows:

Topographic Survey and Platting

A. Topographic Survey (Lump Sum) ..... $12,020.00

B. Platting (Lump Sum) ..... $9,670.00

**Total Topographic Survey and Platting ..... $21,690.00**

Construction Documents (Basic Design Services)

A. Base Map Preparation and Final Program Development (LS) ..... $6,000.00

B. Preliminary Design Concept (Lump Sum) ..... $5,850.00

C. Design Development (Lump Sum) ..... $15,000.00

D. Final Construction Documents (Lump Sum) ..... $26,500.00
- TDLR Review & Site Inspection (Lump Sum) ..... $500.00

E. Bid Phase (Lump Sum) ..... $2,000.00

F. Construction Administration (Lump Sum) ..... $3,400.00

**Total Basic Design Services ..... $59,250.00**

G. Storm Water Pollution Prevention Plan (SWPPP) (Lump Sum) ..... $3,000.00

H. Structural Engineering Study of Existing Bridges and Abutments (Lump Sum) ..... $12,000.00

I. Reimbursable Expenses (Not-to-Exceed) ..... $4,800.00

**TOTAL - Topographic Survey and Platting, Basic Design Services, SWPPP, and Reimbursable Fee (Not-to-Exceed) ..... $100,740.00**

Reimbursable Expenses will be additional to the Basic Design Services cost and shall be in compliance with Exhibit D.

## EXHIBIT "B"
## COMPENSATION SCHEDULE

### II. PROJECT SCHEDULE

Construction Documents to be 100% complete and delivered to the City within 180 days after Notice-to-Proceed is given to Peloton by the City.

### III. ADDITIONAL SERVICES

Additional Services, not included in this Scope of Services, will be negotiated with the City as necessary. Compensation will be based upon either a mutually agreed lump sum fee or on an hourly basis. Items which would be considered Additional Services could include: additional site surveying, geotechnical investigation, design of additional program items beyond what has been identified by the City for the Park improvements, alternate bid items, additional meetings with City Staff and/or presentation to other groups, additional site visits during construction activity, etc.

**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;<br>▪ Minimum $2,000,000.00 in the aggregate. |
| ___ | 3. | XCU Coverage | ▪ Minimum $1,000,000.00 each occurrence;<br>▪ Minimum $2,000,000.00 in the aggregate. |
| X | 4. | Professional Liability | ▪ Minimum $ 1,000,000.00 each claim;<br>▪ 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, _____, 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 23 day of March, 2012.

Partner
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Richard Payne 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 23 day of March, 2012.

STACY A. JEANES
My Commission Expires
March 08, 2014

Notary Public in and for the State of Texas
My commission expires: 3/8/14

## 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.

Peloton Land Solutions, LLP

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

6 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 of person doing business with the governmental entity

3/23/12
Date

Amended 01/13/2006

# AGENDA ITEM #14.

CITY MANAGER'S OFFICE

CITY OF FRISCO

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

# Memorandum

**To:** **Honorable Mayor Maso and the Frisco City Council**
**Thru:** **George Purefoy, City Manager**
**From:** **Greg Ward, Deputy Chief, Police Department**
**CC:** **Ron Patterson, Assistant City Manager**
**Todd Renshaw, Chief of Police**
**Date:** **3/29/2012**
**Re:** **Grant to support Police Department Personnel for the purchase of a Hostage Negotiator Vehicle.**

---

**Action Requested:** Consider and Act on a Resolution approving the terms and conditions of a grant application to the North Central Texas Council of Governments and Homeland Security Urban Areas Security Initiative (UASI) for funding the purchase of a Hostage Negotiator Vehicle and authorizing the submission of the grant applications by the City Manager or his designee.

**Background Information:** Hostage Negotiation vehicles are optimized for information gathering and communication because negotiation is the most important aspect of any hostage crisis. Hostage Negotiation units are built with the goal of creating a calm environment equipped with all the necessary tools to assess the situation, communicate effectively with our team, the hostage-taker, and ultimately diffuse the crisis. The hostage negotiation vehicle accommodates department supplied equipment, including throw phones and recorders, police radios, land line phones, climate controlled interior and other necessary amenities to provide function and comfort needed for extended operations. Hostage negotiation is often a long and gruelling process, which is why it's critical we have a platform with the tools we need to guide our team and the hostages safely through any situation to bring about a peaceful resolution to incidents by negotiation.

**Alternatives:** Council could choose to deny this request or request additional information.

**Financial Considerations:** The Homeland Security Urban Areas Security Initiative (UASI) Grant provides money for both Fire and Police Departments. The Police Department grant request is for $125,000 to fund one Hostage Negotiator Vehicle. The Homeland Security Urban Areas Security Initiative (UASI) Grant Program does not require any cash match; however the Police Department will assume maintenance and fuel costs of the vehicle.

**Staff Recommendation:** Staff requests that the council authorize the City Manager or his designee to submit the application 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 NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND FY 12 HOMELAND SECURITY GRANT – URBAN AREA SECURITY INITIATIVE (UASI) FOR A HOSTAGE NEGOTIATOR VEHICLE; 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 UASI Hostage Negotiator Vehicle grant be operated for the 2012-2013 Fiscal Year; and

**WHEREAS,** City of Frisco finds that this grant does not require matching funds on behalf of the applicant; the City would be requesting grant funds for the complete purchase of the Hostage Negotiator Vehicle; and

**WHEREAS,** The City of Frisco agrees, that in the event of loss or misuse of the Homeland Security Grant funds, the City of Frisco assures that the funds will be returned to the Department of Homeland Security 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 Hostage Negotiator Vehicle to the North Central Texas Council of Governments and Department of Homeland Security.

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:_ UASI_Hostage Negotiator Vehicle _____

**FY12 Urban Area Security Initiative Grant Form**

Instructions: You will not be able to save your project in the middle of entering the information. Once you have submitted the form, it is saved and you will not be able to go back and make changes to the project.

One suggestion is to use the Word document. You can fill in the information you need to at your own pace and come back to the website at a later time and copy/paste the information you entered in your Word document into the online form.

**CONTACT INFORMATION**

**Jurisdiction/Agency :** Select region from dropdown menu
**Name:** Todd V. Renshaw Chief of Police
**Email :** trenshaw@friscotexas.gov
**Phone:** 972-292-6101

The project coordinator is the person that you would like us to contact in regard to this project.

**Project Coordinator Name:** Greg Ward Deputy Chief
**Project Coordinator Email:** gward@friscotexas.gov
**Project Coordinator Phone Number:** 972-292-6150

**Please select the most relevant investment category:**

- Planning
- Response
  - Law Enforcement / SWAT
  - USAR
  - HazMat
  - EOD
- EOC Management
- Interop
- Fusion / Intel
- CI/KR
- Medical
- Community Preparedness

**Project Title:** [Not to exceed 300 characters including spaces]

Frisco Hostage Negotiator Vehicle

**Identify if this project is a New Capability or an Existing Capability** (Dropdown)

**Does this Investment require new construction or renovation, retrofitting, or modification of existing structures?** Yes/No

**Time period for completion of project**
Choose a time period from the dropdown menu:
1-4 Months
5-8 Months
9-12 Months
13-16 Months
17-20 Months

**Project Management Step involved:**
Choose only one.

[Drop down list] Initiate, Plan, Execute, Control, Close Out

**Provide a summary description of the project.** Not to exceed 2500 characters, including spaces

The City of Frisco is seeking $125,000.00 in funding for a Hostage Negotiator Vehicle. In the case of a hostage situation or barricaded suspect, negotiation is often a long and gruelling process, which is why it's important to have a platform with the tools we need to guide our team, hostages or the suspect safely through any situation to bring about a peaceful resolution to critical incidents.

It will be the role of the Police Department's Special Operations Unit/ Hostage Negotiation Team to provide the needed expertise to conduct this type of operation and complete their mission successfully. To accomplish this, there is a need for Hostage Negotiator Vehicle to help identify potential threats and get tactical/rescue personnel in position to rescue those in need and get them to safety.

Hostage Negotiation vehicles are optimized for information gathering and communication because negotiation is the most important aspect of any hostage crisis. Hostage Negotiation vehicles are built with the goal of creating a calm environment equipped with all the necessary tools to assess the situation, communicate effectively with our team, the hostage-taker, and ultimately diffuse the crisis.

Whether trying to locate a barricaded suspect, hostages, or trapped innocent parties, the Hostage Negotiator Vehicle will provide a proper platform to supply Police, Fire and other emergency services with real-time information so they can act quickly and safely to resolve the situation.

**If this is a multi-jurisdictional project please list all participating jurisdictions.** Not to exceed 1000 characters, including spaces

**Provide an explanation on the regional impact of this project.** Not to exceed 1500 characters, including spaces

Local government officials are often challenged to provide initial and secondary responses for large-scale catastrophes and attacks on crucial infrastructure, schools, government buildings, strategic businesses, as well as large public gatherings. There will be an urgent need to provide a coordinated method of safely inserting emergency medical personnel, tactical and fire service personnel into hostile environments to allow the evacuation and treatment of victims of crime, hostages or injured people.

As part of a regional mutual aid response team, Frisco Police Department will be able to provide a Hostage Negotiator Team response to critical incidents and also to serve in a critical support role for EOD, HazMat, WMD, US&R or with any other agency who may be responding to the scene as well.

The Hostage Negotiator Vehicle can also be utilized by our team in support of smaller, less equipped agencies, or any agency that requests our assistance in support of other potentially dangerous assignments including assisting with high-risk narcotics searches, arrest warrant service, and clandestine laboratory incidents. With the purchase and deployment of the Hostage Negotiator Vehicle, the Frisco Police Department will add to its ability to respond to local and regional incidents as well as contribute to the overall regional capabilities index.

**Explain the long-term approach to sustaining the capabilities developed by this project.** Not to exceed 1500 characters, including spaces

The Frisco Police Department will maintain training for designated staff for the operational use of this vehicle. The Frisco Police will assume all costs for continued operations of this vehicle through our normal budget process.

**Describe existing capability levels and prior homeland security funded projects that address the identified goals/objectives and what will be in place to support the Investment prior to the use of FY 2012 funds. List any major milestones, purchases, and training that has already been started or completed.** Not to exceed 1500 characters, including spaces

This investment is a new project which has not been previously funded, to enhance the City of Frisco's disaster preparedness, fire and tactical response to urban rescue and other critical incidents. Currently we are utilizing an old refurbished Fire Department ambulance which, due to it's age, is no longer serviceable.

Though there are several agencies within our region who possess these types of vehicles, if a major event took place within the region, each jurisdiction's priority would initially be to their own citizens and depending on the extent of the devastation or operation, their resources might be engaged and mutual aid may be hindered in getting to us in a timely manner. It is only prudent that this type of tool be widely available so that we can help ourselves but also help others in their time of need.

A Hostage Negotiator Vehicle can accommodate department supplied equipment, including throw phones and recorders, police radios, land line phones, climate controlled interior and other necessary amenities to provide function and comfort needed for extended operations.

**Describe the threats and hazards that create the need for the project**: Not to exceed 1500 characters, including spaces

As it stands now, teams in Frisco must respond to critical incidents without the help of a dedicated Hostage Negotiator  Vehicle when responding to hostage situations, barricaded suspects, or during a domestic or foreign terrorist attack. Without the use of this vehicle, responders may be forced to physically make an unsafe probing entry into a potentially life threatening situation, increasing the risk of injury or death to themselves as well as those trapped without a complete understanding of the threat.

**The capability gap which will be addressed by the project:** Not to exceed 1500 characters, including spaces

The acquiring of this capability fills in gaps identified in the Collin County Community Plan, "There is a need for specialized equipment to respond effectively to any natural or manmade disasters" (*Source: Collin County Community Plan FY10 "Problem: Domestic Preparedness / Homeland Security / Emergency Response" pages 45-46*). There is a similar stated need described in the Denton County Community Plan, " Denton County law enforcement agencies are in need of various specialized personal protective and emergency response equipment" (*Source: Denton County Community Plan FY05 "Homeland Security / Domestic Preparedness" page 15*).

**How will the project reduce the capability gap:** Not to exceed 1500 characters, including spaces

Acquiring this vehicle will provide our region with a suitable platform to respond to critical incidents **

**Choose the Goal, Objective, and Priority Action associated with this proposal.**

(The form includes an outline with the state goals, objectives and priority actions)

**Goal 3: Prepare to Minimize Damage Through Rapid, Decisive Response and Quickly Recover from Terrorist Attacks and Other Disasters**

**3.3.5 OBJECTIVE 3.5:** Integrate Homeland Security Training across all Agencies, Jurisdictions and Disciplines.

**3.5.3.** Routinely assess homeland security training requirements within the state, and update implementation strategies to address shortfalls. (TC: 1, 3, 4, 14, 15, 37)

**What capability gap will this proposal address regarding the UASI Strategy?**
Choose the Goal, Objective, and Implementation Step associated with this proposal.
(The form includes an outline with the UASI Strategy goals, objectives and priority actions)

**GOAL 9: ENHANCE COUNTER-TERROR INVESTIGATIONS AND LAW ENFORCEMENT**

**9.4 Objective**

Increase law enforcement's ability to respond to large scale events including secondary incidents.

**Implementation Steps:**

**9.4.1** Improve command and control abilities at the first responder level through use of command and control vehicles and training.

**Check if this project is for law enforcement.** [checkbox]

**Check if this project supports a fusion center.** [checkbox]

**Enter the amount of funding for each category (UASI Funding).**

Enter decimal numbers only, no characters (dollar signs, commas), do not put N/A, only numbers.

**Planning**

**Organization**

**Equipment**

**Training**

**Exercise**

**M/A***

Total [Calculated]

**Enter the amount of funding for each category (Law Enforcement Funding, if applicable).**

Enter decimal numbers only, no characters (dollar signs, commas), do not put N/A, only numbers.

**Planning**

**Organization**

**Equipment $ 125,000**

**Training**

**Exercise**

**M/A*** **$0.00** The Frisco Police Department will make timely reports and evaluations on the Command/Critical Incident Vehicle's use and the completion, submission and close out of the grant paperwork to the SAA at no additional cost.

Total [Calculated]

**You must include a specific breakdown by funding category (Planning, Organization, Equipment, Training, Exercises, and M&A). Provide detailed information on exactly what the funding will be used to purchase.**

**Planning: (Include AEL Codes)**-Not to exceed 1250 characters, including spaces

**Organization: (Include AEL Codes)**-Not to exceed 1250 characters, including spaces

**Equipment :**
**Provide a broad description here of equipment to be purchased.**
Not to exceed 2000 characters, including spaces

12VE-00-CMDV **AEL Title:** Vehicle, Command, Mobile= $125,000

A self-contained autonomous vehicle optimized for information gathering and communication assuring the relationship between Command , the SWAT team, Incident Commander, Crisis Negotiation Team (CNT) and any other joint or support elements that ensure clear lines of responsibility and compliance with the protocols of a SWAT Type 3 Team as defined by the National Incident Management System and the Incident Command System (NIMS) Resource Typing ,Law Enforcement [7/07].

**Training: (Include AEL Codes)**-Not to exceed 1250 characters, including spaces

**Exercises: (Include AEL Codes)**-Not to exceed 1250 characters, including spaces

**M&A: (Include AEL Codes)**
**(Maximum allowed is 5% of award total.)**

Not to exceed 1250 characters, including spaces

**Please select applicable Core Capabilities and amount of funding for each.**

(The form will include a table of core capabilities to choose and a place for an amount for each capability)

**List 3-5 milestones of this project, and then list the intended completion date for each milestone. Milestones should occur throughout the project.**

**Milestone 1:** Not to exceed 300 characters, including spaces

Determine Specifications for needed equipment

**Intended Start Date:** Must be in MM/DD/YYYY format 12/03/2012

**Intended Milestone Completion Date:** Must be in MM/DD/YYYY format 12/28/2012

**Milestone 2:** Not to exceed 300 characters, including spaces

Identify Equipment and select Vendor

**Intended Milestone Completion Date:** Must be in MM/DD/YYYY format 01/31/2013

**Milestone 3:** Not to exceed 300 characters, including spaces

Receive Cog/UASI approval for equipment

**Intended Milestone Completion Date:** Must be in MM/DD/YYYY format 02/28/2013

**Milestone 4:** Not to exceed 300 characters, including spaces

Order Equipment

**Intended Milestone Completion Date:** Must be in MM/DD/YYYY format 03/29/2013

**Milestone 5:** Not to exceed 300 characters, including spaces

Receive and inventory equipment

**Intended Milestone/Project Completion Date:** Must be in MM/DD/YYYY format 09/27/2013

**List specific performance outputs and outcome measures that will indicate this proposal is successful at the end of the FY2012 HSGP performance period and explain the long-term approach to sustaining the capabilities developed by this project.** Not to exceed 2500 characters, including spaces

Outputs

- Review plans for response to critical incidents
- Participate in annual multi-jurisdictional training exercise for response to critical incidents
- Quarterly Internal trainings with Special Operations Unit with Hostage Negotiation Vehicle
- Respond to critical incidents locally and regionally as needed

Outcome Measures

- After action debriefing: Identify needs and gaps in response plans
- Review Response times and actions meet standards as set forth in the Respond
- The Frisco Police Department will continue to participate in regional exercises and respond to incidents as requested.

Disclaimer: I certify, by checking this box, that the information provided in this submission is accurate to the best of my knowledge. By checking this box, I am indicating that I am authorized to submit this project by my governing body. I also understand this project proposal serves as a request for consideration for grant funding; and, there is not a guarantee of award by submitting this request. I understand that if this project is funded I will complete all necessary actions listed in the grant sub-recipient agreement and special terms and conditions. I also understand that any variation to an approved project must be submitted through the formal change request process. Additionally, the change must be authorized by the UASI Executive Committee and should a change request be denied, funds can be reallocated to another project or jurisdiction.

By accepting DFWA UASI funds, your jurisdiction agrees to abide by the UASI Strategy. In addition, response to data calls and performance milestones may be required.

# AGENDA ITEM #15.

**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:** **3/26/2012**

**Agenda Caption:** **Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0003.**

---

**Action Requested:** City Council adoption of a Resolution calling for public hearings on the proposed voluntary annexation for Tuesday, May 1, 2012 and Tuesday, May 15, 2012.

**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:** Not applicable.

**Alternatives:** The City Council could choose not to adopt the Resolution, therefore not initiating the annexation process.

**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:**

- Resolution
- Locator Map

**Staff Recommendation:** City Council adoption of the Resolution initiating the annexation process.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS SETTING A DATE, TIME AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED VOLUNTARY ANNEXATION OF CERTAIN PROPERTY CONTAINING 5.0 ACRES, MORE OR LESS, SITUATED IN THE MEP & PRR COMPANY NO. 5 SURVEY, ABSTRACT NO. 941 DENTON COUNTY, TEXAS, BY THE CITY OF FRISCO, TEXAS AUTHORIZING AND DIRECTING THE MAYOR OR HIS DESIGNEE TO NOTIFY THE PUBLIC OF SUCH PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF. (ANNEXATION CASE A12-0003)**

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

Section 1. On the 1st day of May, 2012 and on the 15th day of May, 2012, at 6:30 p.m. in the City Council Chamber of the Frisco City Hall, 6101 Frisco Square Boulevard, City of Frisco, Texas, the City Council will hold public hearings giving all interested persons the right to appear and be heard on a proposed voluntary annexation by the City of Frisco, Texas of the property containing 5.0 acres, more or less, situated in the MEP & PRR Company No. 5 Survey, Abstract No. 941, Denton County, Texas. Annexation Case A12-0003.

Section 2. The Mayor or his designee, of the City of Frisco, Texas, is hereby authorized and directed to cause notice of such hearing to be published in a newspaper having general circulation in the city and in the above described territory not more than twenty days or less than ten days prior to the date of such hearings, in accordance with the Municipal Annexation Act (Chapter 43, Texas Local Government Code) and to be provided as otherwise required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on the 3rd day of April, 2012.

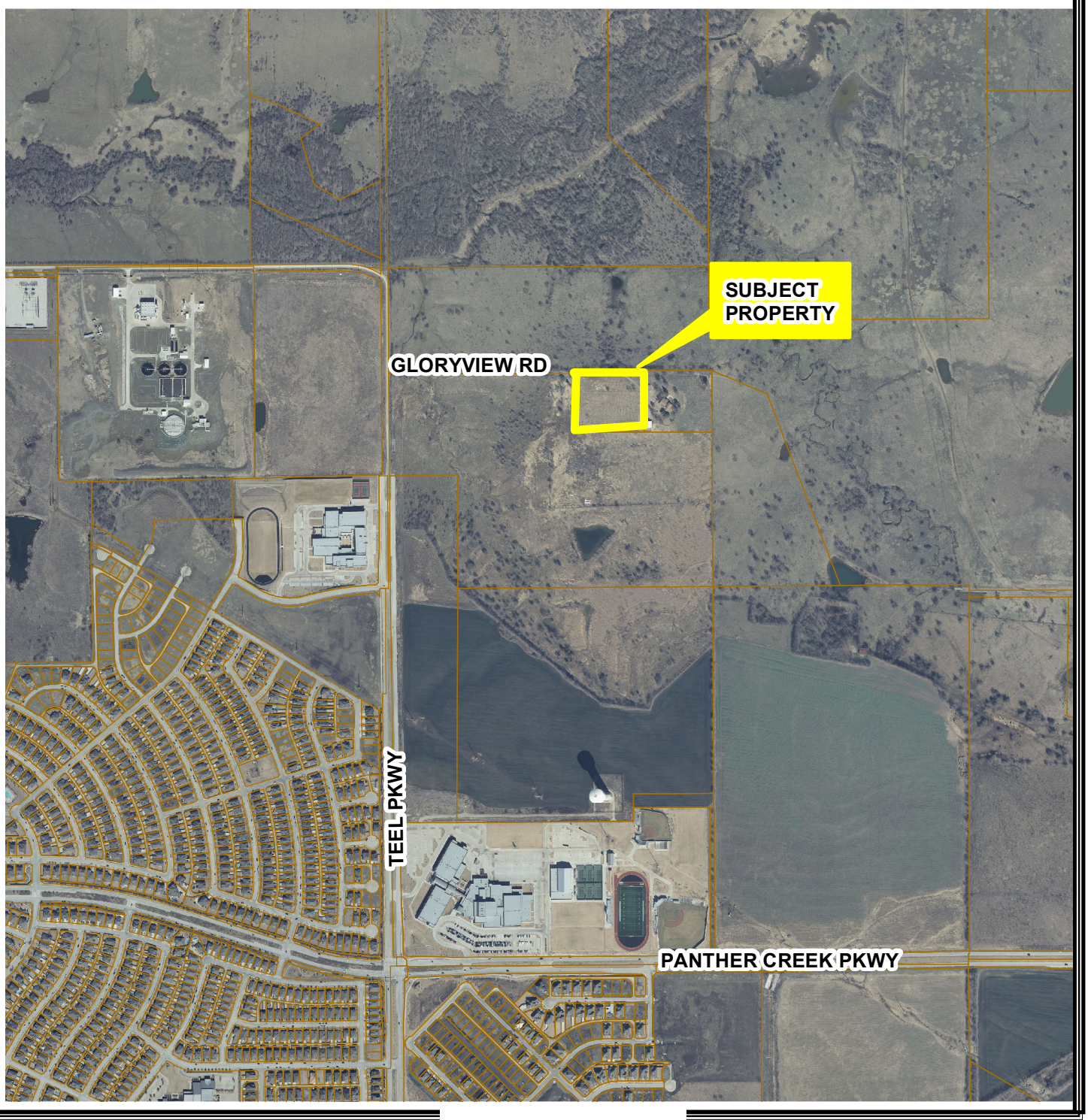
_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

1543

# A12-0003
# MEP & PRR Company No. 5 Survey, Abstract No. 941



# AGENDA ITEM #16.

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:** **3/26/2012**

**Agenda Caption:** **Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0004.**

---

**Action Requested:** City Council adoption of a Resolution calling for public hearings on the proposed voluntary annexation for Tuesday, May 1, 2012 and Tuesday, May 15, 2012.

**Background Information:** This is a voluntary annexation case submitted by Eland Energy. The property is directly adjacent to the City's corporate limits on the west and is vacant.

**Board Review/Citizen Input:** Not applicable.

**Alternatives:** The City Council could choose not to adopt the Resolution, therefore not initiating the annexation process.

**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:**
- Resolution
- Locator Map

**Staff Recommendation:** City Council adoption of the Resolution initiating the annexation process.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS SETTING A DATE, TIME AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED VOLUNTARY ANNEXATION OF CERTAIN PROPERTY CONTAINING 363.4 ACRES, MORE OR LESS, SITUATED 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, BY THE CITY OF FRISCO, TEXAS AUTHORIZING AND DIRECTING THE MAYOR OR HIS DESIGNEE TO NOTIFY THE PUBLIC OF SUCH PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF. (ANNEXATION CASE A12-0004)**

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

Section 1. On the 1st day of May, 2012 and on the 15th day of May, 2012, at 6:30 p.m. in the City Council Chamber of the Frisco City Hall, 6101 Frisco Square Boulevard, City of Frisco, Texas, the City Council will hold public hearings giving all interested persons the right to appear and be heard on a proposed voluntary annexation by the City of Frisco, Texas of the property containing 363.4 acres, more or less, situated 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. Annexation Case A12-0004.

Section 2. The Mayor or his designee, of the City of Frisco, Texas, is hereby authorized and directed to cause notice of such hearing to be published in a newspaper having general circulation in the city and in the above described territory not more than twenty days or less than ten days prior to the date of such hearings, in accordance with the Municipal Annexation Act (Chapter 43, Texas Local Government Code) and to be provided as otherwise required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on the 3rd day of April, 2012.

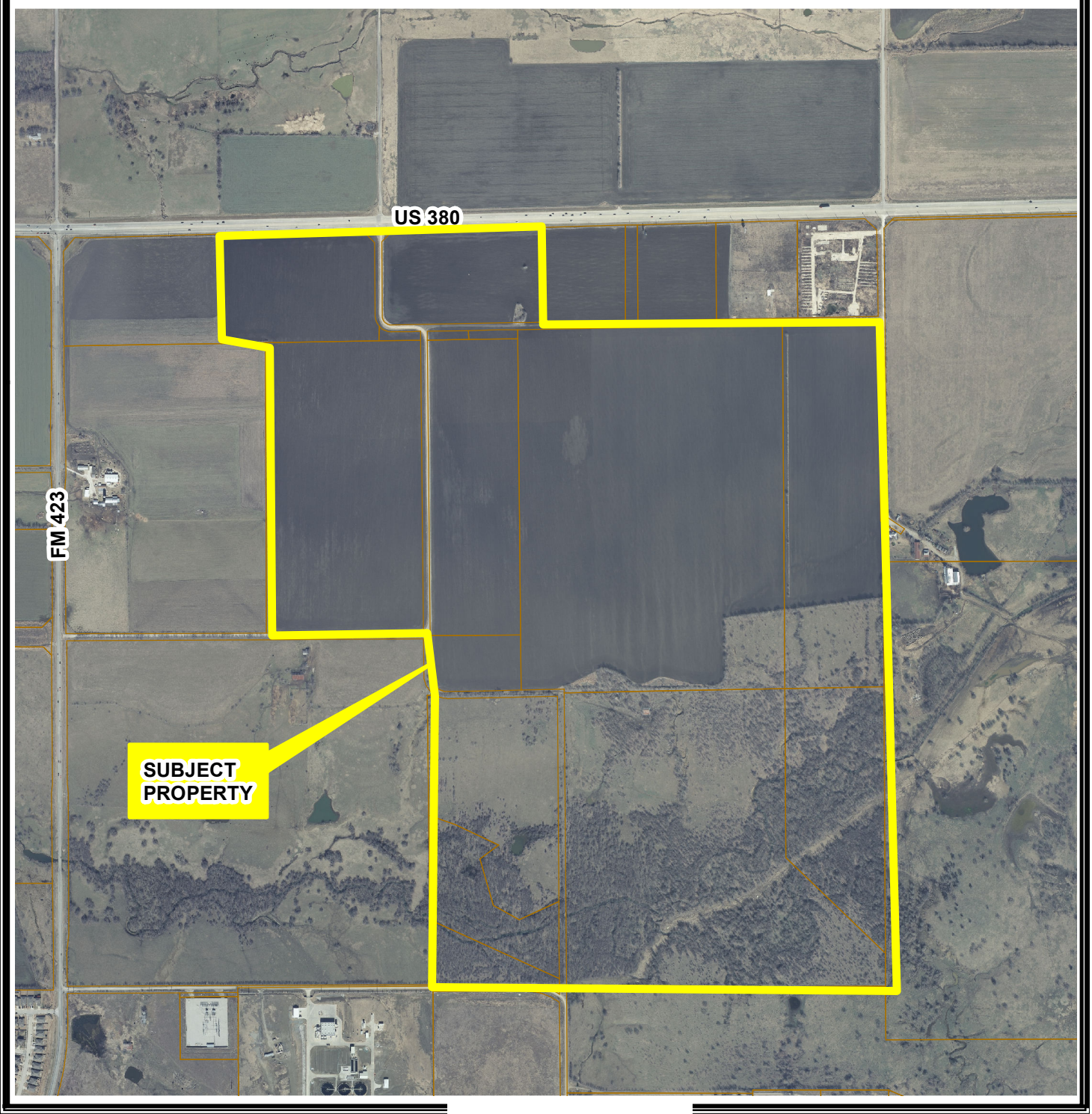
_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

1555

# A12-0004
# Eland Energy Tract



# AGENDA ITEM #17.

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:** **3/26/2012**

**Agenda Caption:** **Consider and act upon adoption of a Resolution setting Public Hearings on 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. Annexation Case A12-0005.**

---

**Action Requested:** City Council adoption of a Resolution calling for public hearings on the proposed voluntary annexation for Tuesday, May 1, 2012 and Tuesday, May 15, 2012.

**Background Information:** This is a voluntary annexation case submitted by Bert Fields, Jr. The property is directly adjacent to the City's corporate limits on the south, east, and west and is vacant.

**Board Review/Citizen Input:** Not applicable.

**Alternatives:** The City Council could choose not to adopt the Resolution, therefore not initiating the annexation process.

**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:**

- Resolution
- Locator Map

**Staff Recommendation:** City Council adoption of the Resolution initiating the annexation process.

CITY OF FRISCO, TEXAS RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS SETTING A DATE, TIME AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED VOLUNTARY ANNEXATION OF CERTAIN PROPERTY CONTAINING 2,816.04 ACRES, MORE OR LESS, SITUATED 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, BY THE CITY OF FRISCO, TEXAS AUTHORIZING AND DIRECTING THE MAYOR OR HIS DESIGNEE TO NOTIFY THE PUBLIC OF SUCH PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF. (ANNEXATION CASE A12-0005)**

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

Section 1. On the 1st day of May, 2012 and on the 15th day of May, 2012, at 6:30 p.m. in the City Council Chamber of the Frisco City Hall, 6101 Frisco Square Boulevard, City of Frisco, Texas, the City Council will hold public hearings giving all interested persons the right to appear and be heard on a proposed voluntary annexation by the City of Frisco, Texas of the property containing 2,816.04 acres, more or less, situated 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. Annexation Case A12-0005.

Section 2. The Mayor or his designee, of the City of Frisco, Texas, is hereby authorized and directed to cause notice of such hearing to be published in a newspaper having general circulation in the city and in the above described territory not more than twenty days or less than ten days prior to the date of such hearings, in accordance with

the Municipal Annexation Act (Chapter 43, Texas Local Government Code) and to be provided as otherwise required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on the 3rd day of April, 2012.

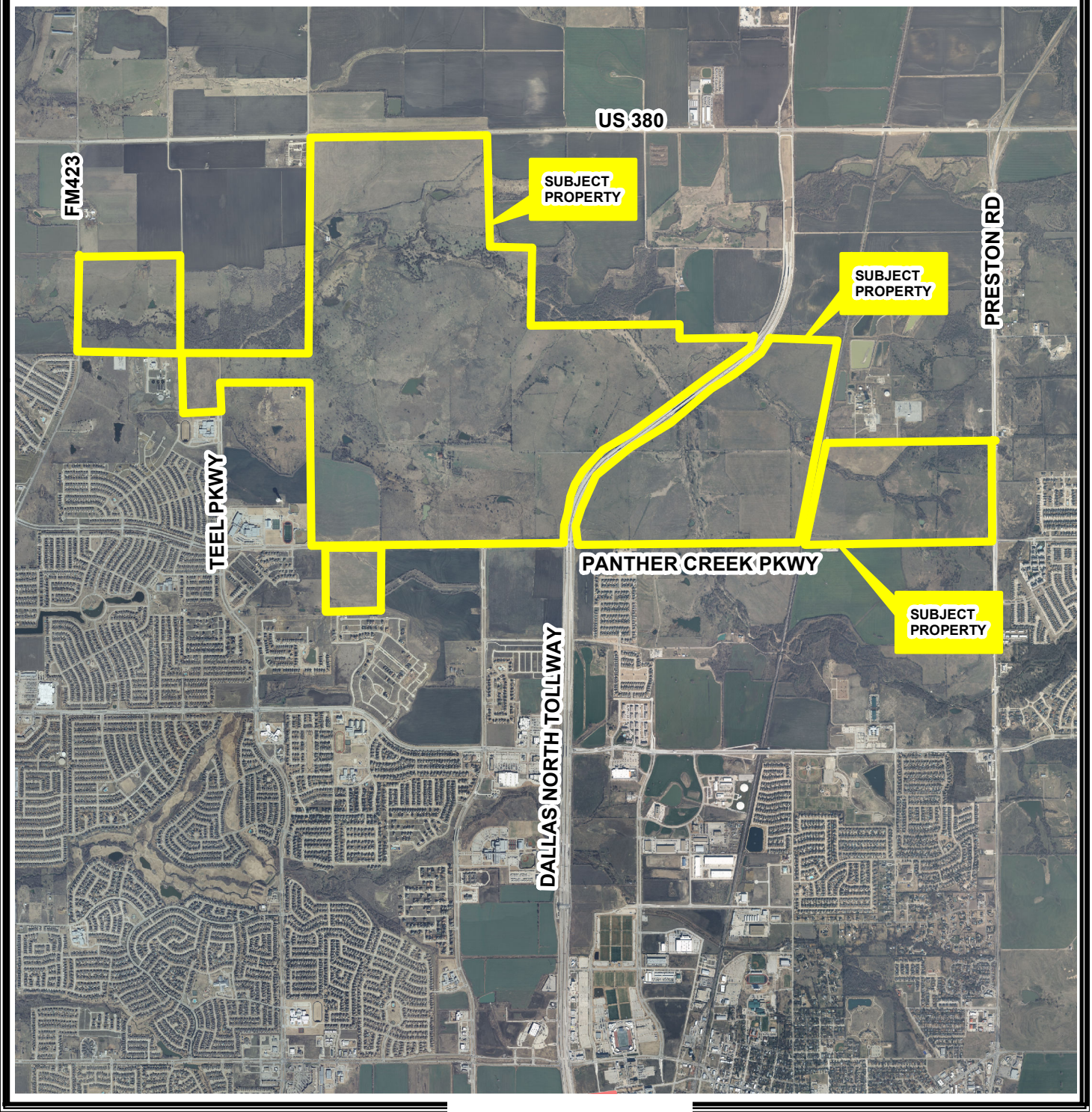
_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page, City Secretary

1572

# A12-0005
# Bert Fields Tract



# AGENDA ITEM #18.

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:** **March 26, 2012**

**Subject:** **Consider and Act Upon Approval of a Purchase Order to L3 Communications for Purchase of Fifteen (15) Police Vehicle DVR System Upgrades**

---

**Action Requested:** City Council approval of a purchase order to L3 Communications for purchase of fifteen (15) Police vehicle DVR system upgrades, in the amount of $38,925.

**Background Information:** Sole source expenditure for services related to ICS products owned by the City of Frisco, as allowed by chapter 252.022 (a) (7) of the Texas Local Government Code. Frisco Police staff is requesting the upgrade of fifteen (15) of its L3 Communications in car DVR systems to a new system that also incorporates a wireless microphone, allowing for additional audio recording from greater distance from the car. The vendor has agreed to extend this special pricing until after approval at the April 3rd Council meeting.

**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 FY12 budget amendment.

**Legal Review:** N/A

**Supporting Documents:** Department memos and quote.

**MEMORANDUM**

**TO:** **Tom Johnston, Director of Administrative Services**

**FROM:** **Todd V. Renshaw, Chief of Police**

**SUBJ:** **Police Vehicles MVR System Upgrade**

**DATE:** **March 8, 2012**

I am requesting the purchase of fifteen (15) DVR and microphone systems from L3 Communications to replace existing mobile video recorder systems. These systems will be installed in the fifteen new Tahoes currently being transitioned into the fleet. The attached supporting documentation indicates we have the opportunity to acquire these systems at a reduced cost and substantial savings over regular pricing. Funding for this purchase in the amount of $39,225 currently exists in 13032321-79450, and I request we proceed with this purchase before the end of the promotional pricing period, which is March 31, 2012.

**MEMORANDUM**

**TO:** **Todd V. Renshaw, Chief of Police**

**FROM:** **Darren M. Stevens, Deputy Chief**

**SUBJ:** **Police Vehicles MVR System Upgrade**

**DATE:** **March 7, 2012**

The Police Department currently has L3 Communications MobileVision Flashback 1 Digital Video Recorders (DVR) for in car video and audio recording. A majority of these systems were placed in service in 2005. There are 29 DVR systems, including the in car components, that are out of warranty at this time. Repairs to these units are becoming more frequent. When repairs are needed, time and materials has to be paid for the repairs to get them operational again. The patrol vehicles have to also be taken out of service while these repairs are being completed and in fact, in the last year, approximately 83 days of down time has been experienced by the 20 vehicles that have received MVR system repair. These 29 DVR's are older technology and do not have the recording capacity and capabilities of the newer Flashback 2 systems.

L3 currently has an upgrade program where the old Flashback 1 DVR can be traded in, and a new Flashback 2 DVR and wireless microphone can be purchased for $2,595. The newer wireless microphone has better range to help officer's record audio from farther distances, like inside residences, apartments, and businesses. The new DVR's will be covered by an initial one year warranty. The upgrade will also cover all in car components with the one year warranty. After the one year warranty, an Extended Maintenance Agreement, (EMA), is available for another four (4) years on the DVR and in car components. This will extend the life of the in car components.

Purchasing fifteen units for the vehicles being acquired this budget year under this upgrade program would result in a five year cost per unit of $4,075, which includes the one year full warranty and four years of extended maintenance coverage. Purchasing fifteen brand new units, which would come with a three year warranty and then two years of extended maintenance, would result in a five year cost per unit of $6,450. Taking advantage of this upgrade program would save $2,375 per unit, totaling $35,675 in savings for all fifteen vehicles purchased this year.

A total of $39,225, which includes $300 shipping and handling, is needed to purchase the fifteen upgraded DVR's and mic boxes. Sufficient funds currently exist in 13032321-79450 to fund the upgrade. The upgrade program L3 is offering expires on March 31, 2012. I recommend we move forward with acquiring the fifteen MVR systems utilizing the upgrade program during this limited window of opportunity.

# QUOTE

Mobile-Vision, Inc.
90 Fanny Rd, Boonton, NJ 07005
T. 800-336-8475 F. 973-257-3024

**Number** AAAQ5876
**Date** Feb 27, 2012

| Sold To | Ship To |
|---|---|
| **Frisco Police Department**<br>Billy "B.J." Willis<br>7200 Stonebrook Parkway<br>Frisco, TX 75034<br>USA<br><br>**Phone** 9722926131<br>**Fax** 9723355501 | **Frisco Police Department**<br>Billy "B.J." Willis<br>7200 Stonebrook Parkway<br>Frisco, TX 75034<br>USA<br><br>**Phone** 9722926131<br>**Fax** 9723355501 |

| Salesperson | P.O. Number | Ship Via | Terms |
|---|---|---|---|
| LEE | | UPS GROUND | NET 30 |

| Line | Qty | SKU | Description | Unit Price | Ext. Price |
|---|---|---|---|---|---|
| 1 | 15 | MVD-FB2-FB-UPG | Upgrade, Flashback 2 System from a Flashback 1 System Installation | $2,195.00 | $32,925.00 |
| 2 | 15 | MVD-FB2-CF8GB | Flash Card, 8 GB, Flashback 2, San Disk Extreme | $0.00 | $0.00 |
| 3 | 15 | MVD-VISOR2-CARD | Visor Card Flashback 2 reference card | $0.00 | $0.00 |
| 4 | 15 | MVD-VLP2-FS | Assembly, Voice Link Plus 2 Wireless Microhone System with Transmitter w/Belt Clip, Docking Station, 9" & 40" Lapel Microphones | $400.00 | $6,000.00 |
| 5 | 15 | MVD-VLP2-CG | VLP2 Charging Station with AC Power Adaptor | $0.00 | $0.00 |
| 6 | 1 | C15 | Please supply all FB1 serial numbers that you will be swapping out for FB2. By supplying these serial numbers now, it will ensure that the free 1 year system warranty (A $250.00 value per system) is credited properly.<br>The pricing on the DVR exchange is contingent that you return your FB1 equipment (DVR and Flash Card) to L-3 in a timely manner. If the equipment is not returned you will be invoiced $1500.00 per system.<br>When returning the FB1 parts, please pack them so they are protected during shipping and are not damaged.<br>Please return the equipment to the following address and reference the return authorization on all boxes, thank you.<br>L-3 Mobile Vision, Inc.<br>RA# _____<br>90 Fanny Road<br>Boonton, NJ 07005 | $0.00 | $0.00 |

Signing below is in lieu of a formal Purchase Order.
Your signature will authorize acceptance of both pricing and product:

Signed:_____ Date:_____

L-3 Shipping Terms are FOB Boonton, NJ. By Signing below you agree to waive your shipping terms and ship this order FOB Boonton, NJ.

Signed:_____ Date:_____

| | |
|---|---|
| **SubTotal** | $38,925.00 |
| **Tax** | TBD |
| **S&H** | $300.00 |
| **Total** | **$39,225.00** |

Credit Terms: Net 30 Days. State/ Local Fee and Taxes are not included

Quotation is valid for 60 days from date issued. These commodities, technology or software were exported from the United States in accordance with the Export Administration regulations. Diversion contrary to US law is prohibited.

# AGENDA ITEM #19.

**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:** **March 28, 2012**

**Subject:** **Consider and Act Upon Approval of a Purchase Order with Sigma Solutions for NetApp Storage System Yearly Maintenance**

---

**Action Requested:** City Council approval of a purchase order with Sigma Solutions for NetApp storage system yearly maintenance, through the State of Texas Department of Information Resources (DIR) contract, in the amount of $26,093.

**Background Information:** The City of Frisco has an Interlocal Agreement with the State of Texas Department of Information Resources (DIR) for the purpose of purchasing selected items. The City IT Department is requesting the purchase of NetApp storage system yearly maintenance, through the DIR, in the amount of $26,093. Purchase will allow for 24/7 support of three of the City's NetApp storage systems.

**Board/ Citizen Input:** N/A

**Alternatives:** City Council could choose not to approve the purchase at this time.

**Financial Considerations:** Available funds are appropriated through the IT General Fund operating budget.

**Legal Review:** N/A

**Supporting Documents:** Department memo, Sigma Solutions, Inc. quotes and DIR contract.

**Information Technology**
City of Frisco, Texas

PROGRESS IN MOTION

# Memorandum

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

**cc:** **Curt Balogh, Director of IT; Tom Johnston, Director of Administrative Services**

**From:** **Tim Yarbrough, Enterprise Technology Manager, IT**

**Date:** **March 26, 2012**

**Subject:** **Renew NetApp storage system yearly maintenance**

---

**Action Requested:** The Information Technology Department is requesting to renew a yearly maintenance agreement for 3 NetApp managed storage systems.

**Background Information:** Based on a need to provide additional reliability, availability and storage for all city systems, the Information Technology Department recommends keeping an active maintenance contract on 3 NetApp storage systems which provides 24x7 support and 4 hour replacement on all parts related to the storage systems. These storage systems support data for all our databases, email, virtualization technology and staff user file data. Maintenance will be purchased through DIR contract # DIR-SDD-1458. Total cost for maintenance is $26,093.91 and is funded in the 2012 operational budget.

SIGMA™ SOLUTIONS

5908 Stone Creek Dr
Ste 100
The Colony, TX 75056

Phone: 972-774-9300 Fax: 972-774-9900

# Quotation

| Date | Quote # | Cust # |
|---|---|---|
| 03/26/12 | SSIQ3204 | |

| Sold To: | Ship To: | Sales Representative: |
|---|---|---|
| Tim Yarbrough<br>City of Frisco<br>6250 LBJ Fwy<br>(972) 335-5555<br>tyarbrough@friscotexas.gov | Tim Yarbrough<br>City of Frisco<br>6250 LBJ Fwy<br>(972) 335-5555<br>tyarbrough@friscotexas.gov | **Mark Nungesser**<br>Account Executive<br>mnungesser@sigmasolinc.com<br>214-223-0870 |

| Item # | Part # | Description | Qty | Unit Price | Ext. Price |
|---|---|---|---|---|---|
| | | **NetApp ASP Support Renewal** | | | |
| | | **Term Dates: 4/01/2012 to 3/31/2013** | | | |
| | | **NetApp Texas DIR Contract# SDD-1458** | | | |
| 1 | CS-A2-4R | SupportEdge Standard Part Replace 4hr - FAS3140A Serial # : 700000455287; 700000455299 Total # of Shelves: 5; Software Disk1: 300 GB/10K; Disk2: 450GB 4Gb 15K FC; Disk3: 750GB 7.2K ATA; # of shelves disk1: 2; # of shelves disk2: 2; # of shelves disk3: 1L | 2 | $6,229.41 | $12,458.82 |
| 2 | CS-A2-4R | SupportEdge Standard Part Replace 4hr - FAS3140 Serial # : 700000451102 Model: FAS3140; # of Systems: 1; Total # of Heads: 1Total # of Shelves: 3; Software License Capacity: Node Disk1: 250GB 7.2K ATA; Disk2: 300GB 4Gb 15K FC; Disk3: 500GB 7.2K ATA; # of | 1 | $7,155.04 | $7,155.04 |
| 3 | CS-A2-4R | SupportEdge Standard Part Replace 4hr - FAS2020Post Serial # : 30024513 Model: FAS2020; # of Systems: 1; Total # of Heads: 1Total # of Shelves: 1; Software License Capacity: NodeDisk1: 750GB ATA / 12 Base Disks; # of shelves disk1: 1 | 1 | $2,261.30 | $2,261.30 |
| 4 | CS-A2-4R | SupportEdge Standard Part Replace 4hr - Shelf Only Serial # : 700000455287;700000455299 Model: Shelf Only; # of Systems: 1; Total # of Heads: 1Total # of Shelves: 2; Software License Capacity: NodeDisk1: 1TB 7.2K ATA-; Disk2: 2TB 7.2K ATA-; # of shelves | 1 | $2,240.16 | $2,240.16 |
| 5 | SW-SSP-SME-SERV | SW Support Plan,SnpMngr-Exchange,Per Server - Serial # : 171001378 | 1 | $1,084.80 | $1,084.80 |
| 6 | SW-SSPVN-SMBR-500PK | Vendor SW Sub SMBR, 500pk - Serial # : 100710217 | 1 | $604.80 | $604.80 |
| 7 | SW-SSP-SDR-WINDOWS | SW Support Plan,SnapDrive for Windows - Serial # : 177079548 | 3 | $96.33 | $288.99 |

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AG

SIGMA™ SOLUTIONS

5908 Stone Creek Dr
Ste 100
The Colony, TX 75056

Phone: 972-774-9300 Fax: 972-774-9900

# Quotation

| Date | Quote # | Cust # |
|---|---|---|
| 03/26/12 | SSIQ3204 | |

| Item # | Part # | Description | Qty | Unit Price | Ext. Price |
|---|---|---|---|---|---|

| | |
|---|---|
| Sub Total | $26,093.91 |
| Estimated Sales Tax | $0.00 |
| Shipping | $0.00 |
| **Total** | **$26,093.91** |

:cepted by: _____ Date: _____ PO: _____

| Quote # |
|---|
| SSIQ3204 |

Unless otherwise stated, Quotes are valid for 30 days from the quote date
All shipping is FOB Source. Shipping and handling charges are the responsibility of the customer and will be added at the time of invoicing.
Applicable taxes are the responsibility of the customer, and will be added at the time of invoicing unless a valid resale or exemption is on
le at the Company's corporate office.

* Please include Company Remit To address on purchase order.
* Cancellation and/or restocking fees may apply if the order is cancelled or changed after the purchase order is received.
* Returns: RMA# must be issued prior to return. Software must be unopened with original manufacturer seal unbroken.
* Lease pricing may be available. Contact your sales representative for more information.
* All quotes are in US Dollars.

AGENDA ITEM #19.

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**STATE OF TEXAS**
**DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**NETAPP, INC.**

## 1. Introduction

### A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and NetApp, Inc. (hereinafter "Vendor"), with its principal place of business at 1921 Gallows Road, Suite 600, Vienna, VA 22182.

### B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-151, on December 22, 2009, for Data Storage. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-151 shall be posted by DIR on the Electronic State Business Daily.

### C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, End User License Agreement; Appendix E, Support Offerings; Appendix F, Services Agreement; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-151, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-151, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

## 2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

## 3. Product and Service Offerings

### A. Products

Products available under this Contract are limited to those products specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

### B. Services

Services available under this Contract are limited to those services specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

## 4. Pricing

### A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

### B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

### C. Customer Price

**1)** The price to the Customer shall be calculated as follows:

**Customer Price = MSRP – Customer Discount**

**2)** Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

**3)** If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement only applies to products or services quoted by Vendor or its HUB resellers as a quantity of one (1) and not volume special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**F. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

**G. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**H. Changes to Prices**

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one and one quarter percent (1.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $1,250.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon

written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:
Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:
NetApp, Inc.
Legal Department
1921 Gallows Road, Suite 600
Vienna, VA 22182
Phone: (703) 918-7200
Email: amalie.weber@netapp.com

**7. Software License and Service Agreements**

**A. Software License Agreement**

**1)** Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix D of this Contract. No changes to the End User License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Order Fulfiller shall make the End User Agreement terms and conditions available to all Customers at all times.

**2)** Compliance with the End User License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the End User License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the End User License Agreement terms and conditions.

**B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be

affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License agreement and determine if the Customer accepts the license terms. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**C. Services Agreement**

Services provided under this Contract shall be in accordance with the End User Support Agreement as set forth in Appendix E of this Contract. No changes to the End User Support Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

**8. Intellectual Property Matters**

**A. Definitions**

1." Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

**B. Ownership.**

All Work Product which includes a Customer's Intellectual Property Rights shall be the subject of a fully-negotiated, stand-alone agreement between Vendor and Customer, signed by a Vendor Executive Officer (hereinafter "IP Agreement"). All Vendor products and services offered to a Customer or Customers under this Contract without an accompanying IP Agreement shall not be considered Work Product. As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the

necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

**C. Further Actions.**

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

**D. Waiver of Moral Rights.**

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**E. Confidentiality.**
All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

**F. Injunctive Relief.**
The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

**G. Return of Materials Pertaining to Work Product.**
Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

**H. Vendor License to Use.**
Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

**I. Third-Party Underlying and Derivative Works.**
To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the

foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

**J. Agreement with Subcontracts.**
Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

**K. License to Customer**.
Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

**L. Vendor Development Rights.**
To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

**A. Section 9.A.2. Infringements** is hereby revised to add paragraph c) as follows:

c) Vendor shall have no liability for either claims or related damages resulting from (i) unauthorized modification or use of the products when the claim or damages would not have occurred but for such modification or use; (ii) combination, operation or use of the products with any products not provided by Vendor when the claim or damages would not have occurred but for such combination, operation or use; or (iii) Customers failure to install an upgrade or new version available from Vendor when the claim or damages would not have occurred but for such failure. To the extent

allowable by Texas law and constitution, Customer shall reimburse Vendor for any costs or damages that result from these actions.

**B. Section 9.N.1.d.** is hereby restated in its entirety as follows:

d) Vendor will use best efforts to provide 30-day Notice of Termination in favor of DIR and/or Customer; and

**C. Section 9.N.3.b.** is hereby restated in its entirety as follows:

b) Vendor will use best efforts to provide 30-day Notice of Termination; and

This Contract is executed to be effective as of the date of last signature.

**NetApp, Inc.**

**Authorized By: Signature on File**

**Name: Mark Weber**

**Title: Senior Vice President, Sales**

**Date: August 2, 2010**

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By: Signature on File**

**Name: Cindy Reed**

**Title: Deputy Executive Director Operations & Statewide Technology Sourcing**

**Date: 8/4/10**

**Legal: Signature on File**




**(Hidden) Business Data Item Builder**

**NetApp, Inc.**

| | | | |
|---|---|---|---|
| URL | Vendor Website | DIR Contract Number | DIR-SDD-1458 |
| Vendor ID | 1770307520400 | Contract Term End Date | 8/4/2013 |
| HUB Type | Non HUB | Contract Exp Date | 8/4/2014 |

E-Rate Qualified

NetApp, Inc.
Contact Robbin Gatling
Phone (512) 944-6964
Fax 512-287-7290

DIR
Contact Sergio Upton
Phone (512) 936-3101
Fax (512) 475-4759

# Contract Overview

DIR negotiates pricing for a quantity of one. Customers are encouraged to negotiate additional discounts based on volume.

DIR maintains a default administrative fee of .50 percent. In some cases, the fee may be as low as .25 percent.

Get Adobe Reader

Contract: DIR-SDD-1458

Standard Terms and Conditions PDF - 290 KB
This appendix contains the standard DIR Terms and Conditions for the contract as of the date identified. Any initial exceptions to these Terms will be contained in the original contract. All subsequent changes or updates to the Terms and Conditions will be reflected in contract amendments.

HUB Subcontracting Plan (HSP) PDF - 318 KB | Updated 08/25/2010
The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. The HSP identifies all authorized resellers and/or all subcontractors performing services.

Pricing PDF - 29 KB | Updated 08/16/2011

Pricing for available products and/or services under this contract are limited to those identified in the appendix.

Electronic and Information Resources (EIR) Accessibility
Information regarding Electronic and Information Resources (EIR) accessibility of this vendor's offerings is included in the contract. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, 1TAC 206, and 1 TAC 213. For additional information, visit the Vendor Website or contact the vendor directly.

- Take me to the website

# How to Order

- **State of Texas, except Houston Area and Texas A & M University (see below)**
  Robbin Gatling, Sales Representative
  Phone: 512-944-6964

- **Houston Area and Texas A & M University**
  Tom Rigamonti, Sales Representative
  Phone: 713-266-8828

- **Higher Ed except Houston**
  Brad Schulze, Sales Representative
  Phone: 972-759-7593

# Available Brands

There are no brands associated with this contract

# Available Products & Services

Data Storage

# Additional Contract Information

Appendix D, EULA (151 KB)

Appendix E, Support Offerings (131 KB)

Appendix F, Services (144 KB)

Amendment 1 (93 KB)

# Reseller Vendor Contacts

| Vendor Name | Vendor ID | HUB Type | Contact Name | Phone/Fax | Address |
|---|---|---|---|---|---|
| CDW Government, LLC | 1364230110800 | Non HUB | Jay Carlisle | Phone: (866) 224-6448 Fax: (312) 705-9492 | 230 North Milwaukee Avenue Vernon Hills, IL 60061 |
| DLT Solutions, LLC. | 1541599882000 | Non HUB | Dennis Barongan | Phone: (703) 708-9639 Fax: (866) 419-7926 | 13861 Sunrise Valley Drive, Suite 400 Herndon, VA 20171 |
| Freeit Data Solutions, Inc. | 1272209002900 | Woman Owned | Cobe Dunn | Phone: (512) 964-0077 Fax: (866) 895-7363 | 1910 Hilltree Lane Cedar Park, TX 78613 |
| INX, Inc. | 1760515249906 | Non HUB | Brent Blaha | Phone: (512) 795-7106 Fax: (512) 795-8844 | 7600 North Capital Of Texas Hwy. Bldg. #130 Austin, TX 78731 |
| Sigma Solutions, Inc. | 1742893658100 | Non HUB | Sandie Vega | Phone: 210-348-9876 Fax: 210-348-9124 | 422 E Ramsey San Antonio, TX 78216 |
| Sirius Computer Solutions, Inc | 1742836721700 | Non HUB | Phyllis Byrd | Phone: 210-369-0617 Fax: (866) 313-0960 | 613 Nw Loop 410, Suite 1000 San Antonio, TX 78216 |
| Solutions II, Inc. | 18412792550 | Non | Charlie | Phone: (210) | 8822 S. Ridgeline |

| | | | | | |
|---|---|---|---|---|---|
| | | HUB | Rentschler | 403-2579<br>Fax: (210) 403-3336 | Blvd. Suite 205<br>Littleton, CO 80129 |
| Storage Assessments, Inc. | 1204159911400 | Woman Owned | Carolyn Chambers | Phone: 972-679-4211<br>Fax: 214-291-5651 | 2232 Teakwood Lane<br>Plano, TX 75075 |

# AGENDA ITEM #20.

PROGRESS IN MOTION

**City Manager's Office**
City of Frisco, Texas

# Memorandum

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

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

**From:** **Ron Patterson, Assistant City Manager**

**Date:** **03-26-2012**

**Agenda Caption:** **Consider and act upon approval of a Resolution authorizing the City Manager to execute an Impact Fee Agreement with Yeager Properties, Inc.**

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**Action Requested**:

Passage of a Resolution and approving an impact fee agreement.

**Background Information**:

The proposed impact fee agreement provides a reduction of thoroughfare impact fees in recognition of the dedication of right-of-way for the development of two roadways. The development is for a two-story office building containing, a minimum of thirty-five thousand square feet (35,000sf) with a minimum façade substantially conforming to that reflected in the Façade Plan contained in the agreement. The building will be located "off corner" at the northwest corner of Main and Teel.

Yeager Properties will be required to obtain a Certificate of Occupancy no later than April 2, 2013.

**Board Review/Citizen Input**:

NA

**Alternatives**:

The City Council may choose not to approve the agreement.

**Financial Considerations**:

There will be no out of pocket cost to the City. This will be simply a reduction in fees that would have otherwise been collected.

**Legal Review**:

The agreement was reviewed by Rebecca Brewer of the City Attorney's office.

**Supporting Documents**:

- Resolution
- Impact Fee Agreement

**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 AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND YEAGER PROPERTIES, INC.

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 Agreement by and between the City of Frisco and Yeager Properties, Inc., a copy of which is attached hereto and incorporated herein for all purposes.

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

RESOLVED THIS the _____ day of _____, 2012.

_____
Maher Maso, Mayor

ATTEST TO:

_____
Jenny Page
City Secretary

ORIGINAL

**After Recording Return to:**
**City of Frisco**
**ATTN: City Manager**
**6101 Frisco Square Boulevard, 5th Floor East**
**Frisco, Texas 75034**

## IMPACT FEE AGREEMENT

**THIS IMPACT FEE 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 municipal corporation ("Frisco"), Yeager Properties, Inc., an Indiana Corporation ("Yeager").

**WHEREAS**, Yeager will close on that certain tract of land situated in the City of Frisco, Denton County, Texas, containing approximately 2.7976 acres, situated in the Teel Crossing Shopping Center II, Block A, Lot 5R-1, Crain & Warren Survey, Abstract No. 229, as more particularly described and depicted in **Exhibit "A",** attached hereto and incorporated herein for all purposes (the "Property") on or before September 1, 2012; and

**WHEREAS**, Yeager desires to fulfill its obligation to pay impact fees due on the Property as described in 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 (individually and collectively the "Impact Fee Ordinance"); and

**WHEREAS**, Yeager and Frisco agree that Yeager may fulfill its obligation to pay impact fees as reflected in the Impact Fee Calculation Worksheet, attached hereto and incorporated herein for all purposes as **Exhibit "B"** (the "Worksheet"), in the manner set forth herein; and

**WHEREAS**, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to establish the payment of impact fees on the Property as provided herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Agreement, Frisco and Yeager 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. Yeager represents that it is the sole owner of the Property.

3. Required Development. Yeager shall, in compliance with Paragraph 26 below: (A) build and operate a two-story office building containing, at a minimum: (i) thirty-five thousand square feet (35,000sf); and (ii) subject to Paragraph 26 below, a façade substantially conforming, as reasonably determined by Frisco, to that reflected in the Façade Plan (the "Façade Plan"), attached hereto and incorporated herein for all purposes as **Exhibit "C"** (the "Office Building"), to be located on the Property; and (B) obtain a Certificate of Occupancy for the Office Building no later than April 2, 2013.

4. Required Dedications and Construction. Frisco acknowledges the dedication, by Final Plat, dated December 1, 2003, and Conveyance Plat, dated November 18, 2002, (collectively, the "Plats") of a portion of the Property as fee simple right-of-way for the construction of a portion of Teel Parkway, Main Street and related drainage improvements, which is more particularly depicted on and described in **Exhibit "D"**, attached hereto and incorporated herein for all purposes (collectively, the "Right-of-Way").

5. Assessment of Impact Fees/Payment of Impact Fees. Provided Yeager timely complies with the terms and conditions of this Agreement, including without limitation, the requirements set forth in Paragraphs 3 and 4 above, the Property shall be subject to the thoroughfare, water and wastewater impact fees as calculated and reflected in the attached Worksheet. Unless otherwise provided in Paragraph 6 below, all impact fees described in the Worksheet shall be due and payable at the time set forth in the Impact Fee Ordinance.

6. Default. If Yeager fails to comply with the provisions of this Agreement, 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 refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or

c. to refuse to issue a Certificate of Occupancy for the Office Building; and/or

d. to nullify Paragraph 5 of this Agreement and immediately enforce the Impact Fee Ordinance through imposition of the full thoroughfare impact fees in affect at the time they are due and making such immediately due and payable. Should a breach occur after payment of the impact fee amounts reflected in the attached Worksheet Yeager shall be required to pay an additional amount equal to the difference between any thoroughfare impact fees due under the then current Impact Fee Ordinance and the amount already tendered to Frisco for the Property; and/or

e. to seek specific enforcement of this Agreement.

In the event Frisco fails to comply with the terms and conditions of this Agreement, Yeager may seek specific enforcement of this Agreement as its sole and exclusive remedy.

7. Limitation of Liability. Notwithstanding anything to the contrary herein, the parties agree and acknowledge that Frisco shall not, under any circumstance, be required to tender, and/or be liable to Yeager for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein.

8. Covenant Running with the Land. This Agreement shall be a covenant running with the Property and shall be binding upon Yeager, its officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Denton County, Texas.

9. Limitations of Agreement. The parties hereto acknowledge that this Agreement is limited to the dedication of land for the Right-of-Way and the reduction of thoroughfare impact fees. Frisco ordinances covering property taxes, utility rates, permit fees, inspection fees, development 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 Yeager to Frisco under any ordinance, whether now existing or in the future arising.

10. 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 Yeager, addressed to it at:

Yeager Properties, Inc.
23 South 8th Street
Noblesville, IN 46060
Telephone: 317.770.7380
Facsimile: 317.776.1867

11. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/YEAGER WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

A. YEAGER ACKNOWLEDGES AND AGREES THAT:

(I) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY AND/OR DESCRIBED IN THIS AGREEMENT TO BE PERFORMED, OR PREVIOUSLY PERFORMED, BY YEAGER, 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 YEAGER 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 YEAGER DEVELOPMENT PLACES ON FRISCO'S INFRASTRUCTURE.

(III) YEAGER 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) YEAGER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS OR PREVIOUSLY CONVEYED TO FRISCO PURSUANT TO AND/OR DESCRIBED BY THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY YEAGER FOR SUCH LAND, AND YEAGER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. YEAGER 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 YEAGER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. YEAGER 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) YEAGER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO YEAGER RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.

B. YEAGER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.

C. YEAGER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUION, 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.

12. 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 Yeager project. YEAGER 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.

13. 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 Paragraphs 6 and 11 above, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.153 of the Texas Local Government Code, as it exists or may be amended.

14. 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 Yeager.

15. 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.

16. 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.

17. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

18. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

19. 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.

20. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

21. 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.

22. 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.

23. 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.

24. Assignment/Binding Effect. This Agreement is not assignable.

25. Indemnification. The parties agree that the Indemnity provision set forth in Paragraph 11 herein is conspicuous, and the parties have read and understood the same.

26. Construction. All construction, including but not limited to, the Office Building and its façade described herein shall be subject to and in compliance with all ordinances of Frisco, whether now existing, hereafter amended or in the future arising. Yeager acknowledges and agrees that such ordinances may require, among other things, the façade to exceed that reflected in the attached Façade Plan.

27. 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.

28. Sovereign Immunity. The parties hereto agree that Frisco has not waived its sovereign immunity by entering into and/or performing its obligations set forth herein

29. Reference to Yeager. When referring to "Yeager" herein, this Agreement shall refer to and be binding upon Yeager, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

30. 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.

**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.

**FRISCO:**

CITY OF FRISCO, TEXAS

BY: _____
George Purefoy,
City Manager

Date: _____

**Yeager:**

YEAGER PROPERTIES, INC.
an Indiana corporation

BY: _____
Scott Yeager,
President

Date: 3/27/12

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: _____

---

STATE OF TEXAS §
§
COUNTY OF Collin §

BEFORE ME, the undersigned authority, on this day personally appeared **Scott Yeager**, 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 and Member of **Yeager Properties, Inc**, an Indiana corporation, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of March, 2012.

Sharon Perry
_____
Notary Public in and for the State of Texas

SHARON L. PERRY
Notary Public, State of Texas
My Commission Expires
March 22, 2014

My Commission Expires: 3-22-14

EXHIBIT "A"
PROPERTY
(2.7976 acres)
(1 PAGE)

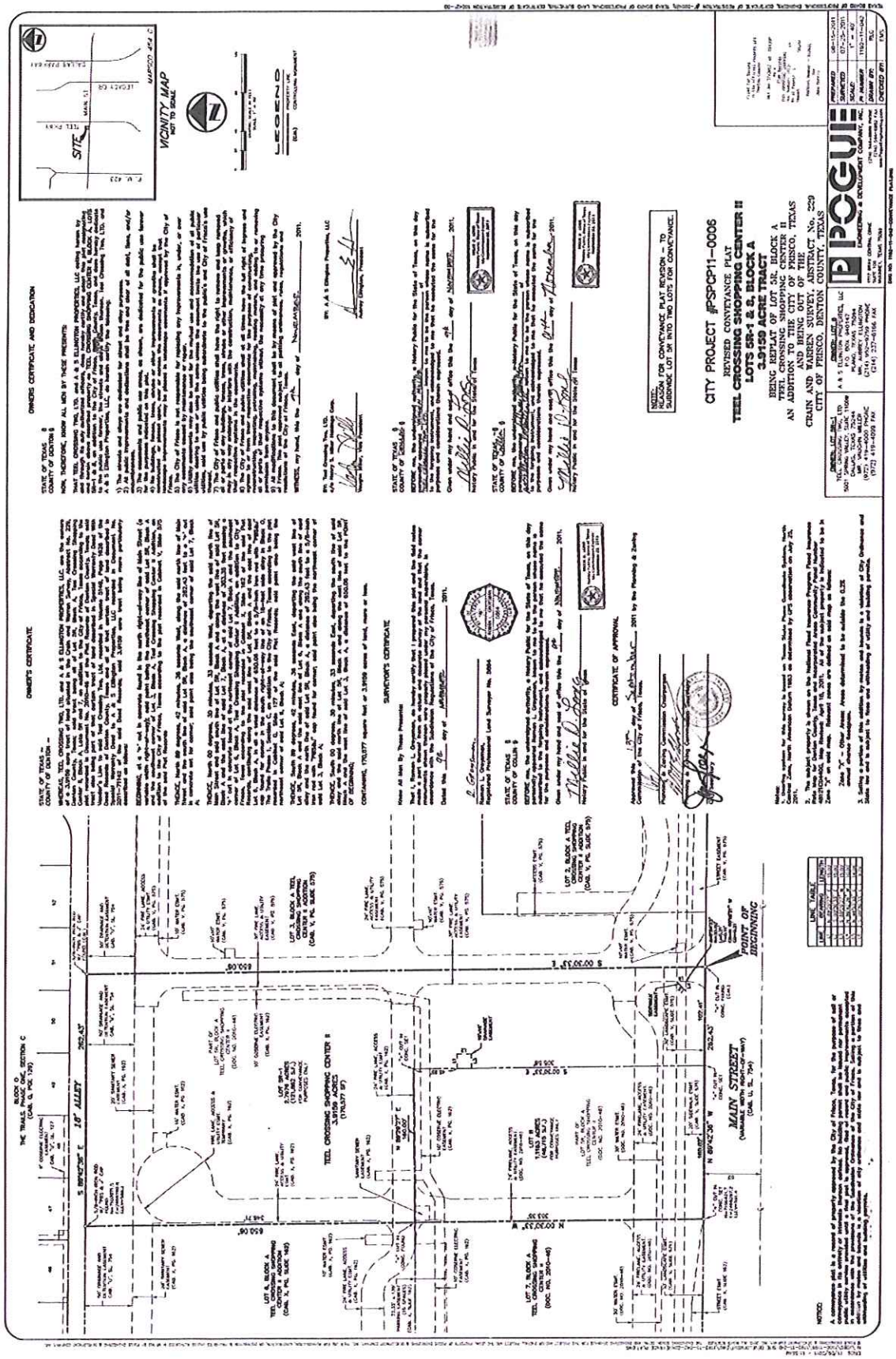


EXHIBIT "B"
Impact Fee Calculation Worksheet - WORKSHEET
(1 PAGE)

# Impact Fee Calculation Worksheet
## City of Frisco, Texas

**Development Name:** Teel Crossing Shopping Center II, Block A, Lot 5R-1 (Proposed Office)

**Applicant:**

**Legal Description (Lot, Block):** Teel Crossing Shopping Center II, Block A, Lot 5R-1

**Case Number:** **Date:** 3/20/2012

*Worksheet Last Updated: 11/10/2009*

**Service Area (select from list):** A (Northwest)

**% of the Maximum Fee to be Assessed:** 60%

*Note: Day Care Centers are a flat rate of $1,722 per 1,000 ft² of GFA*

### ROADWAY IMPACT FEE CALCULATION:

| Land Uses (select from list): | Development Unit: | # of Units: | Impact Fee Per Development Unit: | Roadway Impact Fee: |
|---|---|---|---|---|
| General Office Building | Per Acre | 2.7976 | $15,000.00 | $ 41,964.00 |

**TOTAL ROADWAY IMPACT FEE: $ 41,964.00**

### WATER IMPACT FEE CALCULATION:

| Meter Size / Type (select from list): | # of Meters: | Impact Fee Per Meter: | Water Impact Fee: |
|---|---|---|---|
| 2" PD | 1 | $ 15,288.00 | $ 15,288.00 |

**TOTAL WATER IMPACT FEE: $ 15,288.00**

### WASTEWATER IMPACT FEE CALCULATION:

Note: Impact Fee calculated based upon number of domestic water meters - do not include irrigation meters.

| Meter Size / Type (select from list): | # of Meters: | Impact Fee Per Meter: | Wastewater Impact Fee: |
|---|---|---|---|
| 2" PD | 1 | $ 12,427.00 | $ 12,427.00 |

**TOTAL WASTEWATER IMPACT FEE: $ 12,427.00**

**TOTAL IMPACT FEE: $ 69,679.00**

Note:
Property may be subject to a developer's impact fee agreement.
Escrow may be required for items including, but not limited to, turn lanes, median openings, median planting, and sidewalks.

EXHIBIT "C"
Façade Plan
(1 PAGE)



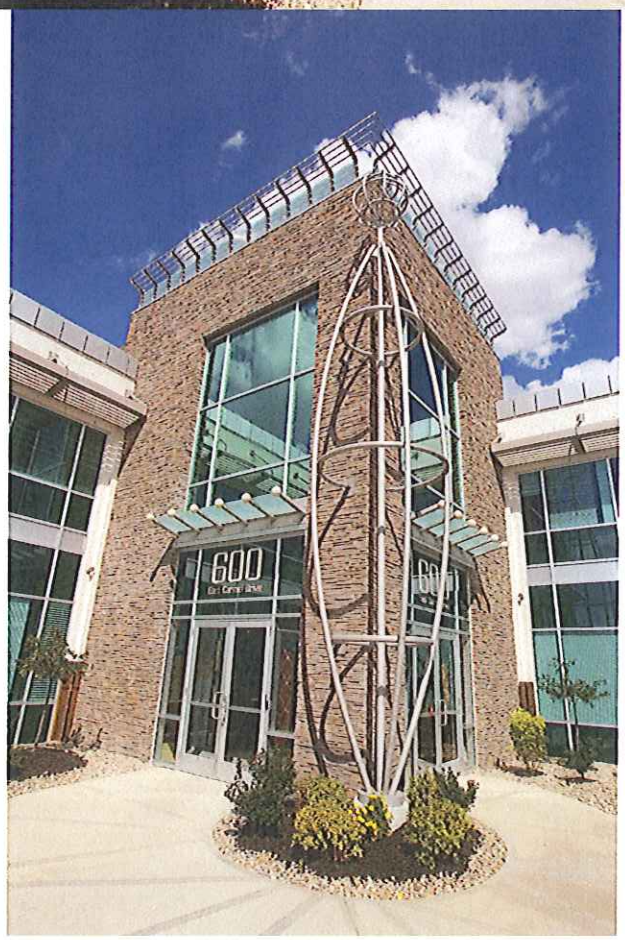
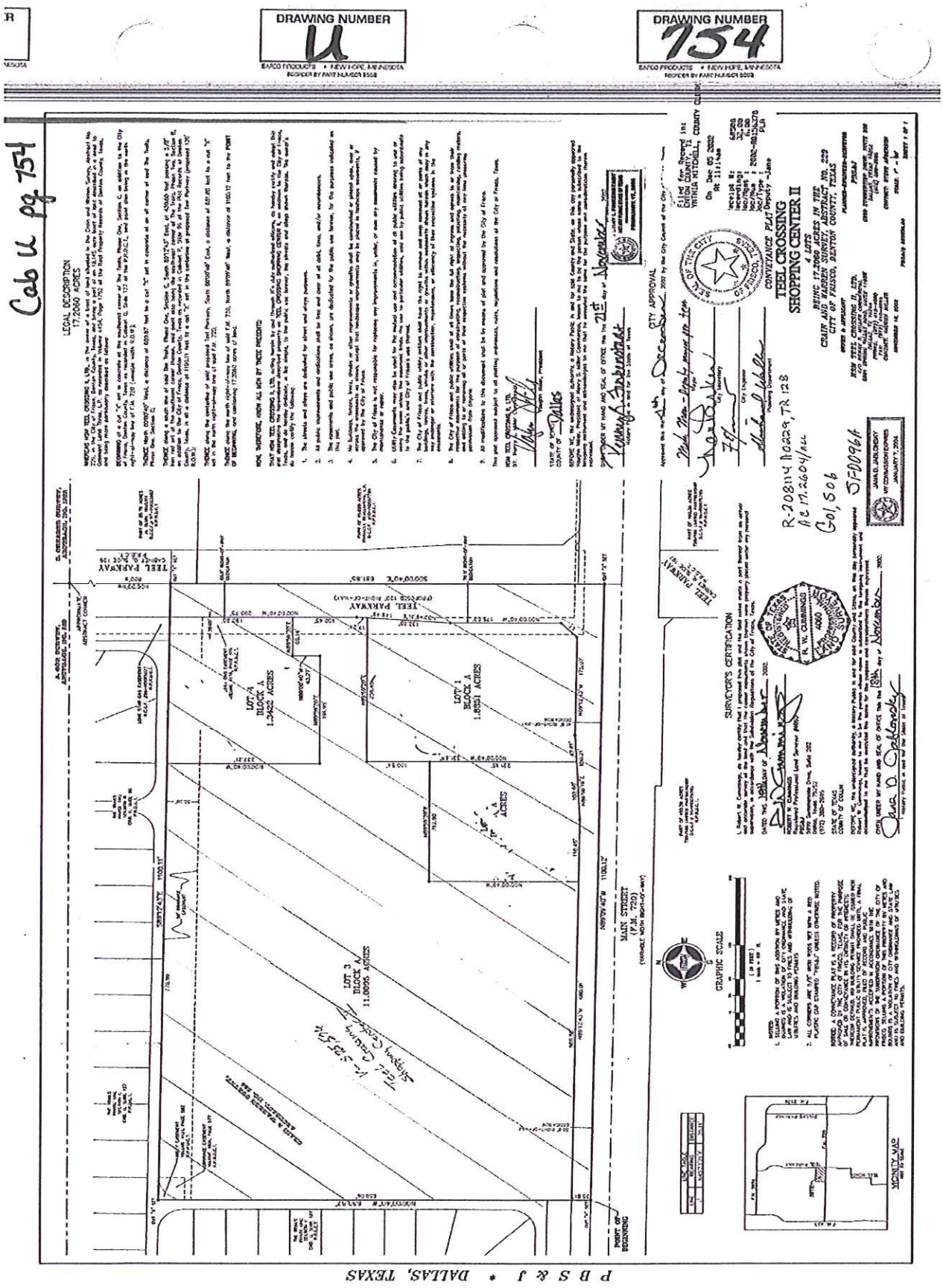
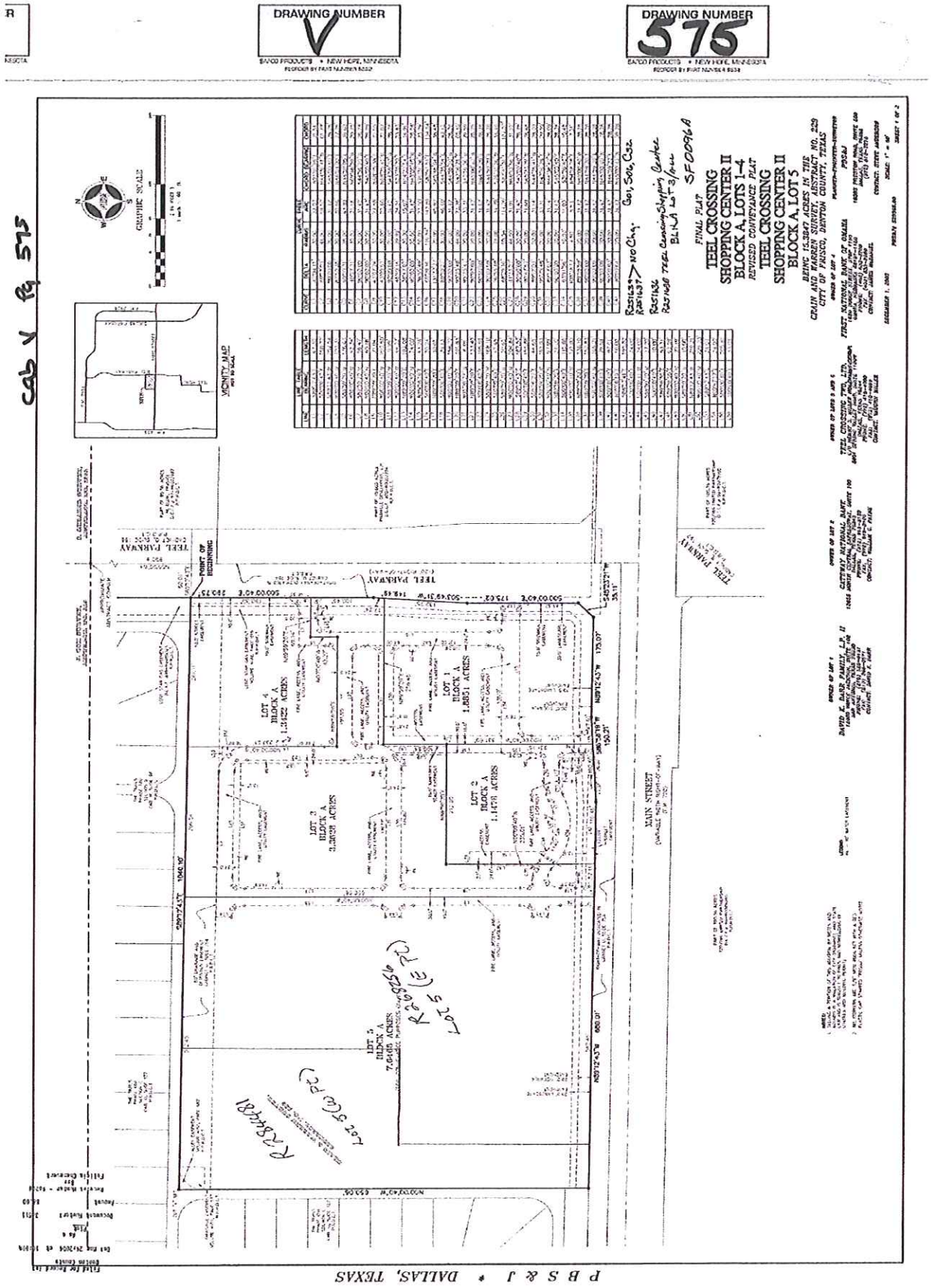
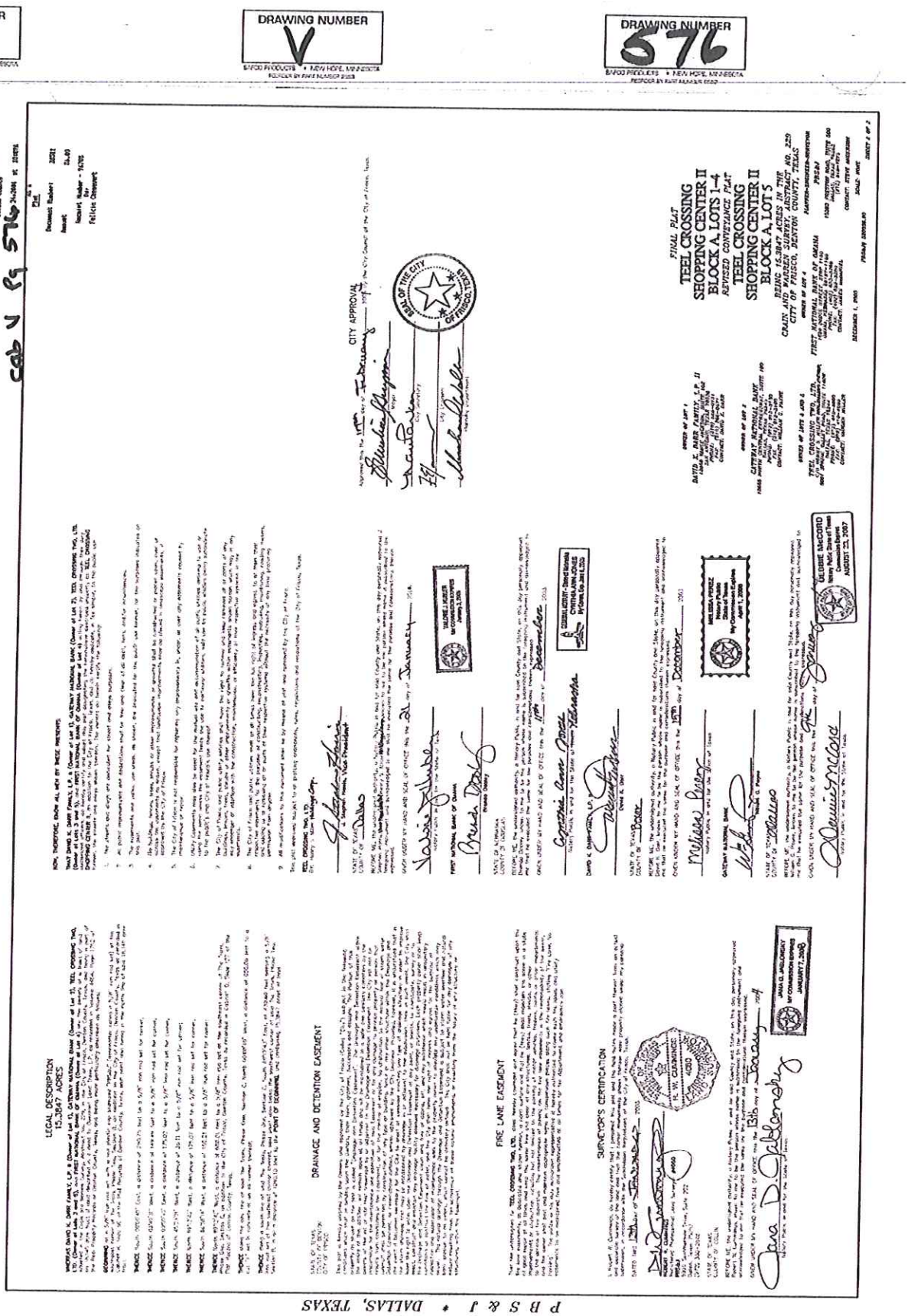

600

EXHIBIT "D"
Final and Conveyance Plats – RIGHT-OF-WAY
(3 PAGES)


DRAWING NUMBER
U
DRAWING NUMBER
754
Cab U pg 754
LEGAL DESCRIPTION
17.2060 ACRES
KNOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:
TEEL CROSSING
SHOPPING CENTER II
4 LOTS
BEING 17.2060 ACRES IN THE
CRAIN AND WARREN SURVEY, ABSTRACT NO. 229
CITY OF FRISCO, DENTON COUNTY, TEXAS
CONVEYANCE PLAT
SURVEYOR'S CERTIFICATION
GRAPHIC SCALE
VICINITY MAP
TEEL PARKWAY
MAIN STREET
(F.M. 720)
LOT A
BLOCK A
1.2422 ACRES
LOT 1
BLOCK A
1.8551 ACRES
LOT 3
BLOCK A
11.0095 ACRES
POINT OF BEGINNING
R-208114 A0229, TR 128
Ae 17.2604/ac
G01,506
DALLAS, TEXAS * P B S & J


DRAWING NUMBER
V
DRAWING NUMBER
575
Cab V Pg 575
FINAL PLAT
TEEL CROSSING
SHOPPING CENTER II
BLOCK A, LOTS 1-4
REVISED CONVEYANCE PLAT
TEEL CROSSING
SHOPPING CENTER II
BLOCK A, LOT 5
BEING 15.3847 ACRES IN THE
CRAIN AND WARREN SURVEY, ABSTRACT NO. 225
CITY OF FRISCO, DENTON COUNTY, TEXAS
SF00968
Gas, Soda, Car
Restaurant w/ Drive-Thru
Retail
Retail
TEEL PARKWAY
MAIN STREET
POINT OF BEGINNING
LOT 4 BLOCK A 1.3142 ACRES
LOT 1 BLOCK A 1.8851 ACRES
LOT 2 BLOCK A 1.1478 ACRES
LOT 3 BLOCK A 3.2939 ACRES
LOT 5 BLOCK A 7.6486 ACRES
Retail (Pad)
Lot 5 Pad
Retail
VICINITY MAP
GRAPHIC SCALE
DALLAS, TEXAS * P B S & J


DRAWING NUMBER
V
DRAWING NUMBER
576
FINAL PLAT
TEEL CROSSING
SHOPPING CENTER II
BLOCK A, LOTS 1-4
REVISED CONVEYANCE PLAT
TEEL CROSSING
SHOPPING CENTER II
BLOCK A, LOT 5
CITY APPROVAL
SEAL OF THE CITY OF FRISCO, TEXAS
LEGAL DESCRIPTION
15.3847 ACRES
DRAINAGE AND DETENTION EASEMENT
FIRE LANE EASEMENT
SURVEYOR'S CERTIFICATION
DALLAS, TEXAS

# AGENDA ITEM #21.

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:** March 28, 2012

**Subject:** Planning & Zoning Commission Site Plan and Plat Approvals

---

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 March 27, 2012 meeting.

Commissioner Hamilton was absent due to a business commitment.

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

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Public Hearing-**
**Replat:** Frisco Sports Complex, Block E, Lots 1R and 2 (PSPRP12-0001)
**Owner(s):** SSR Collin Land, L.P.

**Description:**
Two lots on 12.0± acres on the northeast corner of Dallas North Tollway and Ikea Drive. Zoned Planned Development-169-Mixed Use. Neighborhood #35. JE

**Result/Action:**

**Approved: 5-0 (Hamilton 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 | |

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

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Preliminary Site Plan and Conveyance Plat:** Timber Ridge Plaza, Block A, Lots 1 and 5 (PSPCP12-0003)
**Owner(s):** MJBD Enterprises, Inc.

**Description:**
An assisted living facility and two office buildings on two lots on 5.2± acres on the northeast corner of Teel Parkway and Timber Ridge Drive. Zoned Planned Development-183-Office-1. A companion item to SUP12-0002. Neighborhood #39. RC

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved subject to:
Preliminary Site Plan
1. Staff approval of the preliminary façade plan.
2. City Council's adoption of an Ordinance for use as an Assisted Living Facility.

Conveyance Plat
1. Dedication of a 50-foot temporary turnaround easement on Lot 5 prior to recording plat.

**The Preliminary Site Plan will expire on 01-30-2014.**

**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 | |

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

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Preliminary Site Plan:** Lebanon Ridge Apartments Phase 2, Block A, Lot 2 (PSP11-0016)
**Owner(s):** FCREP26 Lebanon Road, LLC.

**Description:**
A multifamily development containing 308 units and one club house on one lot on 32.1± acres on the east side of Teel Parkway, 440± feet south of Lebanon Road. Zoned Multifamily-19. Neighborhood #36. RC

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved subject to:

1. Staff approval of the preliminary façade plan.
2. Planning & Zoning Commission approval of major creek amenities.

**The Preliminary Site Plan will expire on 12-12-2013.**

**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 | |

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March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Preliminary Plat:** Phillips Creek Ranch, Phase 3 (PP12-0003)
**Owner(s):** PCR Land Company, LLC

**Description:**
Seven Single Family-7 lots, 46 Single Family-8.5 lots, and five Homeowners' Association lots on 20.3± acres on the northeast corner of Chico Basin Road and Bridle Boulevard. Zoned Planned Development-202-Single Family-7/Single Family-8.5/Patio Home. Neighborhood #42. RC

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved subject to:

1. Staff approval of a Landscape Plan.
2. Additions and/or alterations resulting from Engineering Services' review of construction plans.

**The Preliminary Plat will expire on 03-27-2014.**

**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 | |

DEVELOPMENT SERVICES

CITY OF FRISCO

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FRISCO, TEXAS 75034
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WWW.FRISCOTEXAS.GOV

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Final Plat:** Richwoods, Phase 1 (FP12-0006)
**Owner(s):** Papagolos Properties, Ltd.

**Description:**
13 Single Family-8.5 lots, six Patio Home lots, and eight Common Area lots, on 11.8± acres on the west side of Independence Pkwy, 2,700 ± feet south of Rolater Rd. Zoned Planned Development-144-Single Family-8.5 and Patio Home with a Specific Use Permit (S-201) for Private Streets. Neighborhood #26. JE

**Result/Action:**

**Approved: 5-0 (Hamilton 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 | |

FRISCO
DEVELOPMENT SERVICES

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6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Final Plat:** Stonewater Crossing, Phase 2 (FP12-0005)
**Owner(s):** Papagolos Properties, Ltd.

**Description:**
113 Single Family-7 lots and three Homeowners' Association lots, on 31.1± acres on the south side of Witt Road, 650±feet west of F.M. 423. Zoned Single Family-7 and Patio Home. Neighborhood #43. RC

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved as submitted.

**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 | |

DEVELOPMENT SERVICES

CITY OF FRISCO

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FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
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March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Public Hearing – Replat**
**& Revised Site Plan:** Celebration Covenant Church Addition, Block A, Lot 1R (SPRP12-0003)
**Owner(s):** Celebration Covenant Church

**Description:**
A church and public charter school on one lot on 26.0± acres on the east side of Teel Parkway, 1,000± feet south of Main Street. Zoned Information & Technology. Neighborhood #41. SM

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved subject to:
Replat

As submitted.

Revised Site Plan

1. Planning & Zoning Commission approval of the Pedestrian Access and Landscape Plan for screening along the southern property line.
2. Planning & Zoning Commission approval to allow the screening along the east property line to be installed with future development of the property.
3. Celebration Covenant Church shall install the required landscaping along the southern property line in accordance with the Pedestrian Access and Landscape Plan within the time frame mutually agreed upon. No development applications or permits will be issued for further development of the property until installation is accepted by the City.
4. Additions and/or alterations resulting from Engineering Services' review of the construction plans.

**The Revised Site Plan will expire on 02-13-2014.**

**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 |
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WWW.FRISCOTEXAS.GOV

March 28, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the Planning & Zoning Commission, March 27, 2012

**Site Plan:** Miramonte, Phase 1A, Block F, Lot 2 (SP12-0003)
**Owner(s):** City of Frisco

**Description:**
A city park on one lot on 6.1± acres on the terminus of Cava Road. Zoned Planned Development-204-Single Family-8.5/Patio Home. Neighborhood #4. SM

**Result/Action:**

**Approved: 5-0 (Hamilton absent)**
**Denied:**
**Tabled:**

**ACTION:**

The item was approved subject to:

1. Staff approval of the façade plan for the pavilion prior to construction of Phase 2.
2. Dedication of an off-site pedestrian easement for the sidewalk.
3. Additions and/or alterations resulting from Engineering Services' review of the construction plans.

**The Site Plan will expire on 02-27-2014.**

**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 | |

# AGENDA ITEM #22.

PROGRESS IN MOTION

**Development Services Department**
City of Frisco, Texas

# Memorandum

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

**Cc:** **George A. Purefoy, City Manager**
**John Lettelleir, AICP, Director of Development Services**

**From:** **Ross Culbertson, Planner**

**Date:** **3/21/2012**

**Agenda Caption: Consider and act upon adoption of an Ordinance for a Specific Use Permit for a Big Box Retail Development on 6.5± acres on the south side of John Hickman Parkway, 430± feet east of Preston Road. Zoned Commercial-1. Neighborhood #29. Case No. SUP12-0001**

---

**Action Requested**: City Council adoption of an Ordinance granting the Specific Use Permit for a Big Box Retail Development.

**Background Information**: The City Council approved the request by a vote of 5-0 at their March 6, 2012 meeting. Councilmember Nelson was absent.

**Board Review/Citizen Input**: On February 14, 2012, the Planning & Zoning Commission held a public hearing and voted 5-0 to approve the request, (Trykoski and Russell absent).

**Alternatives**: The City Council can:
- Approve the Ordinance;
- Approve the Ordinance with modifications;
- Deny the Ordinance; 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 March 7, 2012.
- Ordinance.

**Staff Recommendation**: Recommended for adoption.

DEVELOPMENT SERVICES

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6101 FRISCO SQUARE BLVD · 3RD FLOOR
FRISCO, TEXAS 75034
TEL 972.292.5300 · FAX 972.292.5388
WWW.FRISCOTEXAS.GOV

March 7, 2012

**TO:** Applicant

**FROM:** John Webb, AICP *JW*
Zoning & Subdivision Administrator

**SUBJECT:** Results of the City Council meeting, March 6, 2012

**Public Hearing -**
**Specific Use Permit:** Prestmont Center, Block B, Lot 2R (SUP12-0001)
**Owner(s):** Dreig-Cambria, LLC., Lebanon Joint Venture, Shula Netzer, and Shula Netzer, Trustee

**Description:**
A request for a Specific Use Permit for a Big Box Retail Development on one lot on 16.5± acres on the south side of John Hickman Parkway, 430± feet east of Preston Road and consider and act to direct staff to prepare an ordinance of the same. Zoned Commercial-1. Neighborhood #29.

**Result/Action:**

**Approved: 5-0 (Nelson absent)**
**Denied:**
**Tabled:**

**ACTION:**
City Council approved the Specific Use Permit request and directed staff to prepare an Ordinance.

**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 BIG BOX RETAIL DEVELOPMENT, LOCATED ON A TRACT OF LAND SITUATED IN THE CITY OF FRISCO AND IN THE MARY BROWN SURVEY, ABSTRACT NUMBER 42, COLLIN COUNTY, TEXAS, CONTAINING 6.4869 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, Dreig-Cambria, L.L.C., Shula Netzer, Trustee and Lebanon Joint Venture (collectively the "Applicants"), initiated a request to allow a Specific Use Permit for a Big Box Retail Development on 6.4869 acres of land, more or less, situated in the Mary Brown Survey, Abstract No. 42, City of Frisco, Collin 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 Applicants have 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. Applicants are granted a Specific Use Permit to allow a Big Box Retail Development, which is zoned Commercial-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 3rd day of April, 2012.

_____
Maher Maso, Mayor

**ATTESTED TO AND CORRECTLY RECORDED BY:**

_____
Jenny Page, City Secretary

**APPROVED AS TO FORM:**

Courtney A. Kuykendall (by permission Rebecca Rees)
Abernathy Roeder Boyd & Joplin P.C.
Courtney A. Kuykendall, City Attorneys

*Dates of Publication:* _____, *Frisco Enterprise*

## Exhibit "A" (1 of 2)
## SUP12-0001

State of Texas ~
County of Collin ~

Legal Description

BEING a 6.4869 acre (282,569 square foot) tract of land situated in the Mary Brown Survey, Abstract Number 42, City of Frisco, Collin County, Texas, and being part of Lots 2R and 7, Block B of PRESTMONT CENTER, LOTS 2R, 4-8, BLOCK B, an addition to the City of Frisco, Collin County, Texas, as recorded in Instrument Number 20110128010000220 of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of that tract of land described in deed to Shula Netzer, Trustee, as recorded in Document Number 99-0140463 of the Official Public Records of Real Property of Collin County, Texas (O.P.R.R.P.C.C.T.), and being part of that tract of land described in deed to Dreig-Cambria, LLC, as recorded in Instrument Number 20080429000514410, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a bent 1/2-inch found iron rod for the northwest corner of said Lot 2R, Block B, said point being on the southerly right-of-way line of John Hickman Road (a 60-foot wide right-of-way), dedicated by plat, as recorded in Cabinet P, Page 387 of the Plat Records of Collin County, Texas (P.R.C.C.T.), said point also being on the east line of said Shula Netzer, Trustee tract;

THENCE South 88 degrees 29 minutes 06 seconds East, with the common south right-of-way line of said John Hickman Road and north line of said Lot 2R, Block B, a distance of 116.64 feet to a 5/8-inch found iron rod with a "POGUE ENG & DEV" cap for the point of curvature of a tangent circular curve to the left having a radius of 480.00 feet, whose chord bears North 75 degrees 42 minutes 09 seconds East, a distance of 261.59 feet;

THENCE Easterly, continuing with the common south right-of-way line of said John Hickman Road and north line of said Lot 2R, Block B and with said curve, through a central angle of 31 degrees 37 minutes 30 seconds, an arc distance of 264.94 feet to a 5/8-inch found iron rod with a "POGUE ENG & DEV" cap for the point of tangency;

THENCE North 59 degrees 53 minutes 24 seconds East, continuing with the common south right-of-way line of said John Hickman Road and north line of said Lot 2R, Block B, a distance of 40.21 feet to a 5/8-inch found iron rod with a "POGUE ENG & DEV" cap for the point of curvature of a non-tangent circular curve to the right having a radius of 420.00 feet, whose chord bears North 75 degrees 00 minutes 49 seconds East, a distance of 210.00 feet;

THENCE Northeasterly, continuing with the common south right-of-way line of said John Hickman Road and north line of said Lot 2R, Block B and with said curve, through a central angle of 28 degrees 57 minutes 18 seconds, an arc distance of 212.25 feet to 1/2-inch found iron rod for the northeast corner of said Lot 2R, Block B and the northwest corner of Lot 1, Block A of PRIMROSE AT PRESTMONT PLACE ADDITION, an addition to the City of Frisco, Collin County, Texas, as recorded in Cabinet J, Page 941, P.R.C.C.T.;

THENCE South 00 degrees 30 minutes 29 seconds East, departing the south right-of-way line of said John Hickman Road and with an east line of said Lot 2R, Block B and the west line of said Lot 1, Block A, distance of 245.00 feet to a 1/2-inch found iron rod with a "CORWIN ENGR INC" cap for the southwest corner of said Lot 1, Block A and the northwest corner of Lot 3, Block B of PRESTMONT CENTER, LOT 3, BLOCK B, an addition to the City of Frisco, Collin County, Texas, as recorded in Instrument Number 20090828010002240, O.R.R.C.C.T.;

THENCE South 00 degrees 16 minutes 15 seconds East, departing the west line of said Lot 1, Block A and continuing with an east line of said Lot 2R, Block B and with the west line of said Lot 3, Block B, a distance of 229.12 feet to a found PK nail in the center of a found "X" in concrete for the southwest corner of said Lot 3, Block B and a southeast corner of said Lot 2R, Block B, said point being on the north line of Lot 1, Block B of LOT 1, BLOCK B, PRESTMONT CENTER, an addition to the City of Frisco, Collin County, Texas, as recorded in Instrument Number 20061017010004520, O.R.R.C.C.T.;

THENCE South 89 degrees 55 minutes 03 seconds West, departing the west line of said lot 3, Block B and with a south line of said Lot 2R and with the north line of said Lot 1, Block B, a distance of 98.00 feet to a found "X" in concrete for the northwest corner of said Lot 1, Block B and an interior ell corner of said Lot 2R, Block B;

THENCE South 00 degrees 04 minutes 57 seconds East, with an east line of said Lot 2R and with the west line of said Lot 1, Block B, a distance of 13.39 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF" for corner;

THENCE North 89 degrees 54 minutes 59 seconds West, departing an east line of said Lot 2R and the west line of said Lot 1, Block B and over and across said Lot 2R, Block B, a distance of 284.46 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF" for corner;

THENCE South 00 degrees 05 minutes 01 second West, continuing over and across said Lot 2R, Block B, a distance of 11.62 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF" for corner;

THENCE North 89 degrees 54 minutes 59 seconds West, continuing over and across said Lot 2R, Block B, a distance of 328.81 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF" for corner said point being on the common east line of Lot 6, Block B of said PRESTMONT CENTER, LOTS 2R, 4-8, BLOCK B addition and a west line of said Lot 2R, Block B;

THENCE North 00 degrees 05 minutes 01 second East, with the common east line of said Lot 6, Block B and a west line of said Lot 2R, Block B, passing at a distance of 39.96 feet a 5/8-inch found iron rod with a "POGUE ENG & DEV" cap for the common northeast corner of said Lot 6, Block B and the southeast corner of said Lot 7, Block B, continuing with a west line of said Lot 2R, Block B and the east line of said Lot 7, Block B, passing at a cumulative distance of 93.31 feet a point for the common angle point of said Lot 7, Block B and said Lot 2R, Block B, over and across said Lot 7, Block B, passing at a cumulative distance of 233.16 feet a point on the north line of said Lot 7, Block B and the south line of said Shula Netzer, Trustee tract, over and across said Shula Netzer, Trustee tract, in all, a total distance of 363.23 feet to a 1/2-inch set iron rod with a yellow plastic cap stamped "HALFF" for corner;

THENCE South 89 degrees 30 minutes 37 seconds East, continuing over and across said Shula Netzer, Trustee tract, a distance of 99.76 feet to the POINT OF BEGINNING AND CONTAINING 282,569 square feet or 6.4869 acres of land, more or less.

**Exhibit "A"**
**(2 of 2)**
**SUP12-0001**

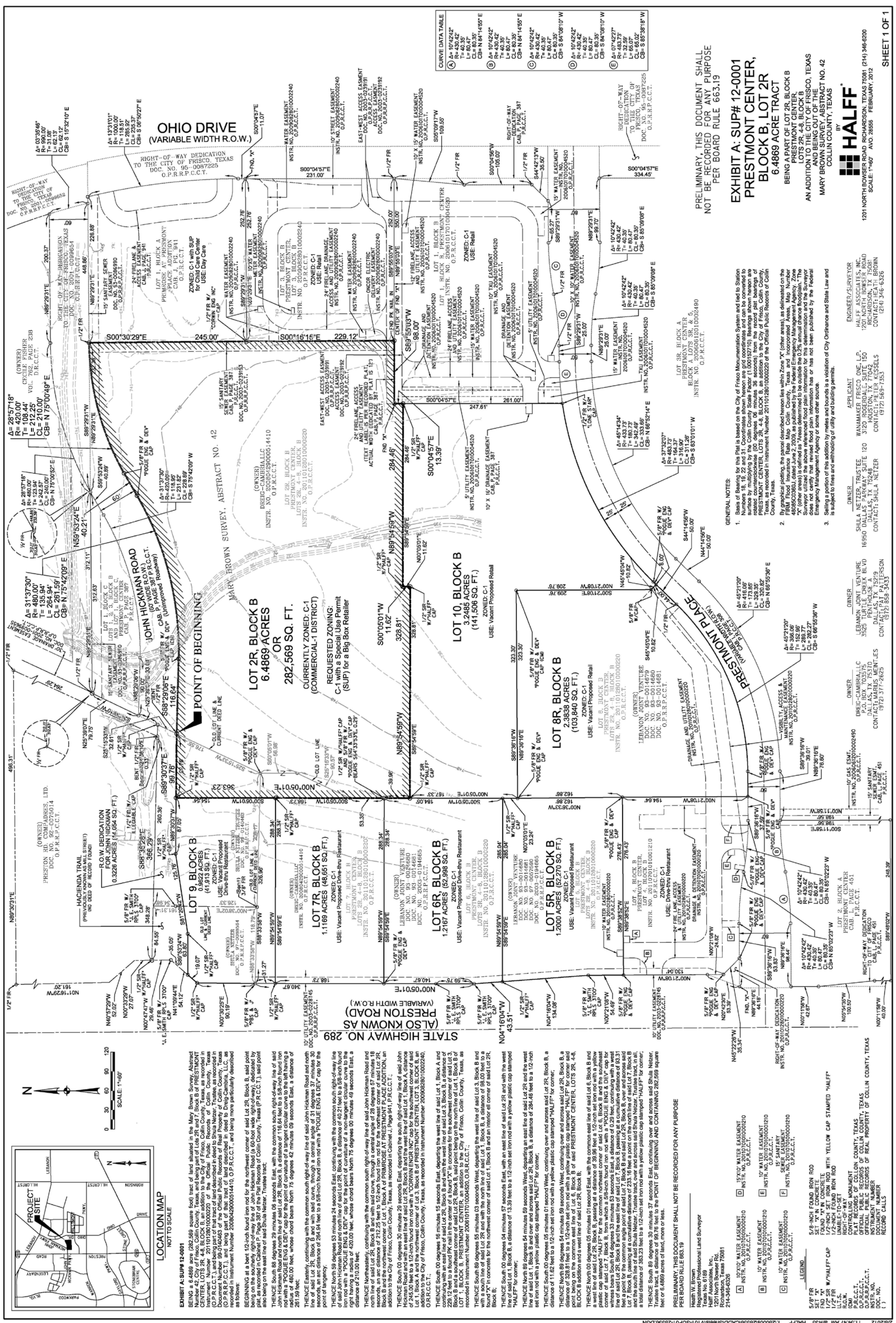


**Exhibit "A-1"**
**SUP12-0001**



**Exhibit "B"**
**SUP12-0001**

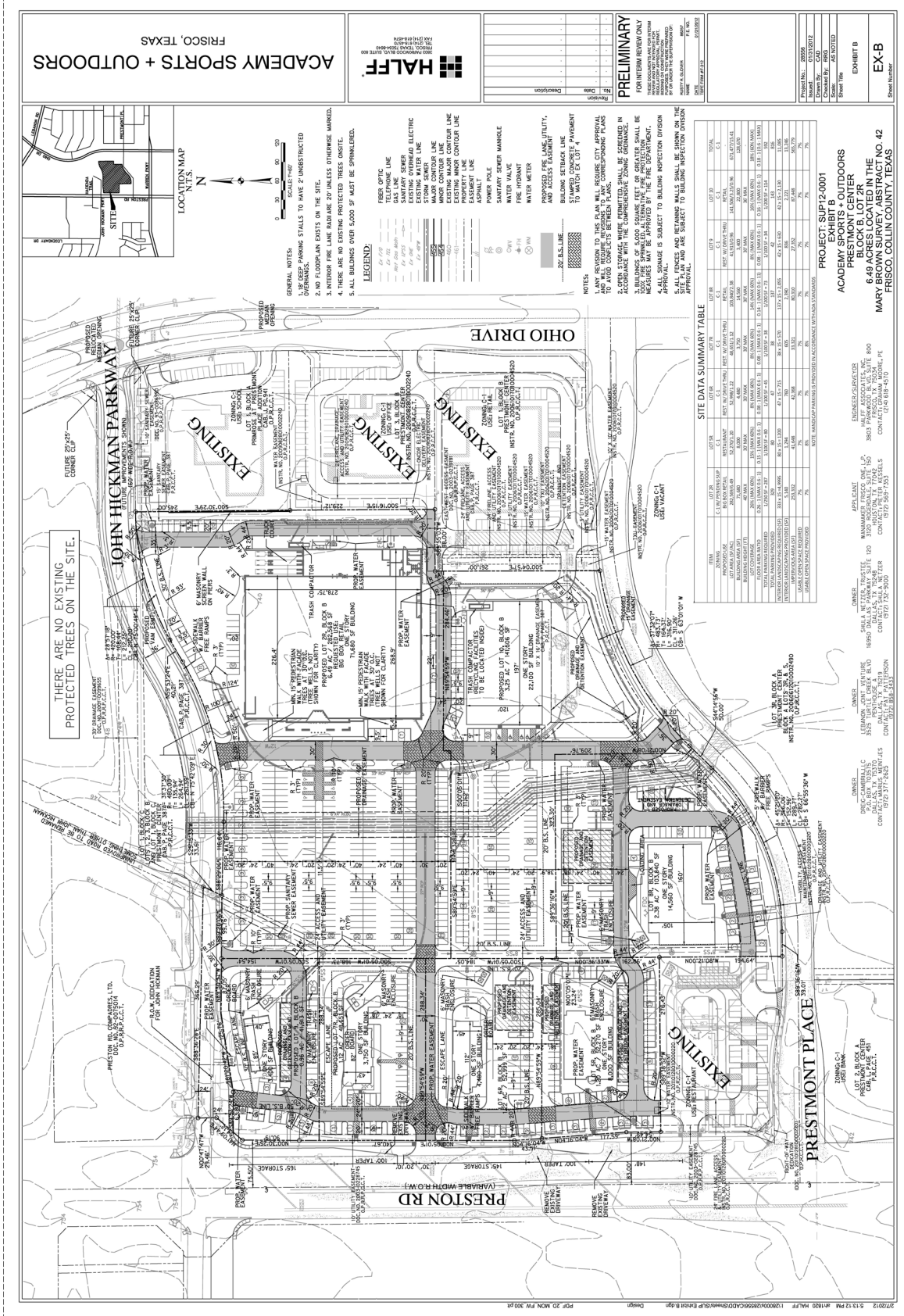


**Exhibit "C"**
**(1 of 2)**
**SUP12-0001**

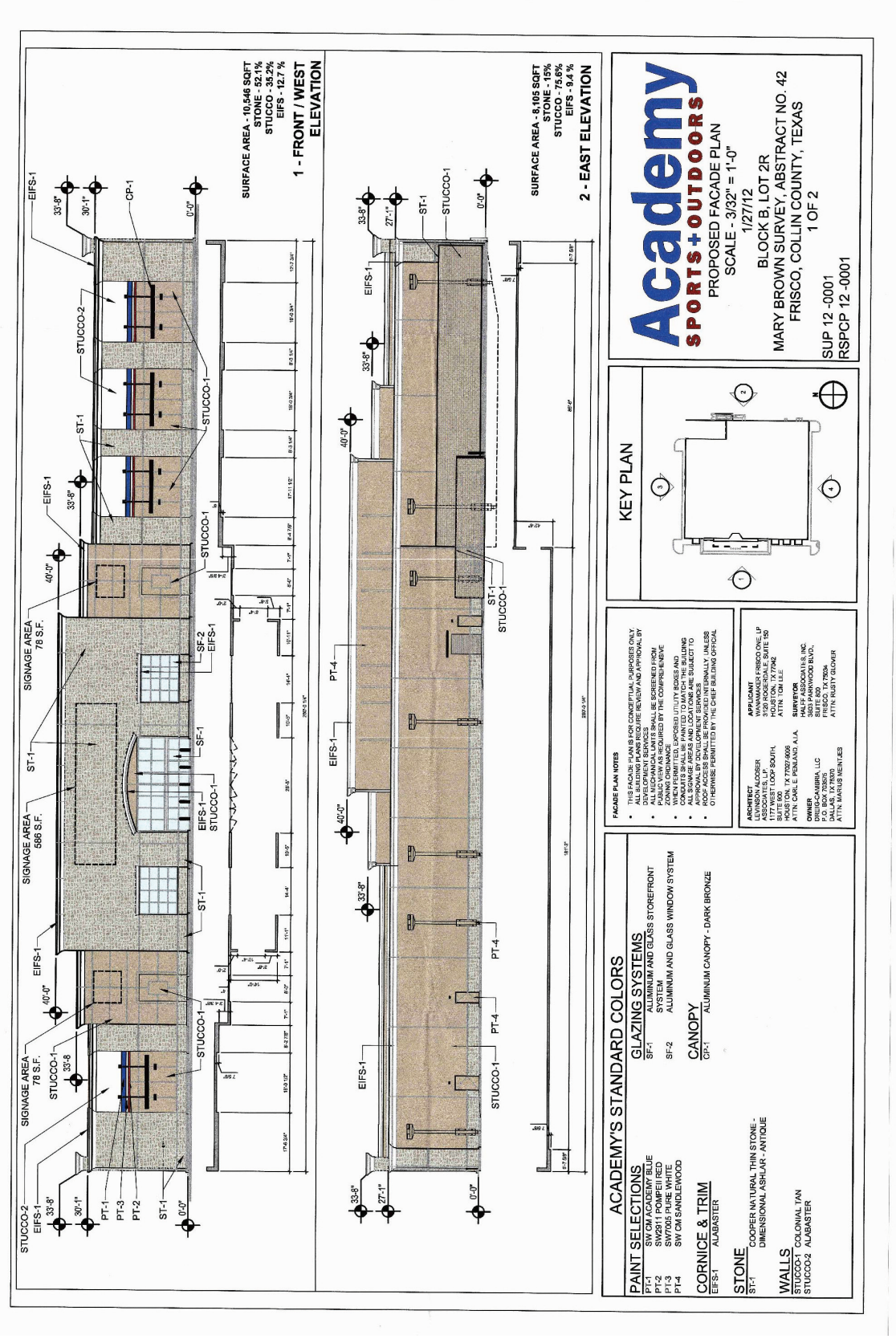
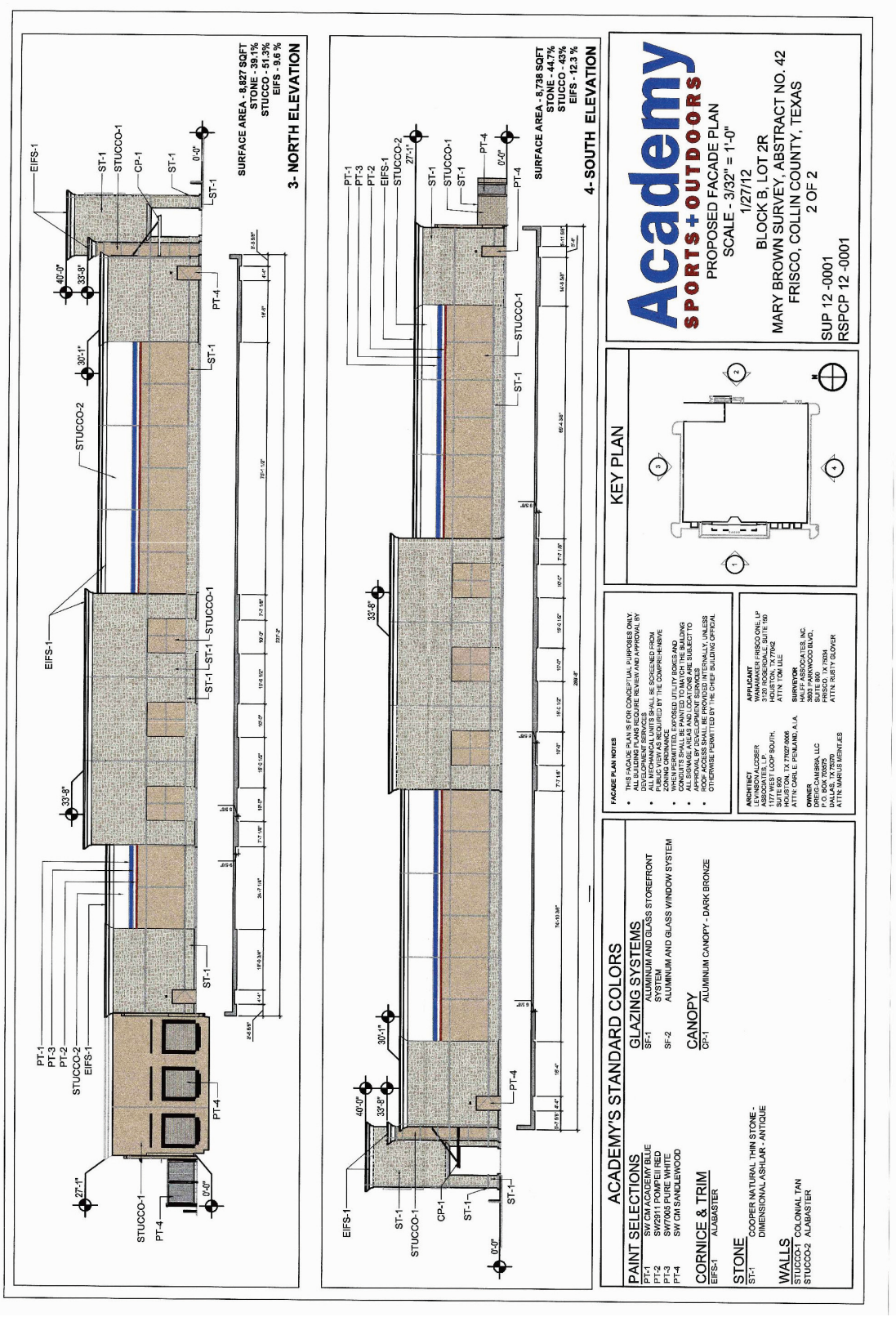


**Exhibit "C"**
**(2 of 2)**
**SUP12-0001**



# AGENDA ITEM #23.

PROGRESS IN MOTION

**Development Services Department**
City of Frisco, Texas

# Memorandum

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

**Cc:** **George A. Purefoy, City Manager**
**John Lettelleir, AICP, Director of Development Services**

**From:** **Michael Walker, AICP, Senior Planner**

**Date:** **3/26/2012**

**Agenda Caption:** **Consider and act upon adoption of an Ordinance on the voluntary annexation of 33.0± acres in the Collin County School Land Survey, Abstract No. 147, Collin County, Texas, generally located on the south side of US Highway 380, 1,150± west of County Road 26. Neighborhood #53. Annexation Case A12-0002.**

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**Action Requested:** The City Council is asked to adopt the proposed Annexation Ordinance.

**Background Information:** This is a voluntary annexation case submitted by the property owner, Forest/380 Partners, LP. The property is directly adjacent to the City's corporate limits on the east and is vacant.

**Board Review/Citizen Input:** The City Council held the two required public hearings at their March 6, 2012 and March 20, 2012 meetings.

**Alternatives:** Not applicable.

**Financial Considerations:** Not applicable.

**Legal Review:** The City Attorney's Office has prepared the Ordinance.

**Supporting Documents:**
- Annexation Ordinance.

**Staff Recommendation:** Recommended for adoption.

**CITY OF FRISCO, TEXAS** **ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, ANNEXING, ON APPLICATION OF THE LANDOWNER, 33.0 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, COLLIN COUNTY, TEXAS; PROVIDING THAT THE OWNERS AND INHABITANTS OF THE ABOVE-DESCRIBED TRACT OF LAND SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF FRISCO AND BE BOUND BY THE ACTS AND ORDINANCES NOW IN EFFECT AND HEREINAFTER ADOPTED; PROVIDING FOR A PENALTY FOR A VIOLATION OF THIS ORDINANCE AND FRISCO'S ORDINANCE NO. 11-04-09 AND ANY AMENDMENTS THERETO; 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 Prosper United Methodist Church, the landowner of 33.0 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, Collin County, Texas (hereinafter defined as the "Property"), submitted an application to the City of Frisco, Texas ("Frisco") for voluntary annexation into the city limits of Frisco (the "Landowner"); and

WHEREAS, in accordance with Section 43.035, Local Government Code, as amended, an offer of a development agreement has been made by Frisco and declined by the Landowner, in writing; and

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council"), under the authority of Sections 43.021 and 43.035, Local Government Code, as amended, and the Frisco City Charter, investigated and determined that it would be advantageous and beneficial to Frisco and its inhabitants to annex the Property; and

WHEREAS, the City Council finds that all requisites relative to consideration and adoption of this Ordinance have been complied with pursuant to Chapter 43, Local Government Code, as amended; and

WHEREAS, prior to conducting the public hearings required under Section 43.063, Local Government Code, the City Council also investigated and determined that the Property is within the extraterritorial jurisdiction of Frisco and is adjacent and contiguous to the existing city limits of Frisco; and

WHEREAS, before the publication of the notice of the first public hearing regarding the annexation of the Property, the City Council directed the appropriate persons to prepare a service plan that provides for the extension of municipal services to the Property to be annexed; and

WHEREAS, the City Council finds that the Service Plan has been prepared in full compliance with Section 43.065, Local Government Code, and has been made available for public inspection and was available for explanation to the inhabitants of the Property at the public hearings; and

WHEREAS, the City Council finds that the field notes close the boundaries of the Property being annexed; and

WHEREAS, the City Council has conducted at least two (2) public hearings at which persons interested in the annexation were given an opportunity to be heard regarding the proposed annexation and the proposed Service Plan; and

WHEREAS, the City Council finds the public hearings were conducted on or after the fortieth (40th) day but before the twentieth (20th) day before the date of the institution of the annexation proceedings; and

WHEREAS, the City Council finds it has completed the annexation process within ninety (90) days after the City Council instituted annexation proceedings; and

WHEREAS, the City Council finds that all legal notices, hearings, procedures and publishing requirements for annexation have been performed and completed in the manner and form set forth by law.

**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: Property Annexed. The Property described as follows and all public streets, roadways and alleyways located within or contiguous to the same is hereby annexed to Frisco, to-wit:

> BEING a tract of land out of the Collin County School Land Survey, Abstract No. 147, Collin County, Texas containing 33.0 acres of land, more or less; said tract is more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

The general location of the property is depicted on Exhibit "B", attached hereto.

SECTION 3: Service Plan. The Service Plan for the Property is attached hereto as Exhibit "C" and made a part hereof for all purposes.

SECTION 4: Rights/Privileges/Bound by Ordinances and Regulations. From and after the passage of this Ordinance, the Property shall be a part of Frisco, and the inhabitants thereof shall be entitled to all the rights and privileges of all of the citizens of Frisco and shall be bound by all of the ordinances and regulations enacted pursuant to and in conformity with the City Charter and the laws of the State of Texas.

SECTION 5: Official Map and Boundaries Amended. The official map and boundaries of Frisco are hereby amended to include the Property as part of Frisco. A certified copy of this Ordinance shall be filed in the County Clerk's Office of Denton County.

SECTION 6: Unlawful Use. It shall be unlawful for any person, firm, entity or corporation to make use of the Property in some manner other than as authorized by this Ordinance and Frisco's Zoning Ordinance No. 11-04-09, as it exists or may be amended; and it shall be unlawful for any person, firm, entity or corporation to construct on the Property any building that is not in conformity with the permissible use under this Ordinance and Frisco's Zoning Ordinance No. 11-04-09, as it exists or may be amended.

SECTION 7: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance or any provision of Frisco's Zoning Ordinance No. 11-04-09, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars ($2,000.00). Each continuing 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 8: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any

violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 9: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance, or the use created under Zoning Ordinance No. 11-04-09, and any amendments thereto, 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 10: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS** on this 3rd day of April, 2012.

_____
Maher Maso, Mayor

**ATTESTED TO AND CORRECTLY RECORDED BY:**

_____
Jenny Page, City Secretary

**APPROVED AS TO FORM:**

Courtney A Kuykendall
Abernathy, Roeder, Boyd & Joplin, P.C.
Courtney A. Kuykendall, City Attorney

DATE(S) OF PUBLICATION: _____, *Frisco Enterprise*

## EXHIBIT "A"
(Legal Description)

**BEING** all that certain lot, tract or parcel of land lying and being situated in the Collin County School Land Survey Abstract 147, Collin County, Texas and being part of a (called) 78.1524 acre tract as described in a deed from Edward A Copely, Trustee to Opubco Properties, Inc., as recorded in Volume 1639 at Page 454 of the Real Properties Records of Collin County, Texas and being the same property called 33.00 acres conveyed to Alice Bass by deed recorded in County Clerks File Number 2006001813650 of the Real Property Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

**BEGINNING** at a found 5/8" iron rod with aluminum disk stamped "541", for the Southwest corner of a tract of land conveyed to The State of Texas, recorded in county clerks file Number 960028737 of the Real Property records of Collin County, Texas, and the Northwest corner of said Alice Bass 33.00 acre tract, said point also being on the South right of way of U.S. Highway 380 (variable width right-of-way), said point also being on the East line of called 40.569 acre tract deeded to Veninga Investment Company, recorded in volume 908 at page 535 of the Deed Records of Denton County, Texas;

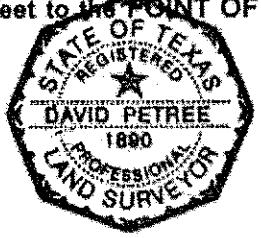
**THENCE** North 88° 36' 38" East (North 88° 47' 18" East deed) with the South right-of-way of U.S. Highway 380 for a distance of 107.61 feet to a found 5/8" iron rod with aluminum disk stamped "500" for corner at an angle in said right-of-way;

**THENCE** North 89° 04' 02" East (North 89° 06' 00" East per deed) with the South right-of-way of U.S. Highway 380 for a distance of 753.49 feet to a ½" iron rod found for corner, said point being the Northeast corner of said 33.00 acre tract and being the Northwest corner of a 44.2828 acre tract of land conveyed to WRC Frisco 380 Partners, L.P. as recorded in Instrument Number 2007000324700 of the Real Property Records of Collin County, Texas;

**THENCE** South 00° 57' 00" East (Basis of Bearings per deed recorded County Clerks File Number 2006001813650 of the Real Property Records of Collin County, Texas) along the common line of said 33.00 acre tract and the 44.2828 acre tract for a distance of 1957.20 feet to a ½" iron rod with yellow cap stamped "1843" found for the Southeast corner of said 33.00 acre tract and the Southwest corner of said 44.2828 acre tract and also being in the North line of a called 6.26 acre tract deeded to Wilpat Real Estate Partners as recorded in Volume 5699, Page 2478 of the Real Property Records of Collin County, Texas;

**THENCE** South 87° 28' 02" West along and near a fence on the South line of said Alice Bass 33.00 acre tract and the North line of said Wilpat Real Estate Partners 61.26 acre tract for a distance of 861.39 feet to a ½" iron rod found at a fence corner post for the Southwest corner of said Alice Bass 33.00 acre tract and also being in the called West line of Collin County and the East line of Denton County;

**THENCE** North 00° 57' 32" West (North 00° 57' 00" West per deed) along and near a fence on the West line of said Alice Bass 33.00 acre tract and the East line of the aforesaid Veninga Investment Company called 40.569 acre tract for a distance of 1680.39 feet to the **POINT OF BEGINNING** and **CONTAINING 32.9934 ACRES OF LAND, more or less.**




David Petree
Registered Professional Land Surveyor No. 1890

**EXHIBIT "B"**

# A12-0002
# Collin County School Survey
# ABST No 147



**Exhibit "C"**

**CITY OF FRISCO, TEXAS**
**SERVICE PLAN FOR ANNEXED AREA**

ANNEXATION ORDINANCE NO. _____

DATE OF ANNEXATION ORDINANCE:

ACREAGE ANNEXED: 33.0 acres of land, more or less

SURVEY, ABSTRACT & COUNTY: Collin County School Land. Survey, Abstract No. 147, Collin County, Texas.

Municipal Services to the acreage described above shall be furnished by or on behalf of the City of Frisco, Texas, at the following levels and in accordance with the following schedule:

A. POLICE SERVICE

1. Patrolling, responses to calls and other routine police services, within the limits of existing personnel and equipment and in a manner consistent with any of the methods of the City of Frisco, Texas, extends police service to any other area of the municipality, will be provided upon the effective date of the annexation ordinance.

2. Upon ultimate development of the area, the same level of police services will be provided to this area as are furnished throughout the City.

B. FIRE SERVICES

1. Fire protection and emergency ambulance equipment by the present personnel and the present equipment of the Fire Department, within the limitations of available water and distances from existing fire stations, and in a manner consistent with any of the methods of the City of Frisco, Texas, extends fire service to any other area of the municipality, will be provided to this area upon the effective date of the annexation ordinance.

2. Upon ultimate development of the area, the same level of fire and emergency ambulance services will be provided to this area as are furnished throughout the City.

C. ENVIRONMENTAL HEALTH AND CODE ENFORCEMENT SERVICES

1. Enforcement of the City's environmental health ordinances and regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicle ordinances and animal control ordinances, shall be provided within this area sixty (60) days of the effective date of the annexation ordinance. These ordinances and regulations will be enforced through the use of existing personnel.

2. Inspection services, including the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical and electrical work to ensure compliance with City codes and ordinances will be provided within sixty (60) days of the effective date of the annexation ordinance. Existing personnel will be used to provide these services.

3. The City's zoning, subdivision, sign and other ordinances shall be enforced in this area beginning upon the effective date of the annexation.

4. All inspection services furnished by the City of Frisco, but not mentioned above, will be provided to this area beginning within sixty (60) days of the effective date of the annexed ordinance.

5. As development and construction commence in this area, sufficient personnel will be provided to furnish this area the same level of Environmental Health and Code Enforcement Services as are furnished throughout the City.

D. PLANNING AND ZONING SERVICES

The planning and zoning jurisdiction of the City will extend to this area upon the effective date of the annexation ordinance. City planning will thereafter encompass this property, and it shall be entitled to consideration for zoning in accordance with the City's Zoning Ordinance and Comprehensive Plan.

E. PARK AND RECREATION SERVICES

1. Residents of this property may utilize all existing park and recreational services, facilities, and sites throughout the City, beginning upon the effective date of the annexation ordinance.

2. Additional facilities and sites to serve this property and its residents will be acquired, developed and maintained at locations and times provided by applicable plans, policies, and programs and decisions of the City of Frisco. This property will be included in all future plans for providing parks and recreation services to the City.

3. Existing parks, playgrounds, swimming pools, and other recreational facilities within this property shall, upon dedication to and acceptance by the City, be maintained and operated by the City of Frisco, but not otherwise.

F. SOLID WASTE COLLECTION

1. Solid waste collection shall be provided to the property in accordance with existing City policies, beginning upon the effective date of the annexation ordinance.

2. As development and construction commence in this property and population density increases to the property level, solid waste collection shall be provided to this property in accordance with the current policies of the City as to frequency, changes and so forth.

G. STREETS

1. The City of Frisco's existing policies with regard to street maintenance, applicable throughout the entire City, shall apply to this property beginning upon the effective date of the annexation ordinance. Unless a street within this property has been constructed or is improved to the City's standards and specifications, that street will not be maintained by the City of Frisco.

2. As development, improvement or construction of streets to City standards commences within this property, the policies of the City of Frisco with regard to participation in the costs thereof, acceptance upon completion and maintenance after completion shall apply.

3. The same level of maintenance shall be provided to streets within this property which have been accepted throughout the City of Frisco as is provided to City streets throughout the City.

4. Street lighting installed on streets improved to the City standards shall be maintained by either TXU Energy, Oncor, Denton County Co-Op or the appropriate Franchise holder in accordance with current City policies.

H. WATER SERVICES

1. Connection to existing City water mains for water service for domestic, commercial and industrial use within this property will be provided in accordance with existing City policies. Upon connection to existing mains, water will be provided at rates established by City ordinances for such service throughout the City.

2. As development and construction commence in this property, water mains of the City will be extended in accordance with provisions of the Subdivision Ordinance and other applicable ordinances and regulations. City participation in the costs of these extensions shall be in accordance with the applicable City ordinances and regulations. Such extensions will be commenced within two and one-half (2 1/2) years from the effective date of the annexation ordinance and substantially completed within four and one-half (4 ½) years after that date.

3. Water mains installed or improved to City standards which are within the annexed area and are within dedicated easements shall be maintained by the City of Frisco beginning upon the effective date of the annexation ordinance.

4. Private water lines within this property shall be maintained by their owners in accordance with existing policies applicable throughout the City.

I. SANITARY SEWER SERVICES

1. Connections to existing City sanitary sewer mains for sanitary sewage service in this area will be provided in accordance with existing City policies. Upon connection, sanitary sewer service will be provided at rates established by City ordinances for such service throughout the City.

2. Sanitary sewage mains and/or lift stations installed or improved to City standards, located in dedicated easements, and which are within the annexed area and are connected to City mains will be maintained by the City of Frisco beginning upon the effective date of the annexation ordinance.

3. As development and construction commence in this area, City sanitary sewer will be extended in accordance with provisions of the Subdivision Ordinance and other applicable City ordinances and regulations. Such extensions will be commenced within two and one-half (2 1/2) years from the effective date of the annexation ordinance and substantially completed within four and one-half (4 ½) years after that date.

J. MISCELLANEOUS

1. Any facility or building located within the annexed area and utilized by the City of Frisco in providing services to the area will be maintained by the City of Frisco commencing upon the date of use or upon the effective date of the annexation ordinance, whichever occurs later.

2. General municipal administration and administrative services of the City shall be available to the annexed area Frisco beginning upon the effective date of the annexation ordinance.

3. Notwithstanding anything set forth above, this Service Plan does not require all municipal services be provided as set forth above if different characteristics of topography, land use and population density are considered a sufficient basis for providing different levels of service.

4. The Service Plan is valid for ten (10) years from the effective date of the Ordinance.

# AGENDA ITEM #24.

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**
**Jim Gandy, President Frisco Economic Development Corporation**

**Date:** **March 28, 2012**

**Re:** **Consider and act upon authorizing the City Manager to execute a Development Agreement by and between Wanamaker Frisco One, L.P., Shula Netzer, and the City of Frisco, Texas for the construction of John Hickman and related improvements for the development of an Academy Sports and Outdoor, and retail center.**

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**Action Requested:** Approval of a development agreement for the construction of John Hickman Drive and require the development and opening of an Academy Sports and Outdoor.

**Background Information:** The developer, Wanamaker Frisco One, L.P., is purchasing a tract of land on the east side of Preston just south of the future extension of John Hickman (south of La Hacienda) which will contain approximately 6.5 acres. The developer has submitted a preliminary site plan for development of the property which reflects a commercial development on a portion of the Property that will consist of an approximately seventy thousand (70,000) square foot building that is expected to be leased and occupied by Academy Sports and Outdoors, with a minimum commercial building permit value of not less than Five Million and 00/100 Dollars ($5,000,000.00), which does not include land.

In order to facilitate the development of the Sports and Outdoors Retail Center and Academy this development agreement is proposed. The development agreement provides for:

1. City agrees to construct –
   (i) an extension of John Hickman Boulevard from Preston Road to Ohio Drive
   (ii) a traffic signal at the intersection of Preston Road and John Hickman Boulevard, subject to approval by TxDOT

(iii) a twelve (12) inch water main in the John Hickman Boulevard with stubs to the property owned by Netzer and the developer
(iv) required improvements on the property owned by Primrose Academy

2. Netzer agrees to convey 0.3226 acres of right of way for the extension of John Hickman Blvd (this is subject to Dreig-Cambria, LLC conveying to Netzer 8,037 square feet pursuant to a separate agreement between Netzer and Dreig-Cambria, LLC)

3. The FEDC and Developer have approved the form of a Performance Agreement that will be executed simultaneously with this development agreement providing for economic assistance to the developer in the form of economic incentives to assist with offsetting the cost of constructing John Hickman Blvd.

4. The developer has agreed to assign to Frisco the economic incentives as follows. The lesser of –
   (i) up to Eight Hundred Thousand and 00/100 Dollars ($800,000.00) of the Economic Incentives; or
   (ii) up to sixty percent (60%) of the costs of the John Hickman Extension (and related water/sewer improvements) upon the City's completion of the construction of said improvements; and

5. The developer will provide Frisco with an irrevocable Letter of Credit (LOC) in the amount of Four Hundred Thousand and 00/100 Dollars ($400,000.00). Upon the developer obtaining a Frisco Certificate of Occupancy ("**CO**") for the Academy Project, Frisco will release the LOC. If developer fails to pay the reimbursement, as outlined above, Frisco shall be permitted to declare the Developer in default and present the Letter of Credit for payment, and no additional action shall be necessary.

***Please note that the Agreement has not been finalized and will delivered to you as soon as it become available.***

**Financial Considerations:** The project budget is a total of $1.6 million. The FEDC will fund up to ½ of this cost with the remainder being funded with approved and sold general obligation funds. This project was on the project list submitted to City Council during its recent work session.

**Legal Review:** The document was drafted and reviewed by City Attorney staff.

**Supporting Documents:**

- (Remains in ***DRAFT***)

**Staff Recommendation:** Recommendation pending final draft.

# AGENDA ITEM #25.

NORTH TEXAS MUNICIPAL
WATER DISTRICT

*Regional Service Through Unity*

March 19, 2012

Mr. George Purefoy, City Manager
City of Frisco
6101 Frisco Square Boulevard
Frisco, Texas 75034

RE: NTMWD BOARD MEMBER APPOINTMENT

Dear Mr. Purefoy:

This is your official notification that Mr. Gary Downey's term of office as an NTMWD Board Member expires May 31, 2012. The City Council, by a majority vote, should reappoint Mr. Downey or appoint another Director to serve a term from June 1, 2012, to May 31, 2014.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in and owns taxable property in the city from which he is appointed. No member of a governing body of a city, and no employee of a city, shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed.

The cities served by the NTMWD appreciate the work and effort expended by the appointed Directors. It is my practice to visit with new Directors in an orientation session prior to their first meeting; therefore, please notify my office in writing when the City Council has appointed a Director for the new term. Should you have any questions or need additional information, please do not hesitate to contact my office.

Sincerely,

JAMES M. PARKS
Executive Director

JMP/mcf

cc: Mr. Gary Downey
City Secretary

OFFICE OF THE MAYOR & CITY COUNCIL
City of Frisco
6101 Frisco Square Blvd.
Frisco, TX 75034
972-292-5113

# Memorandum

**To:** **Honorable Mayor Maso and City Council Members**

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

**Date:** **March 26, 2012**

**Subject:** **Reappointment for the North Texas Municipal Water District (NTMWD)**

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**Action Requested:** City Council reappointment of Gary Downey to fill the vacancy on the North Texas Municipal Water District (NTMWD) for a two year term from June 1, 2012 through May 31, 2014.

**Background Information:** The NTMWD Board is represented by two Council appointed Frisco citizens, Gary Downey and Lynn Shuyler. Mr. Gary Downey's term expires on May 31, 2012. He was appointed in 2002 and was reappointed in 2004, 2006, 2008 and 2010.

Mr. Downey would like to reapply again and is eligible to run for an additional two year term, as long as he remains a citizen of Frisco and does not become employed by the City of Frisco.

**Board/Citizen Input:** The NTMWD does not have term limitations and prides themselves on board member longevity.

**Supporting Documents:** NTMWD letter.

# AGENDA ITEM #26.

PROGRESS IN MOTION

**Frisco Police Department**
City of Frisco, Texas

# Memorandum

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

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

**From:** **John Bruce, Assistant Police Chief**

**Date:** **3/26/2012**

**Agenda Caption: Discussion of Richwoods Subdivions' petition for Frisco Police patrol and traffic enforcement in their gated community and give staff direction.**

---

**Action Requested**: Discuss petition and give staff direction to bring back an ordinance extending enforcement of traffic regulations to the private roadways of a gated community.

**Background Information**: The Richwood Owners are building a gated subdivision within the City limits of Frisco and in accord with the Texas Transportation Code, Section 542.008, seek to cause the traffic rules and laws relating to the operation of motor vehicles on public thoroughfares of the City of Frisco apply in the Richwoods Addition. The owners have submitted a petition in accordance to the statute. At present no one lives in the subdivision and the owners are bringing this forward prior to selling any lots.

**Board Review/Citizen Input**: N/A

**Alternatives**: Denial of the petition.

**Financial Considerations**: The law provides that Council could charge an additional fee to cover the costs of traffic enforcement. Petitioner's have requested that no additional fee be charged as the City would be delivering similar services as non-gated communities receive for no additional fees.

**Legal Review**: City Attorney's office has reviewed the petition and agrees as to its form.

**Supporting Documents**: Petition from Richwoods Development, LLC

**Staff Recommendation**: Traffic Engineering and the Police Department see no problems with accepting this petition as long as the development follows through with the plan during final construction.

**Engineering Services**
City of Frisco, Texas

PROGRESS IN MOTION

# Memorandum

**To:** **John Bruce, Assistant Chief of Police**

**cc:** **Paul Knippel, P.E., Director of Engineering Services**

**From:** **Brian Moen, P.E., Assistant Director of Engineering Services**

**Date:** **March 27, 2012**

**Subject:** **Traffic Enforcement in Richwoods Gated Community**

---

The Transportation Engineering Division is in support of the Richwoods Gated Community receiving traffic law enforcement per Section 542.008 of the Texas Transportation Code under the following conditions:

1. The traffic control devices shown in the construction plans approved by the City of Frisco are installed as shown in the plans. Any decorative sign posts installed along the roadway must be crashworthy breakaway poles.

2. All traffic control signage must meet the sign design and sheeting requirements as stipulated in the construction plans approved by the City of Frisco. These requirements conform to the Texas Manual of Uniform Traffic Control Devices.

3. All traffic control devices installed during construction must pass final inspection by the City of Frisco.

4. All future traffic control devices installed after construction and acceptance of the Richwoods gated community shall conform to the TMUTCD and must be recommended and approved by a Texas licensed professional Engineer hired by the Richwoods gated community. The Engineer must provide a signed and sealed technical memorandum and drawing to the City of Frisco for review and approval of the addition or modification.

5. If, in the future, the City discovers a traffic control device in the Richwoods gated community that does not conform to the TMUTCD and/or was not approved by

the City of Frisco, the City of Frisco will notify the Richwoods gated community in writing and the community shall correct it within 30 days of receipt of notification. Failure to correct the problem will result in the stoppage of traffic enforcement within the Richwoods gated community.

**SLOAN & ROBERTS, PLLC**
5950 BERKSHIRE LANE
SUITE 450
DALLAS, TEXAS 75225-5835
TELEPHONE (214) 987-6070
FACSIMILE (214) 987-6071

KENNETH W. SLOAN KEN@SLOANANDROBERTS.COM

March 27, 2012

City of Frisco
Attn: Jenny Page
6101 Frisco Square Blvd.
Frisco, Texas 75034

*Via Email wwithers@friscotexas.gov*

**Re: Presentation of revised Petition for City of Frisco Police Patrol and Enforcement in Gated Community of Richwoods**

Dear Ms. Page,

As you know from our prior communications, our firm represents Richwoods Development, LLC and the other owners of the Richwoods Addition to the City of Frisco. On March 9, 2012, we submitted our first Petition for City of Frisco Police Patrol and Enforcement in Gated Community of Richwoods under the Texas Transportation Code Section 542.008. Since that time, we have had several communications with the City of Frisco's attorneys and made certain revisions to our presentation. Consistent with those communications, we now submit this, our revised Petition and request this matter be presented to the City Council for review and passage of an Ordinance. Accordingly, please set this matter on the Agenda for the Council Meeting of April 3, 2012. It is our understanding that submission of our Petition via email will be sufficient, but please advise us right away if an original of the signed document is required.

Thank you for your time and attention to this matter. Please contact me with any questions you may have.

Sincerely,

Kenneth W. Sloan

KWS/sh

**PETITION FOR CITY OF FRISCO POLICE PATROL AND ENFORCEMENT IN GATED COMMUNITY OF RICHWOODS**

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

**WITNESSETH:**

**WHEREAS**, Richwoods Development, LLC is the owner of certain real property in the City of Frisco, Collin County, Texas, ("City") that will become a private gated community known as "Richwoods" an addition to the City more fully described on Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, Richwoods Land, L.P., is the owner of certain additional real property in the City, contiguous with Richwoods that, upon completion of development, is intended for inclusion into the Richwoods gated community through the annexation process provided in the restrictive covenants of Richwoods, and such additional real property is more fully described on Exhibit "B" attached hereto and incorporated herein by reference (all of such property within Richwoods, now or in the future, being referred to herein as the "Richwoods Addition" whether one or more); and

**WHEREAS**, the Richwoods Association of Homeowners, Inc. (also referred to herein as the "Association") will be the owner of the private streets and roads by way of dedication to the Association for purposes of ownership and maintenance thereof; and

**WHEREAS**, Richwoods Development, LLC, Richwoods Land, L.P., and the Association will be collectively referred to as the "Richwoods Owners" for purposes of this Petition; and

**WHEREAS**, the Richwoods Owners acknowledge that Richwoods is a subdivision being developed within the City limits of the City and in accordance with the Texas Transportation Code Section 542.008, as amended (the "Statute") the Richwoods Owners seek to cause the traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply in the Richwoods Addition; and

**WHEREAS,** the Statute applies to a subdivision in which the roads are privately owned or maintained, and to a municipality with a population of 300 or more; and

**WHEREAS**, the Statute authorizes, on petition of 25% of the property owners residing in a subdivision, the governing body of the municipality to extend by ordinance any traffic rules that apply to a road owned by the municipality, or by the county in which the municipality is located, to the roads in the subdivision so that the roads of the subdivision are under the same traffic rules, if the governing body of the municipality finds the ordinance in the interest of the municipality generally; and

**WHEREAS**, pursuant to the authority provided for in the Statute, the Richwoods Owners petition to obtain consent and agreement for the enforcement of the traffic rules and laws related to the operation of motor vehicles on public thoroughfares and other laws of the City, as allowed by the Statute, and obtain the patrol presence of the City Police Department for the health, safety and welfare of the citizens that will reside in the Richwoods Addition; and

**WHEREAS**, the Richwoods Owners acknowledge and agree that the terms and conditions set forth in this Petition are subject to the City Council's issuance of an ordinance stating that the private roads in Richwoods Addition are to be considered to be public highways or streets for the purposes of the application and enforcement of the specified traffic rules requested and agreed upon; and

**WHEREAS**, in the event the City Council chooses to act on this Petition, the Richwoods Owners may be required to enter into an agreement with the City setting forth the terms and conditions upon which the traffic rules that apply in the City or in the county shall apply in Richwoods Addition, and in that event, said agreement shall be an exhibit to the Ordinance.

**NOW, THEREFORE**, this Petition is submitted to comply with the Statute and to request that the City Council accept the Petition and find that it is in the best interest of the City to draft and approve an ordinance authorizing the City to apply the City's traffic rules in the Richwoods Addition and the provision of law enforcement for the Richwoods Addition in accordance with an agreement with the City.

**PETITION:**

Pursuant to Section 542.008 of the Texas Transportation Code, the Richwoods Owners unanimously petition the City as follows:

**1. General Nature of Requested Service:**

The Richwoods Owners seek the City to approve and direct that the City Police Department will provide law enforcement to the Richwoods Addition for the purpose of patrol, enforcement of traffic control and laws related to operation of motor vehicles, investigation of criminal activity, and deterrent of criminal activity in the violation of City and State laws within the jurisdiction of the City Police Department for the health, safety and welfare of the citizens of the Richwoods Addition, as defined herein.

**2. Satisfaction of Conditions Precedent:**

(a) The Statute applies to a subdivision in which the roads are privately owned or maintained. The roads of the Richwoods Addition are and will be privately owned and maintained, in accord with Special Use Permit: Richwoods (SUP11-0004) through dedication to the Association.

(b) Frisco is a municipality with a population of 300 or more.

(c) The Statute requires the Petition of at least 25 percent of the property owners residing in the subdivision or on the request of the governing body of the entity that maintains the roads. The Association has joined in this Petition as do the Richwoods Owners, who own and control 100% of the real property and roads made the subject of this Petition, as more particularly described in Exhibit "B".

**3. Municipality May Extend Services:**

The Statute provides that the governing body of the municipality may extend by ordinance any traffic rules that apply to a road owned by the municipality, or by the county in which the municipality is located, to the roads in the subdivision so that the roads of the subdivision, such as the Richwoods Addition, are under the same traffic rules, if the governing body of the municipality finds the ordinance in the interest of the municipality generally.

**4. Traffic Rules Sought to Be Extended:**

The Richwoods Owners seek to extend all traffic rules of City thoroughfares similar to those within the Richwoods Addition, including but not limited to:

(a) Speed Limit of 30 mph;
(b) Vehicle Registration and Inspection Laws; and
(c) Traffic Rules regarding speed, signal indicators, stop signs, parking, and similar traffic laws.

In compliance with the Statute, this Petition specifies the traffic rules that are sought to be extended. The Richwoods Owners request the City to extend all of such requested rules to the Richwoods Addition for the safety, health and welfare of the citizens.

**5. Lack of Necessity for Payment of Costs of Police Service:**

The Richwoods Owners seek no different enforcement or service than that made available and provided to all other citizens and taxpayers of the City, and pursuant to the Statute. While the City may require that owners of property in the subdivision pay all or part of the cost of extending and enforcing the traffic rules in the subdivision, there should be no additional cost than that borne for any other citizen. Accordingly, the Richwoods Owners petition that no additional charges be imposed for the provision of the police service in accordance with the agreement between the Richwood Owners and the City.

**6. Proposed Method of Enforcement:**

On issuance of an order under the Statute, the Richwoods Owners acknowledge that the private roads in the subdivision will be considered to be public highways or streets for purposes of the application and enforcement of the specified traffic rules. The Richwoods Owners will comply with all City requests for placement of necessary official traffic control devices on property abutting the private roads if:

(a) those devices relate to the specified traffic rule; and
(b) the consent of the owner of that property is obtained, if on property not owned by the Association, or an easement is available for the placement.

**7. Execution:**

This Petition is signed by the authorized representatives of the Richwoods Owners.

This Petition will be filed with the Municipal Secretary or other officer performing the functions of the Municipal Secretary. The Richwoods Owners submit this their Petition and request that the City grant all matters requested herein and issue an appropriate Ordinance of the City of Frisco consistent with this Petition, the laws of the State of Texas and the City of Frisco.

Signed this 26TH day of March, 2012.

**Richwoods Development, LLC**

By: Daniel J. Walsh
Its: Vice President

**Richwoods Land, L.P.**
By: Richwoods Management, LLC
Its: General Partner

By: Daniel J. Walsh
Its: Vice-President

**Richwoods Association of Homeowners, Inc.**

By: Daniel J. Walsh
Its: Treasurer

# Exhibit "A"

BEING at tract of land situated in the Jacob Baccus Survey, Abstract No. 53, Tola Dunn Survey, Abstract No. 261 and the J. W. Franklin Survey, Abstract No. 307, City of Frisco, Collin County, Texas, and also being part of a called 404.509 acre tract as conveyed to H. Roger Lawler and recorded in Volume 727, Page 454, Deed Records of Collin County, Texas, also being part of a called 160.572 acre tract as conveyed to H. Roger Lawler and recorded in Volume 682, Page 133, D.R.C.C.T., and also being part of a called 157.320 acre tract as conveyed to H. Roger Lawler and recorded in Volume 658, Page 373, D.R.C.C.T., and being more particularly described by metes and bounds as follows:

BEGINNING at a pk nail w/shiner set for corner in the south line of said 160.572 acre tract, said pk nail being S 89°34'48" W a distance of 926.82' from the southeast corner of said 160.572 acre tract, said pk nail also being in C.R. No. 68;

THENCE S 89°34'48" W following CR No. 68 a distance of 598.29' pk nail and shiner set for corner;

THENCE N 00°24'36" E a distance of 799.71' to a capped 1/2" iron rod set for corner;

THENCE N 17°26'24" W a distance of 66.06' to a capped 1/2" iron rod set for corner at the beginning of a nontangent curve to the right with a chord bearing of S 79°52'26" W, and a chord length of 243.14';

THENCE along said curve to the right through a central angle of 14°37'38", a radius of 955.00', an arc length of 243.81' to a capped 1/2" iron rod set for corner;

THENCE N 00°24'36" E a distance of 738.75' to a capped 1/2" iron rod set for corner;

THENCE S 78°50'22" W a distance of 70.74' to a capped 1/2" iron rod set for corner;

THENCE S 85°01'36" W a distance of 69.58' to a capped 1/2" iron rod set for corner;

THENCE S 89°59'57" W a distance of 74.00' to a capped 1/2" iron rod set for corner;

THENCE N 89°35'24" W a distance of 688.14' to a capped 1/2" iron rod set for corner;

THENCE N 00°24'36" E a distance of 2221.26' to a capped 1/2" iron rod set for corner;

THENCE S 89°07'55" W a distance of 568.08' to a capped 1/2" iron rod set for corner;

THENCE N 00°52'05" W a distance of 842.27' to a capped 1/2" iron rod set for corner at the beginning of a nontangent curve to the right with a chord bearing of N 89°48'35" E, and a chord length of 23.07';

THENCE along said curve to the right through a central angle of 01°21'20", a radius of 975.00', an arc length of 23.07' to a capped 1/2" iron rod set for corner;

THENCE N 89°07'55" E a distance of 586.94' to a capped 1/2" iron rod set for corner;

THENCE N 00°52'05" W a distance of 670.10' to a capped 1/2" iron rod set for corner in the south Right of Way line of Rolater Road;

THENCE N 89°09'31" E following the south ROW line of Rolater Road a distance of 56.51' to a capped 1/2" iron rod set for corner;

THENCE N 89°15'33" E following the south ROW line of Rolater Road a distance of 1667.14' to a capped 1/2" iron rod set for corner;

THENCE S 01°00'54" W a distance of 1022.61' to a capped 5/8" iron rod found for corner;

THENCE S 00°06'42" E a distance of 1087.07' to a capped 5/8" iron rod found for corner;

THENCE N 89°08'19" E a distance of 865.05' to a capped 1/2" iron rod set for corner in the west Right Of Way line of Independence Parkway;

THENCE S 00°36'38" E following the west ROW line of said Independence Parkway a distance of 540.50' to a capped 1/2" iron rod set for corner;

THENCE S 00°01'12" E following the west ROW line of said Independence Parkway a distance of 428.29' to a capped 1/2" iron rod found for corner at the northeast corner of a 20.000 acre tract conveyed to the Frisco ISD as recorded in County Clerks No. 20101115001243960, Collin County, Texas;

THENCE DUB WEST following the north line of said Frisco ISD tract a distance of 848.93' to a capped 1/2" iron rod found for corner;

THENCE S 00°26'20" W following the west line of said Frisco ISD tract passing at 1021.49' the southwest corner of said Frisco ISD tract and continuing in all a distance of 2230.44' to the POINT OF BEGINNING, and containing 8,914,461 square feet or 204.648 acres of land.

# Exhibit "B"

BEING at tract of land situated in the Jacob Baccus Survey, Abstract No. 53, Tola Dunn Survey, Abstract No. 261 and the J. W. Franklin Survey, Abstract No. 307, City of Frisco, Collin County, Texas, and also being part of a called 404.509 acre tract as conveyed to H. Roger Lawler and recorded in Volume 727, Page 454, Deed Records of Collin County, Texas, also being part of a called 160.572 acre tract as conveyed to H. Roger Lawler and recorded in Volume 682, Page 133, D.R.C.C.T., and also being part of a called 157.320 acre tract as conveyed to H. Roger Lawler and recorded in Volume 658, Page 373, D.R.C.C.T., and being more particularly described by metes and bounds as follows:

BEGINNING at a pk nail w/shiner set for corner in the south line of said 160.572 acre tract, said pk nail being S 89°34'48" W a distance of 1704.56' from the southeast corner of said 160.572 acre tract, said pk nail also being in C.R. No. 68;

THENCE S 89°34'48" W a distance of 1117.45' to a pk nail w/shiner set for corner;

THENCE N 00°19'10" W a distance of 15.18' to a capped 1/2" iron rod set for corner;

THENCE S 89°52'00" W a distance of 2579.49' to a "X" cut set for corner in the east Right Of Way line of Colt Road;

THENCE N 00°26'09" W following the east ROW line of Colt Road a distance of 2599.47' to a capped 1/2" iron rod set for corner;

THENCE N 01°41'01" W following the east ROW line of Colt Road a distance of 1379.49' to a capped 1/2" iron rod set for corner;

THENCE N 01°33'49" W following the east ROW line of Colt Road a distance of 228.09' to a capped 1/2" iron rod set for corner;

THENCE N 88°21'39" E a distance of 960.49' to a capped 5/8" iron rod found for corner, said capped iron rod being at the beginning of a nontangent curve to the right with a chord bearing of N 61°00'24" E a chord length of 756.07;

THENCE along said curve to the right through a central angle of 56°23'57" a radius of 800.00', an arc length of 787.48' to a capped 5/8" iron rod found for corner;

THENCE N 89°55'10" E a distance of 163.01' to a capped 5/8" iron rod found for corner;

THENCE N 00°47'39" W a distance of 663.41' to a capped 1/2" iron rod set for corner in the south Right Of Way line of Rolater Road;

THENCE N 89°09'31" E following the south ROW line of Rolater Road a distance of 874.29' to a capped 1/2" iron rod set for corner;

THENCE S 00°52'05" E a distance of 670.10' to a capped 1/2" iron rod set for corner;

THENCE S 89°07'55" W a distance of 586.94' to a capped 1/2" iron rod set for corner, said iron rod being at the beginning of a curve to the left with a chord bearing of S 89°48'35" W, with a chord length of 23.07';

THENCE along said curve to the left through a central angle of 01°21'20", a radius of 975.00', an arc length of 23.07' to a capped 1/2" iron rod set for corner;

THENCE S 00°52'05" E a distance of 842.27' to a capped 1/2" iron rod set for corner;

THENCE N 89°07'55" E a distance of 568.08' to a capped 1/2" iron rod set for corner;

THENCE S 00°24'36" W a distance of 2221.26' to a capped 1/2" iron rod set for corner;

THENCE S 89°35'24" E a distance of 688.14' to a capped 1/2" iron rod set for corner;

THENCE N 89°59'57" E a distance of 74.00' to a capped 1/2" iron rod set for corner;

THENCE N 85°01'36" E a distance of 69.58' to a capped 1/2" iron rod set for corner;

THENCE N 78°50'22" E a distance of 70.74' to a capped 1/2" iron rod set for corner;

THENCE S 00°24'36" W a distance of 738.75' to a capped 1/2" iron rod set for corner, said iron rod being the beginning of a non tangent curve to the left with a chord bearing of N 79°52'26" E, with a chord length of 243.14';

THENCE along said curve to the left through a central angle of 14°37'38", a radius of 955.00', an arc length of 243.81' to a capped 1/2" iron rod set for corner;

THENCE S 17°26'24" E a distance of 66.06' to a capped 1/2" iron rod set for corner;

THENCE S 00°24'36" W a distance of 799.71' to the POINT OF BEGINNING and containing 13,132,394 square feet or 301.478 acres of land.

# AGENDA ITEM #28.

**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**
**Ron Patterson, Assistant City Manager**
**Paul Knippel, P.E., Director of Engineering Services**

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

**Date:** **April 3, 2012**

**Subject:** **Consider and act upon adoption of a Resolution approving a list of roadway projects to be submitted to Collin County and the Regional Transportation Council for Regional Toll Revenue funding.**

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**Action Requested:** City Council consideration and approval of a Resolution authorizing the City Manager to submit a list of projects to Collin County and the Regional Transportation Council (RTC) for Regional Toll Revenue (RTR) funding.

**Background Information:** As a result of cost savings on completed construction projects and interest earned on the funds in the RTR account, additional funding may be available from the RTC for projects in Collin County. Collin County has requested that cities submit project information for projects that they would like considered for funding. The following project list and funding is proposed:

- **Coit Road** from Panther Creek Pkwy to US 380: $4,720,000
- **Dallas Parkway 3rd lane** from SH 121 to Eldorado Pkwy: $11,878,000
- **John Hickman Parkway** from Dallas Pkwy to Preston Rd: $2,650,000
- I**ntersection Improvements on Ohio Drive** (Roundabouts on Ohio Dr at Gaylord Pkwy and Warran Pkwy): $799,000
- **Rockhill Road** from County Road 26 to Preston Rd: $12,945,000
- **US 380** from Collin County Line to Coit Rd: $9,000,000 ($78 million RTR funds currently allocated to this project. Additional funds needed to complete project).

**Financial Considerations:** No City funding is required for project submittal.

**Alternatives:** City Council could consider the following alternatives:

- Approval of the Resolution
- Deny approval of the Resolution

**Legal Review:** N/A

**Supporting Documents:**

- Resolution
- Project Summary Forms

**Staff Recommendation:** Staff recommends adopting the Resolution. Staff will be present at the meeting to address the 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 APPROVING THE LIST OF PROJECTS TO BE SUBMITTED TO COLLIN COUNTY AND THE REGIONAL TRANSPORTATION COUNCIL FOR REGIONAL TOLL REVENUE FUNDING; AND 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 submit, on behalf of the City Council of the City of Frisco, Texas, the attached list of projects for Regional Toll Revenue funding to Collin County and the Regional Transportation Council.

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

RESOLVED THIS the ____ day of _____, 2012.

_____
MAHER MASO, Mayor

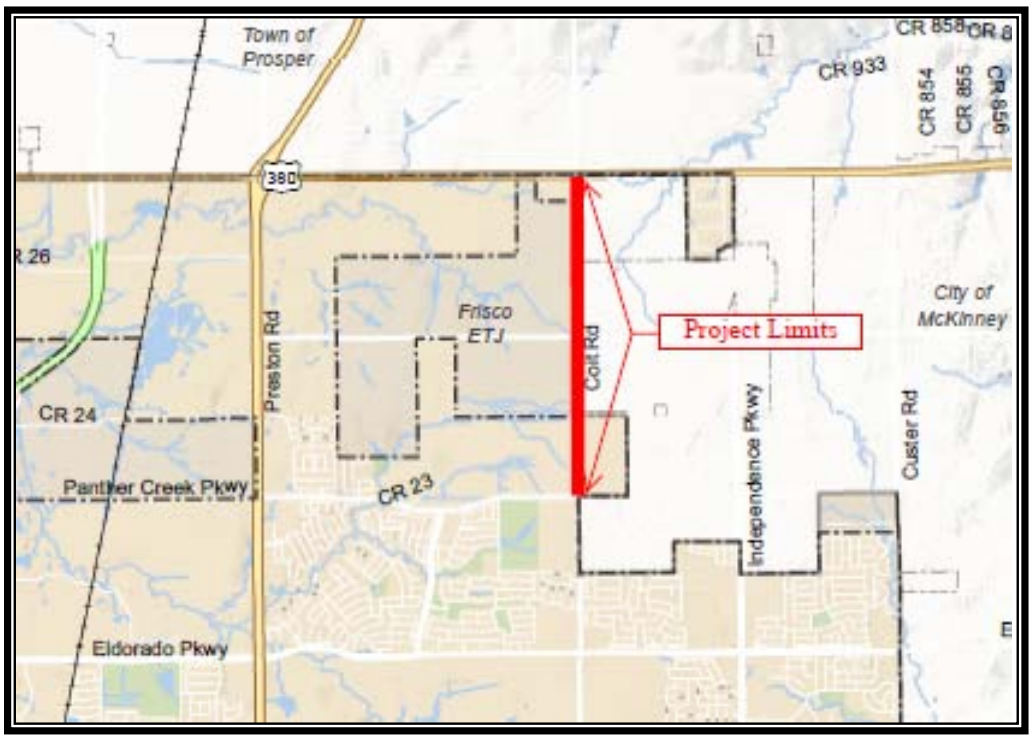
ATTEST TO:

_____
Jenny Page, City Secretary

# Coit Road

## (Panther Creek Parkway to US 380)

**Description:** *Replace the existing two-lane asphalt roadway with a four-lane divided concrete roadway.*




**Regional Benefit:** *Coit Road provides interconnectivity between Plano, McKinney, Frisco, and Prosper. Frisco and McKinney currently have projects underway to complete Coit Road as a four lane urban arterial to Panther Creek Parkway. Prosper is currently under construction to widen Coit, north of US 380 to four lanes.*

**Status:** *No work started by City of Frisco.*

**Funding:**

| Description | Estimated Cost | Available | Source |
|---|---|---|---|
| Design | $ 1,500,000 | | |
| Construction | $ 10,340,000 | $ 5,170,000 | Collin County (2012) |
| | | $ 1,950,000 | McKinney * |
| **Totals** | **$ 11,840,000** | **$ 7,120,000** | **$ 4,720,000** |
| | | | **Funding Requested** |

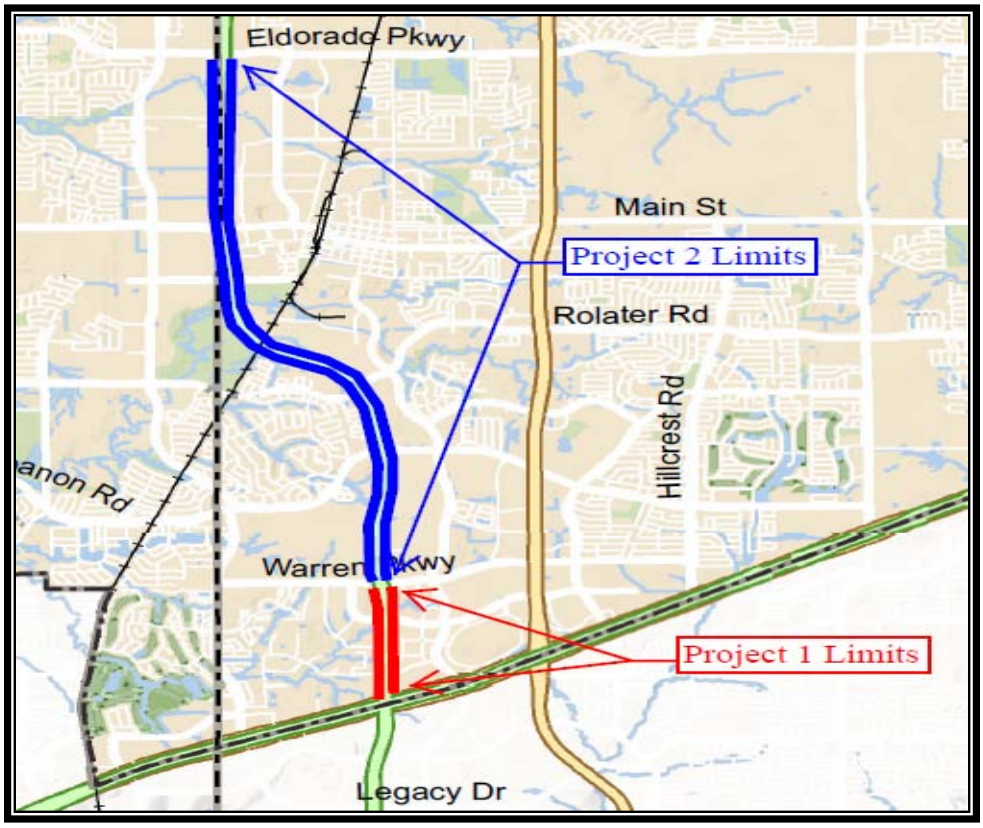
*Approximate value of portion of project to be constructed by the City of McKinney

**Schedule:** *Design could begin upon notification of allocation of funding with Construction beginning approximately 18 months later.*

# Dallas Parkway

## (SH 121 to Eldorado Parkway)

**Description:** *Widen northbound and southbound Dallas Parkway from two to three lanes in each direction.*




**Regional Benefit:** *The Dallas North Tollway and Dallas Parkway together are a major regional arterial through Collin County. Additional lanes will improve mobility and reduce congestion.*

**Status:** *No work started by City of Frisco.*

**Funding:**

| SH 121 to Warren Pkwy | | | |
|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** |
| Design | $ 260,000 | | |
| Construction | $ 2,600,000 | $ 2,500,000 | NCTCOG |
| **Totals** | **$ 2,860,000** | **$ 2,500,000** | **$ 360,000 Funding Requested** |

| Warren Pkwy to Eldorado Pkwy | | | |
|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** |
| Design | $ 1,850,000 | | |
| Construction | $ 15,500,000 | $ 5,832,000 | Collin County (2016) |
| **Totals** | **$ 17,350,000** | **$ 5,832,000** | **$ 11,518,000 Funding Requested** |

**Schedule:** *Design would begin upon notification of allocation of funding.*

# John Hickman Parkway

## (Dallas North Tollway to Preston Road)

**Description:** *Construct new four lane concrete divided roadway from Dallas North Tollway to Parkwood Blvd. and construct the two south side lanes to complete the four lane roadway from Parkwood Blvd. to Preston Rd. Project would include Roundabout at John Hickman and Parkwood.*




**Regional Benefit:** *John Hickman Parkway would provide a key arterial connection between two major regional arterials, Dallas North Tollway and Preston Road.*

**Status:** *No work started by City of Frisco.*

**Funding:** *Frisco does not currently have Bond funds allocated to this project.*

| Dallas North Tollway to Parkwood Blvd. | | |
|---|---|---|
| **Description** | **Estimated Cost** | |
| Design | $ | 150,000 |
| Construction | $ | 1,500,000 |
| **Total Estimated Cost** | **$** | **1,650,000** |

| Parkwood Blvd. to Preston Rd. | | |
|---|---|---|
| **Description** | **Estimated Cost** | |
| Design | $ | 125,000 |
| Construction | $ | 1,150,000 |
| **Total Estimated Cost** | **$** | **1,275,000** |

***Requested Funding: $ 2,650,000 Construction Cost***

**Schedule:** *Design could begin upon notification of allocation of funding with Construction beginning approximately 18 months later.*

# Ohio Drive Intersection Improvements

## (Ohio Drive at Gaylord Parkway and Warren Parkway)

**Description:** *Replace existing 4-way stop intersections with roundabouts at two intersections on Ohio Drive.*




**Regional Benefit:** *Ohio Drive is a connector between retail areas in Plano and Frisco. Replacing the 4 way stop intersections with roundabouts will improve mobility and air quality. Increased mobility could provide residents with an alternative to Preston Road.*

**Status:** *City of Frisco has begun preliminary engineering and is currently performing traffic analysis.*

**Funding:**

| Ohio at Gaylord | | | | |
|---|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** | |
| Design | $ 50,000 | $ 13,000 | Frisco | |
| Construction | $ 350,000 | $ - | | |
| **Totals** | **$ 400,000** | **$ 13,000** | **$** | **387,000** |
| | | | **Funding Requested** | |

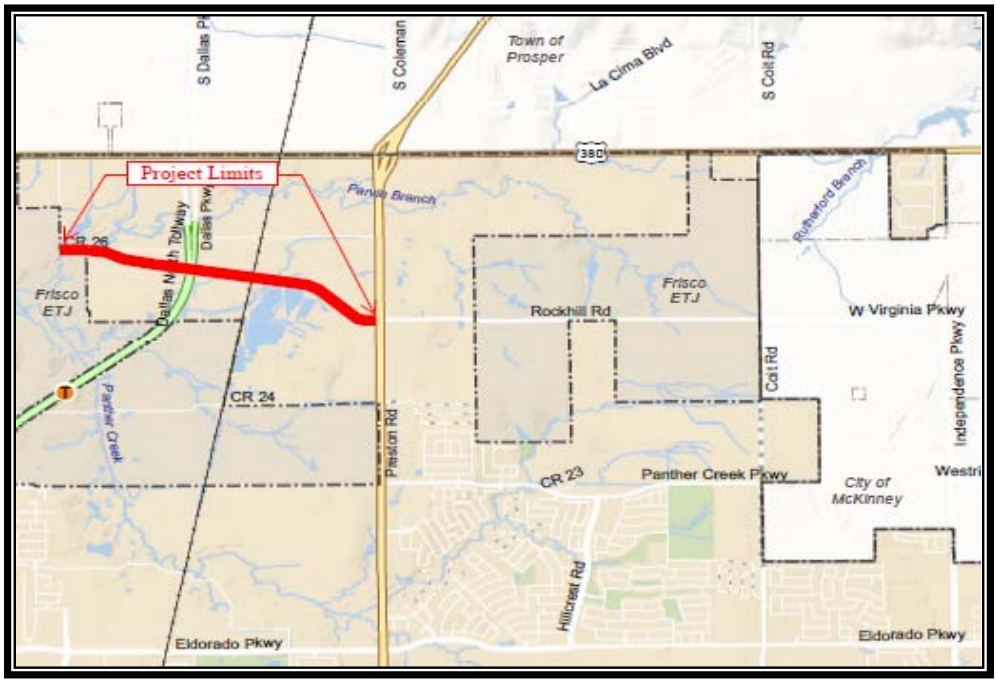
| Ohio at Warren | | | | |
|---|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** | |
| Design | $ 50,000 | $ 38,000 | Frisco | |
| Construction | $ 400,000 | $ - | | |
| **Totals** | **$ 450,000** | **$ 38,000** | **$** | **412,000** |
| | | | **Funding Requested** | |

**Schedule:** *Design anticipated starting Late 2012.*
*Construction anticipated beginning Fall 2013.*

# Rockhill Road

## (CR 26 to Preston Road)

**Description:** *Construct a new six-lane divided concrete roadway including a bridge over the BNSF Railroad.*




**Regional Benefit:** *Rockhill Road/Virginia Parkway provides interconnectivity between McKinney and Frisco. The project would connect Preston Road and Dallas North Tollway on the north side of Frisco and provides an alternate route to US 380.*

**Status:** *Design is 80% complete. Right of Way acquisition is underway.*

**Funding:**

| CR 26 to Dallas North Tollway | | | |
|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** |
| Design | $ 745,000 | $ 745,000 | Frisco |
| Construction | $ 8,000,000 | $ 2,703,000 | Collin County (2013) |
| **Totals** | **$ 8,745,000** | **$ 3,448,000** | **$ 5,297,000 Funding Requested** |

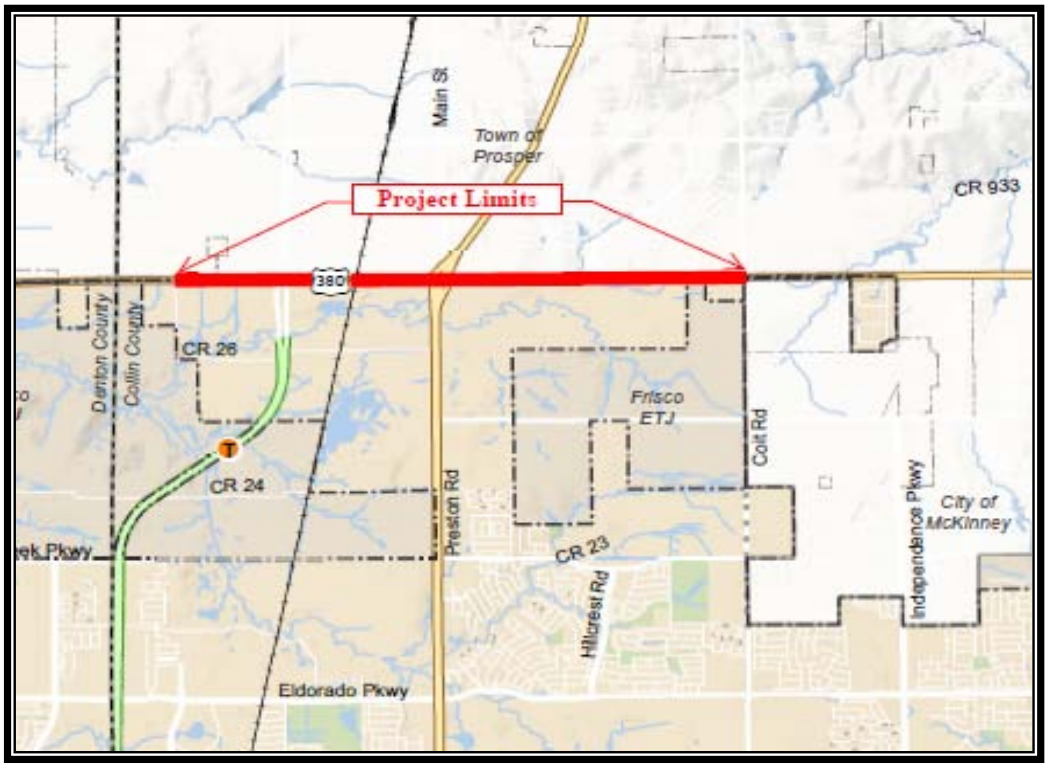
| Dallas North Tollway to Preston Road | | | |
|---|---|---|---|
| **Description** | **Estimated Cost** | **Available** | **Source** |
| Design | $ 1,200,960 | $ 1,200,960 | Frisco |
| Construction | $ 14,200,000 | $ 6,552,000 | Collin County (2013) |
| **Totals** | **$ 15,400,960** | **$ 7,752,960** | **$ 7,648,000 Funding Requested** |

**Schedule:** *Design anticipated being complete in Late 2012.*
*ROW anticipated being acquired Spring 2013.*
*Construction anticipated beginning Summer 2013.*

# US 380

## (CR 26 to Coit Road)

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




**Regional Benefit:** *U.S. 380 is a major regional arterial connecting the Collin County cities of Frisco, Prosper, McKinney, Princeton, and Farmersville.*

**Status:** *Schematic is 95% complete.*
*Environmental document under review.*

**Funding:**

| | | |
|---|---|---|
| Estimated Project Cost | $ 87 M | [redacted] |
| Current RTR funding | $78 M | |
| | $9 M | Funding Requested |

**Schedule:** *TxDOT currently has letting scheduled for August 2014.*