



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
FEBRUARY 14, 2017 - 7:00 PM
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY
ALLEN, TX 75013**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizen's Comments.

[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]

2. Recognition of Arbor Day Poster Contest Winners.

3. Presentation of a Proclamation by the Office of the Mayor.

- Presentation of a Proclamation to Michael Barringer with The Shoe Bank Proclaiming February 14, 2017 as "Michael Barringer Day."
- Presentation of a Proclamation to Greg Burnham and FRC Team 5417 Eagle Robotics, Proclaiming February 25, 2017 as "Allen STEM Education Day."
- Presentation of a Proclamation to Coach Jason Deitsch and the 2017 State Champion Allen Eagles Varsity Ice Hockey Team Proclaiming 2017 as "Allen Eagles Varsity Ice Hockey Team Year."

Consent Agenda.

[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]

4. Approve the Minutes of the January 24, 2017, City Council Regular Meeting.

5. Approve Minutes of the January 28, 2017, Special Called City Council Workshop for Strategic Planning.

6. Adopt a Resolution Ordering the May 6, 2017, General Election and Authorizing the City Secretary to Enter into a Contract with the Elections Administrator of Collin County to Provide Joint Election Services with the Allen Independent School District.
7. Authorize the City Manager to Purchase Traffic Signal Equipment From Paradigm Traffic Systems, Inc. Through the Buy Board Cooperative Agreement in the Amount of \$90,000.
8. Authorize the City Manager to Purchase an Upgrade to the Avaya Telephone System Along with Corresponding Hardware and Software Maintenance with Lantana Communications for Upgrades to Software and Hardware Components of the Telephone System in the Amount of \$102,573.18.
9. Authorize the City Manager to Execute a Contract with DCC Inc. for the Don Rodenbaugh Natatorium Leisure Pool Renovation in the Amount of \$166,937.
10. Appoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and Authorize the City Manager to Execute Employment Agreements Relating to Their Appointments for a Period Ending December 31, 2018.
11. Accept the Resignation of Shirley Mangrum and Declare a Vacancy in Place No. 5 on the Planning and Zoning Commission.
12. Receive the Investment Report for the Period Ending December 31, 2016.

Regular Agenda.

13. Conduct a Public Hearing and Adopt an Ordinance Approving Specific Use Permit No. 152 for a Gymnastics and Sports Training Facility use for a Portion of the Building Located on Lot 1, Block A of Lots 1 & 2, Allen Business Center II; Generally Located North of Bethany Drive and West of Greenville Avenue. [Alliance Cheer at Tech Center One - Gymnastics and Sports Training Facility]

Other Business.

14. Calendar.
15. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

Executive Session. (As needed)

Legal, Section 551.071.

As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

16. Personnel Pursuant to Section 551.074 of the Texas Government Code — Annual Performance Review of the City Manager
17. Reconvene and Consider Action on Items Discussed During Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, February 10, 2017, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	February 14, 2017
SUBJECT:	Recognition of Arbor Day Poster Contest Winners.
STAFF RESOURCE:	Steve Massey, Director of Community Services Donna Kliever, Waste Services Manager
ACTION PROPOSED:	Recognition of Arbor Day Poster Contest Winners.

BACKGROUND

The national and state levels of the Arbor Day Poster Contest originally sponsored by the National Arbor Day Foundation were discontinued. Keep Allen Beautiful (KAB) continues the poster contest tradition in honor of Allen as a "Tree City USA," to raise awareness in Allen of the importance of trees, and in recognition of the national and local Arbor Day Celebration.

Keep Allen Beautiful coordinates the local Arbor Day Poster Contest in the Allen Independent School District (AISD), which aims to foster a love for trees in the fourth and fifth graders who participate. This year's theme was "Trees are Terrific And Energy Wise!" Eight AISD elementary schools participated in the contest forwarding thirty-three (33) posters to the City for consideration. Keep Allen Beautiful Board Members and KAB Support Staff provide the final judging.

Local winners are:

Emily Villano, First Place, student at Cheatham Elementary;
Eric Yang, Second Place, student at Cheatham Elementary;
Neha Nayak, Third Place, student at Olson Elementary.

Later this month, Keep Allen Beautiful will plant a tree at Cheatham Elementary in honor of the first place winner.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Presentation of a Proclamation by the Office of the Mayor.

- Presentation of a Proclamation to Michael Barringer with The Shoe Bank Proclaiming February 14, 2017 as "Michael Barringer Day."
- Presentation of a Proclamation to Greg Burnham and FRC Team 5417 Eagle Robotics, Proclaiming February 25, 2017 as "Allen STEM Education Day."
- Presentation of a Proclamation to Coach Jason Deitsch and the 2017 State Champion Allen Eagles Varsity Ice Hockey Team Proclaiming 2017 as "Allen Eagles Varsity Ice Hockey Team Year."

STAFF RESOURCE:

Shelley B. George, City Secretary

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Approve the Minutes of the January 24, 2017, City Council Regular Meeting.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

JANUARY 24, 2017

Present:

Stephen Terrell, Mayor

Councilmembers:

Gary L. Caplinger, Mayor Pro Tem

Kurt Kizer

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Baine Brooks

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Eric Ellwanger, Assistant City Manager

Shelley B. George, City Secretary

Teresa Warren, Director, Public and Media Relations Office

Rebecca Vice, Assistant to the City Manager

Pete Smith, City Attorney

Workshop Session

With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:34 p.m. on Tuesday, January 24, 2017, in the City Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas.

- 1. Brien Demonstration of New Audio Upgrades in the City Council Chambers.**
- 2. Introduction of George Chrisman, President of the Allen Community Development Corporation.**
- 3. Update Regarding the Allen 2030 Comprehensive Plan**
- 4. Committee Updates from City Council Liaisons.**
- 5. Questions on Current Agenda.**

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 6:59 p.m. on Tuesday, January 24, 2017.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:08 p.m. on Tuesday, January 24, 2017, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizen's Comments.

Greg Jacobs, 1421 Salado Drive, Allen, Texas, expressed concerns regarding outdoor commercial advertising affecting the aesthetics of Allen.

Council recognized Cub Scouts from Pack 910 and a Boy Scout from Troop 328 in attendance for requirements in obtaining the Building a Better World and Communication Merit Badges.

2. Presentation of the Allen Community Development Corporation (CDC) Annual Report by George Chrisman, President.

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adopt all items on the Consent Agenda as follows:

3. Approve the Minutes of the January 10, 2017, City Council Regular Meeting.

4. Adopt a Resolution Bestowing the Name "Linda Hopper Municipal Courtroom" upon the Municipal Courtroom of the City of Allen.

RESOLUTION NO. 3449-1-17(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, BESTOWING THE NAME OF THE "LINDA HOPPER MUNICIPAL COURTROOM" UPON THE CITY OF ALLEN MUNICIPAL COURT; AND, PROVIDING AN EFFECTIVE DATE.

5. Award Bid and Authorize the City Manager to Execute a Contract with N.G. Painting, LP, for Paint, Repairs, and Improvements to the Rowlett Elevated Storage Tank and the Stacy Ground Storage Reservoir #2 in the Amount of \$1,113,700.

6. Award Bid and Authorize the City Manager to Execute an Annual Contract for Mowing Services with Carruthers Landscape Management, Inc., for Various Greenbelts, Right-of-Ways, Medians, and Easements with Three Optional One Year Renewals in the Amount of \$388,120.

7. Award Bid and Authorize the City Manager to Execute an Annual Contract with Firestone Complete Auto Care for Routine Service and Repair of the City Fleet with Two Optional One-Year Renewals in the Amount of \$350,000, and Execute a Contract with The Auto Shop as the Secondary Vendor.

8. **Authorize the City Manager to Execute the Purchase of Four (4) Stryker PowerLOAD Systems from Stryker EMS Equipment in the Amount of \$149,659.**
9. **Authorize the City Manager to Purchase Daktronics Audio/Visual Equipment Through a Buy Board Cooperative Purchasing Agreement for the Allen Event Center in the Amount of \$147,219.**
10. **Authorize the City Manager to Execute an Annual Contract with Waste Partners Environmental, Inc., for Street Sweeping Services with Four Optional One Year Renewals in the Amount of \$135,000.**
11. **Authorize the City Manager to Execute the Purchase of Five (5) LUCAS Chest Compression Systems from Physio-Control, Inc., in the Amount of \$96,302.**
12. **Award Bid and Authorize the City Manager to Execute an Annual Contract with TB2 Services, dba Aire Dynamics, Inc., for HVAC Preventative Maintenance and Repair Services for City Facilities with Two Optional One-Year Renewals in the Amount of \$90,000, and Award a Contract with CEC Facilities Group, LLC, as the Secondary Vendor.**
13. **Authorize the City Manager to Execute a Facilities Relocation Agreement with DD Watters 6.06, LLC.**
14. **Motion to Cancel the March 28, 2017, City Council Regular Meeting.**
15. **Set August 18-20, 2017 as the Dates for the City Council Budget Workshop with City Council and Executive Staff.**
16. **Receive the Unaudited Financial Report for the Period Ending September 30, 2016.**
17. **Receive the Capital Improvement Program (CIP) Status Reports.**
18. **Receive the Summary of Property Tax Collections as of December 2016.**

The motion carried.

Regular Agenda

19. **Conduct a Public Hearing and Adopt an Ordinance Approving Specific Use Permit No. 151 for a Fueling Station Use for 0.999± Acres Generally Located North of Main Street and West of Angel Parkway. [East Allen Retail - Fueling Station]**

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to continue the public hearing to the February 28, 2017, regular meeting. The motion carried.

20. **Conduct a Public Hearing and Adopt an Ordinance to Change the Zoning from Shopping Center to a Planned Development for Townhome Residential, and Adopt Development Regulations, a**

Concept Plan, Hardscape Plan, and Building Elevations for 10.839± Acres Generally Located South of Stacy Road and East of Greenville Avenue. [Stacy Villas - Townhome Development]

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

The following individuals spoke in support of the item:
Steve Bartels, 1711 Whiterock Court, Allen, Texas; and,
Wendy Wilson, 1001 Shelborn Drive, Allen, Texas.

With no one else speaking, Mayor Terrell closed the public hearing.

ORDINANCE NO. 3450-1-17: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, RELATING TO THE USE AND DEVELOPMENT OF A 10.839± ACRE TRACT OF LAND IN THE JAMES T. ROBERTS SURVEY, ABSTRACT NO. 777 AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, PRESENTLY ZONED AS “SC” SHOPPING CENTER BY CHANGING THE ZONING TO CREATE “PD” PLANNED DEVELOPMENT NO. 126 WITH A BASE ZONING OF “TH” TOWNHOME RESIDENTIAL DISTRICT AND ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, HARDSCAPE PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 3450-1-17, as previously captioned, to change the zoning from Shopping Center to a Planned Development for Townhome Residential, and adopt Development Regulations, a Concept Plan, Hardscape Plan, and Building Elevations for 10.839± acres generally located south of Stacy Road and east of Greenville Avenue, for Stacy Villas. The motion carried.

Other Business

21. Calendar.

- January 28, 2017 – City Council Strategic Planning Session, Hilton Garden Inn

22. Items of Interest.

- Council wished Councilmember Brooks’ daughter, Brenna, a happy birthday.

Executive Session

Executive Session was not held.

Adjournment

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 8:14 p.m. on Tuesday, January 24, 2017. The motion carried.

These minutes approved on the 14th day of February 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Approve Minutes of the January 28, 2017, Special
Called City Council Workshop for Strategic Planning.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL
SPECIAL CALLED WORKSHOP
JANUARY 28, 2017

Present:

Stephen Terrell, Mayor

Councilmembers:

Gary L. Caplinger, Mayor Pro Tem
Kurt Kizer
Ross Obermeyer
Joey Herald
Robin L. Sedlacek
Baine Brooks

City Staff:

Peter H. Vargas, City Manager
Shelli Siemer, Assistant City Manager
Eric Ellwanger, Assistant City Manager
Rebecca Vice, Assistant to the City Manager
Shelley B. George, City Secretary
Pete Smith, City Attorney
Eric Cannon, Chief Financial Officer
Ogden “Bo” Bass, Community Development
Director
Lee Battle, Community Development Assistant
Director

Stephen Massey, Community Services Director
Dan Bowman, Economic Development Executive
Director
Bill Hawley, Fire Chief
Monika Kretschmer, Human Resources Director
Eric Matthews, Information Technology Director
Tim Dentler, Parks and Recreation Director
Brian Harvey, Police Chief
Teresa Warren, Public and Media Relations
Officer

Breakfast Served: 8:30 a.m. – 9:00 a.m.

1. Call to Order and Announce a Quorum is Present

With a quorum of the Allen City Council present, the Special Called Workshop Session of the Allen City Council was called to order by Mayor Terrell at 9:02 a.m. on Saturday, January 28, 2017, at the Hilton Garden Inn, 705 Central Expressway South, Allen, Texas 75013.

2. Introduction and Workshop Overview
3. Update on Public Transportation and City Infrastructure Projects.

The Workshop was recessed at 10:13 a.m. and reconvened at 10:20 a.m.

4. Update on Water and Sewer Fund.
5. Overview and Discussion of City’s Legislative Agenda.

Mayor Terrell left the meeting at 12:00 p.m.

Lunch Served: 12:08 – 1:00 p.m.

6. Update on Current Parks Projects.

Mayor Terrell returned to the meeting at 1:45 p.m.

7. Update on Status of Current Development Projects and Vision for Future Development.
8. General Discussion Regarding City Council's Strategic Initiatives.

Executive Session.

The Executive Session was not held.

Adjournment.

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adjourn the Special Called Workshop of the Allen City Council at 4:42 p.m. on Saturday, January 28, 2017. The motion carried.

These minutes approved on the 14th day of February 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Adopt a Resolution Ordering the May 6, 2017, General Election and Authorizing the City Secretary to Enter into a Contract with the Elections Administrator of Collin County to Provide Joint Election Services with the Allen Independent School District.

STAFF RESOURCE:

Shelley B. George, City Secretary

ACTION PROPOSED:

Adopt a Resolution Ordering the May 6, 2017, General Election and Authorizing the City Secretary to Enter into a Contract with the Elections Administrator of Collin County to Provide Joint Election Services with the Allen Independent School District.

BACKGROUND

In accordance with Texas Election Law, the Allen City Council is responsible for ordering the General Election to be held on the first Saturday in May for the purpose of electing the Mayor and Councilmember for Place No. 2.

The order of the General Election is shown in the form of the attached Resolution. The Resolution also authorizes the City Secretary to enter into a contract with the Elections Administrator of Collin County to provide joint election services for the May 6, 2017, General Election with the Allen Independent School District.

BUDGETARY IMPACT

The Collin County Elections Administrator has estimated the City of Allen's portion of the joint election to be \$7,468.75. The estimated costs are significantly lower this year due to the number of entities contracting with the Collin County Elections Administration for election services.

STAFF RECOMMENDATION

Staff recommends that City Council adopt a Resolution ordering the May 6, 2017, General Election and authorize the City Secretary to enter into a contract with the Elections Administrator of Collin County to provide joint election services with the Allen Independent School District.

MOTION

I make a motion to adopt Resolution No. _____ ordering the May 6, 2017, General Election and

authorizing the City Secretary to enter into a contract with the Elections Administrator of Collin County to provide joint election services with the Allen Independent School District.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON MAY 6, 2017, FOR THE PURPOSE OF ELECTING THE MAYOR AND CITY COUNCILMEMBER FOR PLACE NO. 2; DESIGNATING LOCATION OF POLLING PLACE; ORDERING NOTICE OF ELECTION TO BE GIVEN AS PRESCRIBED BY LAW IN CONNECTION WITH SUCH ELECTION; AUTHORIZING EXECUTION OF JOINT ELECTION AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. Municipal officer's election is hereby ordered for May 6, 2017, to be held jointly with the Allen Independent School District for the purpose of electing the Mayor and Allen City Councilmember for Place No. 2, each such term being for a period of three (3) years. The filing period for the General Election shall begin on January 18, 2017, and end on February 17, 2017, at 5:00 p.m. in accordance with State Law.

SECTION 2. Pursuant to the Joint Election Agreement, the Elections Administrator of Collin County shall serve as Elections Administrator for the election. Presiding Election Judges and Alternate Presiding Election Judges appointed to serve the authorized polling places and the early voting clerk and deputy early voting clerks shall be those election officials furnished by the Elections Administrator from the list of proposed election judges as required in the Elections Services Contract. The City Secretary is hereby authorized to execute an Elections Services Contract with the Collin County Elections Department for the General Election on May 6, 2017. The City Secretary shall have further authority to approve any minor modifications as may be necessary in the best interest of the City. A voting system or systems meeting the standards and requirements of the Texas Election Code, as amended, is hereby adopted and approved for early voting by personal appearance and by mail and for election day voting.

SECTION 3. Notice of the General Election shall be posted on the bulletin board used to post notice of the City Council meetings, the City's website and be published in a newspaper of general circulation in the City. That said notice must be published at least once, not earlier than the 30th day nor later than the 10th day, before Election Day as provided in Section 4.003(a)(1) of the Texas Election Code. A copy of the published notice that contains the name of the newspaper and the date of publication shall be retained as a record of such notice, and the person posting the notice shall make a record of the time of posting, starting date, and the place of posting.

SECTION 4. The entire City shall constitute one election precinct for this election and the Municipal Court Building, 301 Century Parkway, Allen, Texas is hereby designated the polling place. The election officers and maximum number of clerks for said polling place shall be determined and appointed in accordance with the provisions of the Contract.

On Election Day, the polls shall be open from 7:00 A.M. to 7:00 P.M.

The Collin County Elections Office, 2010 Redbud Boulevard, Suite 102, McKinney, Texas 75069, is hereby designated the main early voting place. Early voting by personal appearance shall also be conducted at Allen Municipal Court Building, 301 Century Parkway, Allen, Texas.

City of Allen voters may vote at any of the additional Election Day or Early Voting locations open under full contract services with the Collin County Elections Administration. If the election services contract with the

Collin County Elections Administrator revises the polling places listed previously, the City will utilize the polling places designated in said Election Services Contract, as the same may be amended from time to time.

Applications for ballot by mail shall be received and processed by the Collin County Elections Administrator, 2010 Redbud Boulevard, Suite 102, McKinney, Texas 75069. Applications for ballots by mail must be received no later than the close of business on April 25, 2017.

Early voting for the General Election shall begin on Monday, April 24, 2017, and end Tuesday, May 2, 2017, and the dates and hours designated for early voting by personal appearance at the early voting locations shall be as set forth below:

Dates	Hours
Monday, April 24, 2017 through Wednesday, April 26, 2017	8:00 A.M. to 5:00 P.M.
Thursday, April 27, 2017	8:00 A.M. to 7:00 P.M.
Friday, April 28, 2017 and Saturday, April 29, 2017	8:00 A.M. to 5:00 P.M.
Monday, May 1, 2017 and Tuesday, May 2, 2017	7:00 A.M. to 7:00 P.M.

For purposes of processing ballots cast in early voting, the election officers for the early voting ballot board for this election shall be appointed and designated in accordance with the provisions of the Contract.

SECTION 5. The City Secretary shall present the General Election returns to the City Council at a Council meeting for the canvassing of said election in accordance with the Texas Election Code. The candidate for Mayor and Councilmember for Place No. 2 that receives a majority of valid votes by qualified voters at the election shall be declared elected. In the event no candidate receives a majority of all the votes cast for all the candidates for an office, a runoff election shall be conducted on the date set forth in the Joint Election Agreement or other date ordered by the City Council in accordance with the Allen City Charter and State law.

SECTION 6. This Resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF FEBRUARY 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 14, 2017

SUBJECT: Authorize the City Manager to Purchase Traffic Signal Equipment From Paradigm Traffic Systems, Inc. Through the Buy Board Cooperative Agreement in the Amount of \$90,000.

STAFF RESOURCE: Chris Flanigan, Director of Engineering

ACTION PROPOSED: Authorize the City Manager to Purchase Traffic Signal Equipment From Paradigm Traffic Systems, Inc. Through the Buy Board Cooperative Agreement in the Amount of \$90,000.

BACKGROUND

This authorization is to purchase 40 uninterrupted power supply (UPS) backup batteries and 2 signal cabinets with breakaway bases. The buy board discount pricing applies to a minimum purchase of 40 UPS batteries. If purchasing a smaller quantity, the pricing per battery increases. The UPS batteries ensure that a signal will maintain operation during power outages. The two signal cabinets and breakaway bases are to replace existing ones that are not compatible with the flashing yellow arrow conversion.

The current BuyBoard pricing contract 432-13 expires in March 31, 2017, and pricing typically increases under the new contracts.

The City of Allen typically purchases traffic signal equipment each year. This year, the City of Allen has entered into an agreement with TxDOT by which we will purchase signal equipment for the Stacy Road reconstruction project and they will reimburse us for those expenses. This type of arrangement will ensure that the new signals on Stacy will be consistent with the other signals in the City of Allen. As a result, we will expend more than \$50,000 from this vendor in FY2017 and will require Council approval.

BUDGETARY IMPACT

The current purchase orders for Paradigm Traffic Systems totals \$41,976.39. The proposed purchase is for an additional \$35,350.39. In the event that any additional purchase needs are identified once work is underway on traffic signals, an additional amount of \$12,673.22 is included in this request.

Funding for this purchase agreement will come from the FY17 engineering department operating budget or funds from the capital improvement program (for expenses associated with the Stacy Road signals being reconstructed by TxDOT).

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to purchase traffic signal equipment from Paradigm Traffic Systems, Inc. through the Buy Board Cooperative Agreement in the amount of \$90,000.

MOTION

Authorize the City Manager to purchase traffic signal equipment from Paradigm Traffic Systems, Inc. through the Buy Board Cooperative Agreement in the amount of \$90,000.

ATTACHMENTS:

Buy Board Agreement



12007 Research Boulevard • Austin, Texas 78759-2439
PH: 800-695-2919 • FAX: 800-211-5454 • www.vendor.buyboard.com

PROPOSER'S AGREEMENT AND SIGNATURE

Proposal Name: Public Safety and Fire House
Supplies and Equipment

Proposal Opening Date and Time:
September 9, 2013 at 2:30 PM

Proposal Number: 432-13

Location of Proposal Opening:
Texas Association of School Boards, Inc.
BuyBoard Department
12007 Research Blvd.
Austin, TX 78759

Contract Time Period: April 1, 2014 through
March 31, 2015 with two (2) possible one-year
renewals.

Anticipated Cooperative Board Meeting Date:
January 2014

Paradigm Traffic Systems, Inc.
Name of Proposing Company

9/5/13
Date

2201 E. Division Street
Street Address


Signature of Authorized Company Official

Arlington, TX 76011
City, State, Zip

Jerry Priester
Printed Name of Authorized Company Official

817-831-9406
Telephone Number of Authorized Company Official

President
Position or Title of Authorized Company Official

817-831-9407
Fax Number of Authorized Company Official

75-2520341
Federal ID Number

The proposing company ("you" or "your") hereby acknowledges and agrees as follows:

1. You have carefully examined and understand all Cooperative information and documentation associated with this Proposal Invitation, including the Instructions, General Terms and Conditions, Attachments/Forms, Item Specifications, and Line Items (collectively "Requirements");
2. By your response ("Proposal") to this Proposal Invitation, you propose to supply the products or services submitted at the prices quoted in your Proposal and in strict compliance with the Requirements, unless specific deviations or exceptions are noted in the Proposal;
3. Any and all deviations and exceptions to the Requirements have been noted in your Proposal and no others will be claimed;



Phone: 800-695-2919
 Fax: 800-211-5454
 Email: info@buyboard.com

Welcome **Ellen** [Log Off]

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Vendor Contract Information

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Search:

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Refine Your Search:

Vendors

Paradigm Traffic Systems, Inc.[X]

Price Range

Show all prices

Category

None Selected

Contract

None selected

Vendor Name: Paradigm Traffic Systems, Inc.

Address: 2201 E. Division St.

Arlington, TX 76001

Phone Number: (817) 831-9406

Email: jpriester@paradigmtraffic.com

Website: <http://www.paradigmtraffic.com>

Federal ID: 75-2520341

Contact: Jerry Priestler

Accepts RFQs: Yes

Minority Owned: No

Women Owned: No

Service-Disabled Veteran Owned: No

EDGAR: No

Contract Name: Public Safety & Fire House Supplies & Equipment

Contract Description: Full line of law enforcement and fire fighting supplies, equipment, & uniforms; firearms; ammunition; riot/body armor; vehicle equipment; thermal imaging; bike patrol; drug testing; speed enforcement; traffic signal; service/repair & installation

Contract#: 432-13

Effective Date: 04/01/2014

Expiration Date: 03/31/2017

Payment Terms: Net 30 days

Delivery Days: 30

Shipping Terms: Pre-paid and added to invoice

Freight Terms: FOB Destination

Ship Via: Common Carrier

Region Served: All Texas Regions

States Served: Texas

Quote Reference Number: PTSIBB14

Return Policy: Case by case basis

Contract Documents

EDGAR Notice: [Click to view EDGAR Notice](#)

Proposal Documents: [Click to view BuyBoard Proposal Documents](#)

Regulatory Notice: [Click to view Bonding Regulatory Notice](#)

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CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Authorize the City Manager to Purchase an Upgrade to the Avaya Telephone System Along with Corresponding Hardware and Software Maintenance with Lantana Communications for Upgrades to Software and Hardware Components of the Telephone System in the Amount of \$102,573.18.

STAFF RESOURCE:

Eric Matthews, Director of Information Technology

PREVIOUS COUNCIL ACTION:

On February 26, 2013, City Council approved the purchase of new desktop phone sets and the corresponding hardware and software maintenance.

On November 10, 2015, City Council ratified the three-year maintenance agreement for hardware and software maintenance of the Avaya phone system.

ACTION PROPOSED:

Authorize the City Manager to Purchase an Upgrade to the Avaya Telephone System Along with Corresponding Hardware and Software Maintenance with Lantana Communications for Upgrades to Software and Hardware Components of the Telephone System in the Amount of \$102,573.18.

BACKGROUND

In 1995, the City purchased the current Avaya Telephone System. The PBX was upgraded with new hardware and software in 2011. That upgrade expanded its capability to include operating Voice Over Internet Protocol (VOIP) telephone sets. In addition, an Avaya Gateway integrated the Allen Event Center with the City's phone system.

This upgrade will keep our software in support by the vendor as well as add mobility and office workflow features to the environment. Such features include Voicemail to Email, mobile/smartphone integration, and more. We will also be obtaining an entire hardware refresh in that the phone system servers are being replaced and new phone software is being installed. The professional services component of this agreement will cover this one-time installation and migration as well as the first year of annual maintenance.

Every 4-5 years, we can expect a similar system-wide upgrade.

BUDGETARY IMPACT

Funding for these costs are provided in the Information Technology departmental operating budget.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to purchase an upgrade to the Avaya telephone system along with corresponding hardware and software maintenance with Lantana Communications for upgrades to software and hardware components of the telephone system in the amount of \$102,573.18.

MOTION

I make a motion to authorize the City Manager to purchase an upgrade to the Avaya telephone system along with corresponding hardware and software maintenance with Lantana Communications for upgrades to software and hardware components of the telephone system in the amount of \$102,573.18.

ATTACHMENTS:

Lantana Agreement



Lantana
Communications

Main: 1-800-345-4211

Email: mbradford@lantanacom.com

Web: www.lantanacom.com

Sales Agreement

DOC_022017003

Quote #001022 v5

Prepared for

City Of Allen

Prepared by

Michael Bradford



Hardware/Software - City Hall		Price	Qty	Ext. Price
185446	AVAYA COMMUNICATIONS SOLUTION	\$0.00	1	\$0.00
184048	MODULAR MESSAGING MODEL	\$0.00	1	\$0.00
244923	MESSAGING R6.X AVAYA STORE SEAT TRACKING LIC:CU,NU	\$0.00	665	\$0.00
244929	MESSAGING R6.X 1 SEAT MAINSTREAM NEW LIC:CU,NU,DS	\$40.73	15	\$610.95
244935	MESSAGING R6.X MAINSTREAM AVAYA SFTW INVEST PROT POL LIC:CU,DS,NU	\$8.15	650	\$5,297.50
259726	MSG R6.X NEW SYSTEM TRACKING	\$0.00	1	\$0.00
270426	MSG MEDIA ENCRYPTION LIC:DS	\$0.00	1	\$0.00
273122	SAL STANDALONE GATEWAY LICENSE R2 DOWNLOAD LIC:DS	\$0.00	1	\$0.00
303617	MSG R6.X VIRTUAL PLTFRM SOL TRK	\$0.00	1	\$0.00
303620	MESSAGING R6.X VIRTUAL APPLIANCE SYSTEM LIC:DS,SR	\$0.00	2	\$0.00
700510718	MESSAGING R6.3+ MEDIA FOR AVAYA VMWARE OPEN VIRTUAL APP DVD	\$31.33	2	\$62.66
184716	CM S8700 MULTI CONNECT MODEL UPGRADE	\$0.00	1	\$0.00
224272	C-LAN INTERFACE CIRCUIT PACK TN799DP - NON GSA	\$1,159.33	1	\$1,159.33
227273	SECURE ACCESS LINK POLICY SERVER DOWNLOADABLE R1.5 LIC:DS	\$0.00	1	\$0.00
231820	AVAYA AURATM RFA TO PLDS CONVERSION	\$0.00	1	\$0.00
259401	MEDIA ENCRYPTION R6+/MBT LIC:DS	\$0.00	1	\$0.00
307098	DIAGNOSTIC SRVR R2 SAL 2.3 GATEWAY SOFTWARE VIRTUAL	\$0.00	1	\$0.00
308257	ASBCE R6 VIRTUAL PLATFORM NEW STYSTEM TRACKING CODE	\$0.00	1	\$0.00
340056	DIAGNOSTIC SRVR R2.5 SLA MON STANDALONE LIC:DL	\$0.00	1	\$0.00
340153	AVAYA LIVE VIDEO RIGHT TO DISCOUNT	\$0.00	26	\$0.00
380002	SESSION MANAGER R7 VE VAPPLIANCE SYSTEM LIC:DS,NU,SR	\$0.00	1	\$0.00
380004	SESSION MANAGER R7 SYSTEM LIC:DS,NU,SR	\$1,768.00	1	\$1,768.00



Hardware/Software - City Hall		Price	Qty	Ext. Price
380228	AURA SYSTEM MANAGER R7 VE VAPPLIANCE SYSTEM LIC:DS,SR	\$0.00	1	\$0.00
380348	AURA R7 CM VIRTUAL PLATFORM SOLUTION UPGRADE TRACKING	\$0.00	1	\$0.00
380349	AURA R7 CM VE VAPPLIANCE SYS LIC:DS,SR	\$0.00	1	\$0.00
380360	AURA R7 CM DUPLICATE MAC VE VAPPLIANCE SYS LIC:DS,SR	\$0.00	1	\$0.00
380361	AURA R7 UTILITY SERVICES VE VAPPLICANCE SYS LIC:DS,SR	\$0.00	1	\$0.00
380366	AURA R7 ANALOG UPG ENTITLE LIC:NU	\$0.00	100	\$0.00
380402	AURA R7 CORE SUITE UPGRADE/UPLIFT UA SOFTWARE LIC:NU;CU;SR	\$15.67	665	\$10,420.55
380413	CORE SUITE R7 ASBCE R7 STD SVCS /E LIC:CU	\$0.00	190	\$0.00
380414	CORE SUITE R7 ASBCE R7 ADV SVCS /E LIC:CU	\$0.00	95	\$0.00
380415	CORE SUITE R7 ASBCE R7 STD HA LIC /E LIC:CU	\$0.00	190	\$0.00
380416	CORE SUITE R7 ASBCE R7 ADV HA LIC /E LIC:CU	\$0.00	95	\$0.00
380417	CORE SUITE R7 MESSAGING SEAT BASIC R6 /E LIC:NU	\$0.00	665	\$0.00
380418	CORE SUITE R7 AVAYA MULTIMEDIA MSG R2 BASIC USER R6 /E LIC:NU	\$0.00	665	\$0.00
380419	CORE SUITE R7 EQUINOX IPAD R3 /E LIC:NU	\$0.00	665	\$0.00
380420	CORE SUITE R7 EQUINOX WIN R3 /E LIC:CU	\$0.00	665	\$0.00
380421	CORE SUITE R7 EQUINOX MOBILE R3 /E LIC:NU	\$0.00	665	\$0.00
380422	CORE SUITE R7 AES UNIFIED DESKTOP R7 /E LIC:CU	\$0.00	665	\$0.00
380423	CORE SUITE R7 INTG MGMT SITE ADMINISTRATION R6 /E LIC:DS	\$0.00	1	\$0.00
380424	CORE SUITE R7 EC500 SINGLE MODE R9 /E LIC:NU	\$0.00	665	\$0.00
380425	CORE SUITE R7 ONE-X CES R6 /E LIC:CU	\$0.00	665	\$0.00
380426	CORE SUITE R7 VIDEO R7 /E LIC:NU	\$0.00	665	\$0.00
380429	CORE SUITE R7 PRESENCE SERVICES R7 /E LIC:NU	\$0.00	665	\$0.00
380430	CORE SUITE R7 AVAYA BREEZETM R3 USER /E LIC:CU	\$0.00	665	\$0.00
380432	CORE SUITE R7 CMM R7 /E LIC:NU	\$0.00	665	\$0.00



Hardware/Software - City Hall		Price	Qty	Ext. Price
380434	CORE SUITE R7 EQUINOX MAC R3 /E LIC:NU	\$0.00	665	\$0.00
380435	CORE SUITE R7 ONE-X COMMUNICATOR R6 /E LIC:NU	\$0.00	665	\$0.00
380436	CORE SUITE R7 COMMUNICATOR FOR MS LYNC R6 /E LIC:NU	\$0.00	665	\$0.00
382283	ASBCE R7 ELEMENT MANAGER LICENSE	\$0.00	1	\$0.00
382284	ASBCE R7 HIGH AVAILABILITY LICENSE	\$0.00	1	\$0.00
382295	ASBCE R7 VE VAPP LICENSE	\$250.67	1	\$250.67
382298	ASBCE R7 VE VAPP TRACKING CODE NEW LICENSE	\$0.00	1	\$0.00
387760	AURA R7 DEVICE SERVICES VE VAPPLIANCE SYSTEM LIC:DS;NU;SR	\$0.00	1	\$0.00
389637	AURA R7 SYSTEM MANAGER R7 LIC:DS	\$0.00	1	\$0.00
700512863	AURA SESSION MANAGER R7.0.1.2 DVD	\$31.33	1	\$31.33
700512865	AURA SYSTEM MANAGER R7.0.1.2 DVD	\$37.60	1	\$37.60
AUS3046614				
SOLD TO: 4949733 305 Century Parkway Allen, TX 75013				
777338-S01	DL380 GEN9 E5-2640V3 SVR	\$4,121.18	2	\$8,242.36
726718-B21	8GB 1RX4 PC4-3133P-R KIT	\$161.65	12	\$1,939.80
781516-B21	600GB 12G SAS 10000 RPM 2.IN SC ENT HDD	\$397.59	6	\$2,385.54
VS6-STD-C	VSPHERE 6 STD 1 PROC	\$1,160.03	4	\$4,640.12
Subtotal:			\$36,846.41	

Hardware/Software - Event Center		Price	Qty	Ext. Price
185446	AVAYA COMMUNICATIONS SOLUTION	\$0.00	1	\$0.00
184716	CM S8700 MULTI CONNECT MODEL UPGRADE	\$0.00	1	\$0.00
380349	AURA R7 CM VE VAPPLIANCE SYS LIC:DS,SR	\$0.00	1	\$0.00
380361	AURA R7 UTILITY SERVICES VE VAPPLICANCE SYS LIC:DS,SR	\$0.00	1	\$0.00



Hardware/Software - Event Center		Price	Qty	Ext. Price
381276	AV APPLICATION VIRTUAL PLTFRM R7 SINGLE CPU EMBEDDED SERVER	\$156.67	1	\$156.67
381547	SM BRANCH SESSION MANAGER (BSM) VE VAPPLIANCE SYSTEM LIC:DS,NU,SR	\$0.00	1	\$0.00
700510424	AV APPLICATION VIRTUAL PLATFORM R7 MEDIA KIT	\$94.00	1	\$94.00
700512869	AVAYA APPLIANCE VIRTUALIZATION PLATFORM R7.0.1.2 CD	\$31.33	1	\$31.33
AUS3046615				
SOLD TO: 5383583 200 E Stacy Rd Allen, TX 75002				
Subtotal:				\$282.00

Recurring Services - Prepaid - City Hall		Recurring	Qty	Ext. Recurring
U7AD9E	3YR NBD FC SVC DL380 GEN9	\$239.21	2	\$478.42
VS6-STD-P-SSS-C	PROD SNS VSPHERE 6 STD 1 PROC 1YR	\$398.03	4	\$1,592.12
Lantana 8x5 Maint	Lantana 8x5 Maintenance Lantana 8x5 Maintenance	\$2,097.55	1	\$2,097.55
Lantana 8x5 Hardware Maintenance City Hall (1) Paging UPAM KIT (4) Avaya Large Gateway - G650 Media Gateway				
Lantana 8x5 Maint	Lantana 8x5 Maintenance Lantana 8x5 Maintenance	(\$6,008.94)	1	(\$6,008.94)
Lantana 8x5 Hardware Maintenance City Hall Credit for removal of of material no longer used (post upgrade) Credit is based on 7-months - 04/01/2017 through 10/31/2017				
Lantana EA Core	Lantana Enterprise Assist Core Management Lantana Enterprise Assist Core Management	\$14,084.58	1	\$14,084.58
Lantana EA Core	Lantana Enterprise Assist Core Management Lantana Enterprise Assist Core Management	(\$1,314.58)	1	(\$1,314.58)
Lantana EA Core Credit for current Enterprise Assist contract from 04/01/2017 through 04/31/2017				



Recurring Services - Prepaid - City Hall		Recurring	Qty	Ext. Recurring
Lantana EA System Control	Lantana Enterprise Assist System Control Lantana Enterprise Assist System Control	\$0.00	1	\$0.00
Lantana EA TOD	Lantana Technician on Demand Lantana Enterprise Assist - Technician on Demand	\$4,400.00	1	\$4,400.00
Lantana Technician On Demand <ul style="list-style-type: none"> The program offers a pre-paid block of dollars of Seller's support per year to be used at the Purchaser's discretion. Unused dollars will not accumulate from year to year. If the dollars are not used during each year, they will expire and the following year block will begin. All time accrued outside of normal business hours will be deducted at time-and-a-half rates and holiday hours will be deducted at double-time. A trip charge of .5 hours will be included for each trip to the Purchaser's location. All hours will be scheduled through the Lantana Communications service desk and require at least 24 hours advanced notice. Technician Rates are \$110 per hour and Engineer rates are \$185 per hour. 				
Lantana Sourcebook	Lantana Sourcebook Lantana Sourcebook	\$200.00	1	\$200.00
232258	SUPPORT ADVANTAGE MESSAGING MODEL	\$0.00	1	\$0.00
238498J	SA ESSENTIAL SUPT CO-DEL AVAYA AURATM MSG R6 1ST MAINSTRM 3YR AN PREPD	\$3.36	15	\$50.40
238498J	SA ESSENTIAL SUPT CO-DEL AVAYA AURATM MSG R6 1ST MAINSTRM 3YR AN PREPD	\$3.36	650	\$2,184.00
238510	UPGRADE ADVANTAGE AVAYA AURATM MSG R6 1 ST MAINSTREAM 3YR AN PREPD	\$1.33	15	\$19.95
238510	UPGRADE ADVANTAGE AVAYA AURATM MSG R6 1 ST MAINSTREAM 3YR AN PREPD	\$1.33	650	\$864.50
232253	SUPPORT ADVANTAGE COMMUNICATION MANAGER MODEL	\$0.00	1	\$0.00
284957J	SA PREFER SUPT CO-DEL DIAGNOSTIC SRVR R2 SLA MON STANDALONE	\$0.00	1	\$0.00
284958	UPGRADE ADVANTAGE DIAGNOSTIC SRVR R2 SLA MON STANDALONE	\$0.00	1	\$0.00
284959J	SA PREFER SUPT CO-DEL DIAGNOSTIC SRVR R2 SAL 2.3 GTWY VIRTUAL	\$0.00	1	\$0.00
284960	UPGRADE ADVANTAGE DIAGNOSTIC SRVR R2 SAL 2.3 GTWY VIRTUAL	\$0.00	1	\$0.00
292473J	SA PREFER SUPT CO-DEL AURA R7 ANALOG 3YR AN PREPD	\$0.95	100	\$95.00
292625J	SA PREFER SUPT CO-DEL AURA R7 CORE SUITE (Z4) 3YR AN PREPD	\$0.00	665	\$0.00
295201J	SA PREFER SUPT CO-DEL UPG AURA R7 TRACKING	\$0.00	1	\$0.00



Recurring Services - Prepaid - City Hall		Recurring	Qty	Ext. Recurring
<i>Term coverage reflected in the "Pre-Paid" section is from 04/01/2017 through 10/31/2017 unless otherwise noted.</i>				
Recurring Subtotal:				\$18,743.00

Recurring Services - Prepaid - Event Center		Recurring	Qty	Ext. Recurring
Lantana 8x5 Maint	Lantana 8x5 Maintenance Lantana 8x5 Maintenance	\$598.50	1	\$598.50
Lantana 8x5 Hardware Maintenance Event Center (1) Avaya Small Server - S8300 (1) Avaya Small Gateway - G430 Media Gateway with EM200				
232253	SUPPORT ADVANTAGE COMMUNICATION MANAGER MODEL	\$0.00	1	\$0.00
292934J	SUPT ADV PREFERRED CO-DELIVERY REMOTE SITE TRACKING AURA R7	\$0.00	1	\$0.00
293650J	SA PREFER SUPT CO-DEL AAVP R7 SINGLE CPU EMBEDDED SRVR 3YR AN PREPD	\$15.31	1	\$15.31
<i>Term coverage reflected in the "Pre-Paid" section is from 04/01/2017 through 10/31/2017 unless otherwise noted.</i>				
293656	UPGRADE ADVANTAGE AAVP R7 SINGLE CPU EMBEDDED SRVR 3YR AN PREPD	\$4.95	1	\$4.95
Recurring Subtotal:				\$618.76

Recurring Services - Annual - City Hall		Recurring	Qty	Ext. Recurring
VS6-STD-P-SSS-C	PROD SNS VSPHERE 6 STD 1 PROC 1YR	\$398.03	4	\$1,592.12
Lantana 8x5 Maintenance	Lantana 8x5 Maintenance Lantana 8x5 Maintenance	\$3,595.80	1	\$3,595.80
Lantana 8x5 Hardware Maintenance City Hall (1) Paging UPAM KIT (4) Avaya Large Gateway - G650 Media Gateway				
Lantana EnterpriseAssist Core	Lantana Enterprise Assist Core Lantana Enterprise Assist Core Management	\$24,145.00	1	\$24,145.00



Recurring Services - Annual - City Hall		Recurring	Qty	Ext. Recurring
Lantana Enterprise Assist System Control	Lantana Enterprise Assist System Control Lantana Enterprise Assist System Control	\$0.00	1	\$0.00
Lantana Enterprise Assist TOD	Lantana Staff Augmentation Lantana Enterprise Assist - Technician on Demand	\$8,800.00	1	\$8,800.00
Lantana Technician On Demand <ul style="list-style-type: none"> The program offers a pre-paid block of dollars of Seller's support per year to be used at the Purchaser's discretion. Unused dollars will not accumulate from year to year. If the dollars are not used during each year, they will expire and the following year block will begin. All time accrued outside of normal business hours will be deducted at time-and-a-half rates and holiday hours will be deducted at double-time. A trip charge of .5 hours will be included for each trip to the Purchaser's location. All hours will be scheduled through the Lantana Communications service desk and require at least 24 hours advanced notice. Technician Rates are \$110 per hour and Engineer rates are \$185 per hour. 				
Lantana Sourcebook	Lantana Sourcebook Lantana Sourcebook	\$200.00	1	\$200.00
232258	SUPPORT ADVANTAGE MESSAGING MODEL	\$0.00	1	\$0.00
238498J	SA ESSENTIAL SUPT CO-DEL AVAYA AURATM MSG R6 1ST MAINSTRM 3YR AN PREPD	\$5.76	15	\$86.40
238498J	SA ESSENTIAL SUPT CO-DEL AVAYA AURATM MSG R6 1ST MAINSTRM 3YR AN PREPD	\$5.76	650	\$3,744.00
238510	UPGRADE ADVANTAGE AVAYA AURATM MSG R6 1 ST MAINSTREAM 3YR AN PREPD	\$2.29	15	\$34.35
238510	UPGRADE ADVANTAGE AVAYA AURATM MSG R6 1 ST MAINSTREAM 3YR AN PREPD	\$2.29	650	\$1,488.50
232253	SUPPORT ADVANTAGE COMMUNICATION MANAGER MODEL	\$0.00	1	\$0.00
284957J	SA PREFER SUPT CO-DEL DIAGNOSTIC SRVR R2 SLA MON STANDALONE	\$0.00	1	\$0.00
284958	UPGRADE ADVANTAGE DIAGNOSTIC SRVR R2 SLA MON STANDALONE	\$0.00	1	\$0.00
284959J	SA PREFER SUPT CO-DEL DIAGNOSTIC SRVR R2 SAL 2.3 GTWY VIRTUAL	\$0.00	1	\$0.00
284960	UPGRADE ADVANTAGE DIAGNOSTIC SRVR R2 SAL 2.3 GTWY VIRTUAL	\$0.00	1	\$0.00
292473J	SA PREFER SUPT CO-DEL AURA R7 ANALOG 3YR AN PREPD	\$1.63	100	\$163.00
292625J	SA PREFER SUPT CO-DEL AURA R7 CORE SUITE (Z4) 3YR AN PREPD	\$0.00	665	\$0.00



Recurring Services - Annual - City Hall		Recurring	Qty	Ext. Recurring
295201J	SA PREFER SUPT CO-DEL UPG AURA R7 TRACKING	\$0.00	1	\$0.00
251204	Upg adv auratm r5 se 101-1k u1 3yr annual Upg adv auratm r5 se 101-1k u1 3yr annual	\$12.60	665	\$8,379.00
256687J	SA ess c/d aura r5 se101-1k u1 3yr annual SA ess c/d aura r5 se101-1k u1 3yr annual	\$10.68	665	\$7,102.20
Note: Material 251204 and 256687J listed above are under current contract until 10/31/2018 and will not be repurchased. These items have been included to project annual maintenance cost between 11/01/2017 and 10/31/2018.				
Recurring Subtotal:				\$59,330.37

Recurring Services - Annual - Event Center		Recurring	Qty	Ext. Recurring
Lantana 8x5 Maint	Lantana 8x5 Maintenance Lantana 8x5 Maintenance	\$1,026.00	1	\$1,026.00
Lantana 8x5 Hardware Maintenance Event Center (1) Avaya Small Server - S8300 (1) Avaya Small Gateway - G430 Media Gateway with EM200				
232253	SUPPORT ADVANTAGE COMMUNICATION MANAGER MODEL	\$0.00	1	\$0.00
292934J	SUPT ADV PREFERRED CO-DELIVERY REMOTE SITE TRACKING AURA R7	\$0.00	1	\$0.00
293650J	SA PREFER SUPT CO-DEL AAVP R7 SINGLE CPU EMBEDDED SRVR 3YR AN PREPD	\$44.76	1	\$44.76
293656	UPGRADE ADVANTAGE AAVP R7 SINGLE CPU EMBEDDED SRVR 3YR AN PREPD	\$15.00	1	\$15.00
Recurring Subtotal:				\$1,085.76

Pro Services		Price	Qty	Ext. Price
Lantana Pro Services	Lantana Professional Services Lantana Professional Services	\$46,083.00	1	\$46,083.00
Subtotal:				\$46,083.00



DOC_022017003

Quote Information:

Quote #: 001022
Version: 5
Quote Date: 02/03/2017
Expiration Date: 02/28/2017

Prepared for:

City Of Allen
305 Century Parkway
Allen, TX 75013
Eric Matthews
ematthews@cityofallen.org
(214) 509-4850

Prepared by:

Lantana Communications
Michael Bradford
(817) 606-3327
mbradford@lantanacom.com



Quote Summary		Amount
Hardware/Software - City Hall		\$36,846.41
Hardware/Software - Event Center		\$282.00
Pro Services		\$46,083.00
Total		\$83,211.41

Recurring Expenses Summary		Amount
Recurring Services - Prepaid - City Hall		\$18,743.00
Recurring Services - Prepaid - Event Center		\$618.76
Recurring Services - Annual - City Hall		\$59,330.37
Recurring Services - Annual - Event Center		\$1,085.76
Recurring Total		\$79,777.89

Payments		Periods	Payments	Amount
Payment Terms				
Down Payment	One-Time Payments	One-Time	1	\$18,564.21
Hardware/Software Payment	One-Time Payments	One-Time	1	\$18,564.21
Completion Payment	One-Time Payments	One-Time	1	\$46,083.00
Recurring Services - Prepaid	Recurring Payments	One-Time	1	\$19,361.76
Recurring Services - Annual	Recurring Payments	Annual	1	\$60,416.13

This Quote, including all attachments hereto, is entered into between Lantana Communications, ("Seller") and the company listed under the prepared for section ('Purchaser'). When signed by the parties where provided below, this Quote, including all attachments hereto, shall be incorporated into and made a part of the Agreement between Seller and Purchaser. This Quote is effective as of the first date mentioned above, and shall continue until project completion as set forth in the scope of work, unless earlier terminated in accordance with the Agreement. Signing this Quote or providing a Purchaser PO indicates acceptance of applicable Seller, and or, manufacturer Terms and Conditions as detailed and found at <http://lantanacom.com/eula> and any proposal specific terms outlined in the list of equipment and services and/or the scope of work.

Down Payment is due upon execution of this agreement. Hardware/Software payment is due upon shipment of equipment or delivery of software and license(s) under Purchaser specific net terms. Completion payment is due upon acceptance of implementation, if implementation is included under Purchaser specific net terms. Recurring payment is due upon creation of contract under Purchaser specific net terms for term duration listed.



Signature

Date



Technical Scope of Work

■ Work to be completed by Seller

City of Allen upgrade CM R5.2.1 Duplex S8800s to CM R7.

Upgrade Modular Messaging R5 to Avaya Aura Messaging R6.3 Add Session Manager with WebLm, System Manager, Session Border Controller, Utility Server, and SAL D2 all on customer provided virtual servers. Convert from Enterprise License to Core Suite License.

Lantana Responsibilities

Configure (2) HP servers and provision VM Host

Load Open Virtualization Alliance files (OVA).

Install firmware update on gateways, TN circuit packs and media modules.

Download/ activate R7 Core Suite Licenses.

Perform backup of CM R5.2.1. Push CM configuration files to new servers.

Run System Manager and Session Manger installation application software.

Deploy Session Border Controller for One X Mobile SIP.

Configure One X Mobile SIp for 15 users.

Complete Network Assessment in conjunction with upgrade - To be fulfilled under Enterprise Assist contract/SOW.

Upgrade to Avaya Aura Messaging:

Creation of up to 665 Aura Messaging Subscriber mailboxes with voicemail to email from customer provided electronic database.

Recreation of up to 5 caller applications (auto attendants).

One Admin and train the trainer knowledge transfer session to include training for fax implementation to subscriber email.

Install of up to 2 System languages at time of implementation.

Up to 4 hours on-site support for first day of business.

Includes testing of Aura Messaging system and integration to CM.

Up to 30 days(after cutover) of remote support included .

Does not include end user training. End users training via class or webinar can be provided at an additional charge.

Support for enhanced distribution list creation can be provided at an additional charge.

■ Purchaser Responsibility and Assumptions

Assumptions:

All work to be done remotely during normal business hours Monday-Friday 8am-5pm except for firmware updates and cutover to CM R7 which will be after hours.

Customer to complete Lantana provided IP address worksheet.

Customer is responsible for tracking any/all changes made after translations freeze date, and providing changed information to Lantana for addition to CM and or Aura Messaging.

The customer is responsible for providing all router, data switches, LAN infrastructure, WAN infrastructure, and VM infrastructure necessary for the implementation of this design

Network Assessment is not included unless specified above.

Any additional services/equipment/material added to this scope of work will require an updated service quote or an approved, written Change Order.

■ Enterprise Assist - Scope of Work

Enterprise Assist - Scope of Work

- Lantana Communications (Seller) will provide The City of Allen (Purchaser) an engineer to complete any firmware updates needed on Avaya telephony systems as well as software service packs and patches. The engineer may download and install the appropriate software remotely or on site (depending on coverage selected on the attached agreement). Purchaser must have a current manufacturer support contract with Avaya to receive firmware or



software updates. All after hours work, either remote or onsite must be scheduled at least one week in advance by the Purchaser. The offer does not include the implementation of any minor and/or major releases as defined by Avaya.

- The program also consists of a configuration review of Avaya's telephony hardware and software. During the review, the Seller will provide recommendations for optimization of hardware and software. Implementation of the recommendations or changes to the configuration will be considered out of the scope of the program and will be billable at the current hourly rate or used with any block of hours.
- Seller will provide assistance with identifying and resolving alarms as they relate to the Avaya telephony equipment. Alarm identification and resolution may be handled remotely or onsite, whichever is deemed necessary by the Seller's engineers. The program does not provide for proactive alarm identification and resolution. All alarm assistance may be addressed in conjunction with other pieces of the program and will be completed manually.
- Seller will provide one (1) VOIP network assessment per year of coverage with the program. The assessment must be requested by Purchaser and is limited to a maximum of 2 sites.
- Seller will provide alarm notification to Purchaser. This includes notification only and does not include any corrective actions or hardware replacement associated with alarms. Seller will provide alarm notification to Purchaser through either email or SMS messaging.
- Seller will assist in updating Purchaser's documentation as related to the Avaya telephony environment. A true-up process will be completed quarterly to account for additional equipment and/or locations. Pricing will be adjusted accordingly at the time of true-up.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 14, 2017

SUBJECT: Authorize the City Manager to Execute a Contract with DCC Inc. for the Don Rodenbaugh Natatorium Leisure Pool Renovation in the Amount of \$166,937.

STAFF RESOURCE: Tim Dentler, Director of Parks and Recreation Department

BOARD COMMISSION ACTION: On June 20, 2016, the Allen Community Development Corporation (CDC) Recommended Funding for the Don Rodenbaugh Natatorium Leisure Pool Renovation Project in the Fiscal Year 2016-2017 Budget Process.

ACTION PROPOSED: Authorize the City Manager to Execute a Contract with DCC Inc. for the Don Rodenbaugh Natatorium Leisure Pool Renovation in the Amount of \$166,937.

BACKGROUND

Don Rodenbaugh Natatorium was originally constructed in 2002. The facility serves AISD and enjoys a large membership of local patrons. The Leisure Pool and play feature are in need of replacement. The current surface is peeling off in large pieces and has been patched for the past three years leaving the surface looking patchy. The play feature is 14 years old and has had repairs made to it over the past few years.

The Allen Community Development Corporation recommended funding for the cost of the leisure pool re-surfacing and play feature in their 2017 budget.

This project will be completed by DCC Inc. through a Buy Board contract.

BUDGETARY IMPACT

Don Rodenbaugh Natatorium Leisure Pool Renovation Project Cost Estimate:

<u>Description</u>	<u>Costs</u>
Leisure Pool resurfacing	\$64,092
Demo and removal of current play structure	\$4,875
Install new aquatic play structure	\$97,970
TOTAL	\$166,937

Work is to be completed under Buyboard Contract 451-14 as reflected on the attached quotes.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with DCC Inc., for the Don Rodenbaugh Natatorium Leisure Pool Renovation in the amount of \$166,937.

MOTION

I make a motion to authorize the City Manager to execute a contract with DCC Inc., for the Don Rodenbaugh Natatorium Leisure Pool Renovation in the amount of \$166,937.

ATTACHMENTS:

Replaster Pool Quote
Removal of Water Feature Quote
New Water Feature Quote
Contract

QUOTE - SERVICE & PARTS & SUPPLIES

E-mail Invoice

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote # 3687
Order Date 11/04/16
Requested Date 01/30/17
Promised Date 01/30/17
Delivery Date 01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

RE-PLASTER
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770

QUOTE

COMMENTS:

RE-PLASTER OF INDOOR POOL-QUARTZ BASED
COLORED PLASTER FINISH.
PROJECT ESTIMATED 17 DAYS FOR COMPLETION
PROJECT TOTAL: \$64,091.57

Qty	Unit \$	Total Item \$
1		0.00

REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES 1 \$56,915.57 56,915.57

INTERIOR RE-FINISHING OF PLASTER POOL.
A PREP PROCEDURE (DRAINING, WEEP HOLE
DRILLING, SAW CUTTING, CHIPPING, HOLLOW
PLASTER REMOVAL (UP TO 2 HOURS) ACID
WASH BOND COAT IS APPLIED THE DAY BEFORE
PLASTER IS INSTALLED.
CUSTOMER TO DRAIN POOL AND SHUT OFF ALL
EQUIPMENT PRIOR TO START OF PROJECT.
REMOVE LADDERS AND HAND RAILS.
SAW CUT/ CHIP BACK 3 RACING LANES-
(DOWN-AROUND-BACK) 140 FT.X 3 LANES.
SAW CUT/ CHIP BACK 6 TARGETS-10 FT. EACH
TARGET (60 FT.)
VERIFY SURFACE TO BE CLEAN OF DIRT, OR
ANY FOREIGN MATTER THAT MAY AFFECT THE
BONDING PROCESS.
APPLICATION OF BOND COAT-MULTI COAT
SCRATCH COAT TO BE APPLIED.
APPLICATION OF PLASTER SURFACE.
TROWEL TO A SMOOTH FINISH.
ACID WASH SURFACE-EXPOSE QUARTZ FINISH.
START WATER TO BEGIN FILLING POOL.
CLI QUARTZ COLORED FINISH POOL
LABOR, PARTS, SUPPLIES TOTAL: \$56,915.57

REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES 1 \$2,496.00 2,496.00

SAW CUT/ CHIP BACK 3 RACING LANES-
(DOWN-AROUND-BACK) 140 FT.X 3 LANES.

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3687
Order Date	11/04/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

RE-PLASTER
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838 214-509-4770

QUOTE

SAW CUT/ CHIP BACK 6 TARGETS 10 FT. EACH
TARGET (60 FT.)
REMODEL-POOL-LABOR, PARTS, SUPPLIES
TOTAL: \$2,496.00

REMODEL - POOL/SPA	SUPPORT	1	\$4,680.00	4,680.00
PROJECT MOBILIZATION				
TECHNICIAN SUPPORT				
3 DAYS AFTER PLASTER CARE/ START UP/				
CHEMICAL BALANCE/ BRUSHING SURFACE				
REMODEL POOL/SPA-SUPPORT TOTAL: \$4,680				

PLASTER TERMS & CONDITIONS	1	0.00
---------------------------------------	----------	-------------

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3687
Order Date	11/04/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

RE-PLASTER
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838 214-509-4770

QUOTE

PROJECT COMMENTS: If more than 20% of pool is found to require Hollow Repairs, an additional charge will be required to remove the extra material. DCC will provide a quote prior to completing any additional work.

DCC will inspect existing drain covers for VGB compliance when removed during preparation stage. Grates may be re-used if they are in compliance and are not damaged.

DCC will provide additional quote for new grates if it is determined they need to be replaced at time of project.

MAINTENANCE COMMENTS: Customer must provide City water to refill the pool and be responsible for completing pool refill. Customer must immediately upon completion of the plaster fill the pool and shut off water only after pool is completely filled

In addition the customer is also responsible for brushing all new plaster surfaces for 7 consecutive days after pool has been filled, this will prevent a buildup of plaster dust and result in a smoother and cleaner surface.

WARRANTY COMMENTS: Any unforeseen repairs or additional work that is identified during project, the customer will be notified immediately of such, and if required DCC will provide additional pricing for approval before such repairs are performed.

The customer must maintain water in the pool, regularly brush the pool plaster area and maintain the daily water chemistry balance in accordance with State and City pool and plaster standards as well as follow plaster guidelines set forth by the National Plaster Council. Customer to notify DCC prior to project with any concerns regarding filtration equipment, or electrical equipment (including pool lights) No warranty expressed or implied on vertical

mastic (cantilever can move) or deck-o-seal (decks can move). 30 day warranty on tile/brick/rock repairs No wheeled/tracked commercial pool cleaners/vacuums should be used on pool surface within 30 days of plaster completion.

WARRANTY includes one (1) year workmanship / Manufacturers Plaster/Material Warranty varies and is based on selection of final surface. FAILURE for the customer to adhere to plaster standards and guidelines, including proper chemical startup and

brushing, maintaining pool water chemistry or by draining the pool will result in the warranty being voided. Therefore, the customer is required to notify DCC in writing at least 10 business days prior to draining the re-plastered pool.

QUOTE TOTAL

\$64,091.57

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3687
Order Date	11/04/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

RE-PLASTER
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770

QUOTE

Note: Changes to Scope of Work: DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted in page one of the quote that will require DCC Inc to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work. Material pricing is for normal, stock delivery. Expediting charges, if necessary, are to be added to the proposal amount.

The following price is good for **30** days. All of the above work to be completed in a substantial and workmanlike manner according to standard and code practices for the sum of : \$ 64,091.57 **plus applicable sales tax.**

DCC recommends that all pool and spa owners or operators contact (1) the pool and spa health inspector or similar code enforcement officer or their local regulatory authority (e.g. city or county government), or (2) a certified-registered professional inspector to verify pool and spa requirements and compliance.

Therefore DCC. Inc., is acting solely as an installer, and makes no representation that the services and materials specified herein will insure that customer's pool or spa complies with local (municipal and/or county) ordinances, state regulations or federal regulations.

Customers is solely responsible to insure that customer's pool or spa complies with such regulations and releases DCC, Inc. from any claim related to the compliance with such regulations.

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work and products under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

DCC Inc. will warrant labor for thirty (30) days. Also, installed equipment and parts are based on each manufactures warranty however labor will be charged for their warranty replacement requirements. Therefore DCC does not warrant labor, equipment or any items directly or indirectly that is not included in the scope of work.

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3687
Order Date	11/04/16
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Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

RE-PLASTER
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838 214-509-4770

QUOTE

TERMS

The attached DCC Inc. standard terms and conditions on page four (4) of this proposal apply and are incorporated by reference. The parties agree that all disputes in anyway related to, arising out of, or connected with the sale of goods and /or services provided by DCC Inc. shall be litigated if at all, exclusively in Dallas County, Texas. Furthermore, the parties agree that Texas law shall govern all such disputes.

The customer agrees to pay: **0%** down, and **balance** at completion of our work. Service charges listed below become effective on all accounts 30 days after invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

Notice to Buyer: - do not sign the agreement before you read it, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

Submitted By:  Date: 11/30/17

Accepted By: _____ PO#: _____

Authorized Signature: _____ Date: _____

Printed Name: _____

DCC INC. STANDARD TERMS AND CONDITIONS

1. Engagement of Services:

Once work is authorized by the customer, DCC Inc. is committed to certain "ramp up" expenses, both direct and indirect (travel, parts, materials, supplies, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of DCC Inc. these expenses will be due and payable to DCC Inc. on a pro-rata basis. Any requests for reimbursement of these expenses will be itemized and defined.

2. Changes to Scope of Work:

DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted on page one of the quote that will require DCC Inc. to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work.

3. Permits and Taxes:

Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc. will be provided by DCC Inc. at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

4. DCC Inc. Employees:

The customer agrees that they shall not hire or sub contract any DCC employee currently working on a project for the customer, or any employee of DCC Inc. who has worked on a service call or project for the customer within the last twelve (12) months.

5. Payment Terms:

Standard payment terms are net due in ten days from invoice date unless stated differently on the front of this proposal. A service charge may be charged on all past due amounts. Amounts will be considered past due 30 days after date of invoice. You may avoid a service charge or additional service charges upon payment at any time of the unpaid balance.

6. Warranty:

DCC Inc. will warranty labor for thirty (30) days. Also, installed equipment and parts are based on each manufacturer's warranty, however, labor will be charged for their warranty replacement requirements. However, DCC does not warranty labor, equipment or any items directly or indirectly that is not included in the original scope of work.

7. Indemnity:

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

8. Limitation of DCC Liability:

With respect to any of its work performed under this Agreement or the Scope of Work or any Proposal, DCC's liability shall be limited to repairing and replacing any defective work, regardless of whether it arises from a breach of warranty, a breach of contract or DCC's negligence. This "repair and replace" remedy shall be the customer's exclusive remedy for any claims or damages arising from or relating to any defective work performed by DCC, regardless of the reason, and the customer shall not be entitled to pursue or recover any other claim, remedy or damages arising from or relating to DCC's work, including but not limited to consequential damages. Customer agrees that this limitation of liability provision is commercially responsible in light of the risks involved in DCC performing the work.

9. Force Majeure:

No party shall be liable for any failure to perform its obligations in connection with any action described in the Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, fire or other cause beyond such party's reasonable control (including any mechanical, electronic, or communication failure, but excluding failure caused by a party's financial condition or negligence).

10. Attorney Fees:

If DCC Inc. is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse DCC Inc. for all attorney fees, expert fees and other legal expenses that may incur to collect such amount.

11. Incorporation by Reference:

Unless expressly agreed in writing otherwise, these standard terms and conditions are part of, and hereby incorporated by reference, all proposals submitted by DCC Inc. to the customer or credit agreement signed by the customer, and all terms and conditions of any such proposal or credit agreements.

12. Fully Integrated Contract:

The party's hereby agree that this Agreement is an integrated contract that fully sets forth each and every term and condition to which the parties have agreed regarding the subject matter of the Agreement. The parties agree that they fully set forth all of the terms and conditions of the Agreement within the four corners of the Agreement, and that no other prior or contemporaneous writings or oral promises or representations shall be admissible to prove the terms of this Agreement for any reason. This Agreement may be modified or amended only by a writing signed by both parties.

By signing the proposal the signatures of the agreement warrant that they have the authority to enter into this contract or agreement and have read the standard terms and conditions and agree to abide by them:

DATE: _____

ACCEPTED BY: _____

QUOTE - SERVICE & PARTS & SUPPLIES

E-mail Invoice

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote # 3694
Order Date 12/06/16
Requested Date 01/30/17
Promised Date 01/30/17
Delivery Date 01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

KIDS WATER FEATURE
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770

QUOTE

COMMENTS:

PROJECT CONSISTS OF REMOVAL AND BREAK-
DOWN OF CURRENT WATER & MUSHROOM FEATURE
PROJECT AVAILABLE THROUGH TEXAS BUYBOARD
COOPERATIVE CONTRACT # 451-14.
DCC VENDOR # 1753.
PROJECT TOTAL: \$4,875.00

Qty	Unit \$	Total Item \$
1		0.00

REMODEL - POOL/SPA L.P.S.

REMOVAL OF CURRENT WATER FEATURE AND
MUSHROOM.

PARTS & SUPPLIES TOTAL: \$4,875.00

LABOR, PARTS, SUPPLIES	1	\$4,875.00	4,875.00
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QUOTE TOTAL

\$4,875.00

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3694
Order Date	12/06/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

KIDS WATER FEATURE
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838 214-509-4770

QUOTE

Note: Changes to Scope of Work: DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted in page one of the quote that will require DCC Inc to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work. Material pricing is for normal, stock delivery. Expediting charges, if necessary, are to be added to the proposal amount.

The following price is good for **30** days. All of the above work to be completed in a substantial and workmanlike manner according to standard and code practices for the sum of : \$ 4,875.00 **plus applicable sales tax.**

DCC recommends that all pool and spa owners or operators contact (1) the pool and spa health inspector or similar code enforcement officer or their local regulatory authority (e.g. city or county government), or (2) a certified-registered professional inspector to verify pool and spa requirements and compliance.

Therefore DCC. Inc., is acting solely as an installer, and makes no representation that the services and materials specified herein will insure that customer's pool or spa complies with local (municipal and/or county) ordinances, state regulations or federal regulations.

Customers is solely responsible to insure that customer's pool or spa complies with such regulations and releases DCC, Inc. from any claim related to the compliance with such regulations.

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work and products under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

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D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3694
Order Date	12/06/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

KIDS WATER FEATURE
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770


QUOTE

TERMS

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The customer agrees to pay: **0%** down, and **balance** at completion of our work. Service charges listed below become effective on all accounts 30 days after invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

Notice to Buyer: - do not sign the agreement before you read it, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

Submitted By:  Date: 1/30/17

Accepted By: _____ PO#: _____

Authorized Signature: _____ Date: _____

Printed Name: _____

DCC INC. STANDARD TERMS AND CONDITIONS

1. Engagement of Services:

Once work is authorized by the customer, DCC Inc. is committed to certain "ramp up" expenses, both direct and indirect (travel, parts, materials, supplies, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of DCC Inc. these expenses will be due and payable to DCC Inc. on a pro-rata basis. Any requests for reimbursement of these expenses will be itemized and defined.

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Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc. will be provided by DCC Inc. at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

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8. Limitation of DCC Liability:

With respect to any of its work performed under this Agreement or the Scope of Work or any Proposal, DCC's liability shall be limited to repairing and replacing any defective work, regardless of whether it arises from a breach of warranty, a breach of contract or DCC's negligence. This "repair and replace" remedy shall be the customer's exclusive remedy for any claims or damages arising from or relating to any defective work performed by DCC, regardless of the reason, and the customer shall not be entitled to pursue or recover any other claim, remedy or damages arising from or relating to DCC's work, including but not limited to consequential damages. Customer agrees that this limitation of liability provision is commercially responsible in light of the risks involved in DCC performing the work.

9. Force Majeure:

No party shall be liable for any failure to perform its obligations in connection with any action described in the Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, fire or other cause beyond such party's reasonable control (including any mechanical, electronic, or communication failure, but excluding failure caused by a party's financial condition or negligence).

10. Attorney Fees:

If DCC Inc. is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse DCC Inc. for all attorney fees, expert fees and other legal expenses that may incur to collect such amount.

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Unless expressly agreed in writing otherwise, these standard terms and conditions are part of, and hereby incorporated by reference, all proposals submitted by DCC Inc. to the customer or credit agreement signed by the customer, and all terms and conditions of any such proposal or credit agreements.

12. Fully Integrated Contract:

The party's hereby agree that this Agreement is an integrated contract that fully sets forth each and every term and condition to which the parties have agreed regarding the subject matter of the Agreement. The parties agree that they fully set forth all of the terms and conditions of the Agreement within the four corners of the Agreement, and that no other prior or contemporaneous writings or oral promises or representations shall be admissible to prove the terms of this Agreement for any reason. This Agreement may be modified or amended only by a writing signed by both parties.

By signing the proposal the signatures of the agreement warrant that they have the authority to enter into this contract or agreement and have read the standard terms and conditions and agree to abide by them:

DATE: _____

ACCEPTED BY: _____

QUOTE - SERVICE & PARTS & SUPPLIES

E-mail Invoice

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote # 3693
Order Date 12/06/16
Requested Date 01/30/17
Promised Date 01/30/17
Delivery Date 01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

KIDS WATER FEATURE
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770

QUOTE

COMMENTS:

PROJECT CONSISTS OF INSTALLING NEW KIDS
WATER FEATURE & PALM TREE FEATURE. DCC
WILL BE INSTALLING NEW FOAM PAD AT THE
END OF THE BIG SLIDE.
PROJECT AVAILABLE THROUGH TEXAS BUYBOARD
COOPERATIVE CONTRACT # 451-14.
DCC VENDOR # 1753.
PROJECT TOTAL: \$97,970.00

Qty	Unit \$	Total Item \$
1		0.00

REMODEL - POOL/SPA L.P.S.

LABOR, PARTS, SUPPLIES	1	\$97,370.00	97,370.00
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(1) KIDS WATER FEATURE @ \$65,000.00
(1) PALM TREE FEATURE @ \$7,800.00
(1) FOAM LANDING PAD @ \$2,860.00
(1) REPAIR/ REMOVE CONCRETE @ \$3,250.00
(1) ALLOWANCE FOR WATER SUPPLY HOOK-UP
@ \$2,600
(1) INSTALLATION OF NEW FEATURE @ \$2,990
(1) LABOR @ 8,320.00
(1) SHIPPING @ \$4,550.00
PARTS AND SUPPLIES TOTAL: 97,370.00

REMODEL - POOL/SPA

SUPPORT	1	\$600.00	600.00
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LABOR & SUPPORT TOTAL: \$600.00

QUOTE TOTAL

\$97,970.00

D C C. Inc.
2929 Storey Lane
Dallas, TX 75220
Office 972-224-1669
Fax 214-352-1049



Quote #	3693
Order Date	12/06/16
Requested Date	01/30/17
Promised Date	01/30/17
Delivery Date	01/30/17

CITY OF ALLEN DON RODENBAUGH NAT
110 N RIVERCREST COURT
COMBO 2126
ALLEN, TX 75002
214-509-4785

KIDS WATER FEATURE
AARON GARNER BUYBOARD CONTRACT #451-14

Fax: 214-509-4838

214-509-4770

QUOTE

Note: Changes to Scope of Work: DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted in page one of the quote that will require DCC Inc to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work. Material pricing is for normal, stock delivery. Expediting charges, if necessary, are to be added to the proposal amount.

The following price is good for 30 days. All of the above work to be completed in a substantial and workmanlike manner according to standard and code practices for the sum of : \$ 97,970.00 plus applicable sales tax.

DCC recommends that all pool and spa owners or operators contact (1) the pool and spa health inspector or similar code enforcement officer or their local regulatory authority (e.g. city or county government), or (2) a certified-registered professional inspector to verify pool and spa requirements and compliance.

Therefore DCC. Inc., is acting solely as an installer, and makes no representation that the services and materials specified herein will insure that customer's pool or spa complies with local (municipal and/or county) ordinances, state regulations or federal regulations.

Customers is solely responsible to insure that customer's pool or spa complies with such regulations and releases DCC, Inc. from any claim related to the compliance with such regulations.

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work and products under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

DCC Inc. will warrant labor for thirty (30) days. Also, installed equipment and parts are based on each manufactures warranty however labor will be charged for their warranty replacement requirements. Therefore DCC does not warrant labor, equipment or any items directly or indirectly that is not included in the scope of work.

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QUOTE

TERMS

The attached DCC Inc. standard terms and conditions on page four (4) of this proposal apply and are incorporated by reference. The parties agree that all disputes in anyway related to, arising out of, or connected with the sale of goods and /or services provided by DCC Inc. shall be litigated if at all, exclusively in Dallas County, Texas. Furthermore, the parties agree that Texas law shall govern all such disputes.

The customer agrees to pay: 0% down, and balance at completion of our work. Service charges listed below become effective on all accounts 30 days after invoice date. Charges are computed at the lower of 1.5% per month or the maximum allowed by law.

Notice to Buyer: - do not sign the agreement before you read it, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep this agreement to protect your legal rights.

Submitted By: _____

Date: _____

Accepted By: _____

PO#: _____

Authorized Signature: _____

Date: _____

Printed Name: _____

DCC INC. STANDARD TERMS AND CONDITIONS

1. Engagement of Services:

Once work is authorized by the customer, DCC Inc. is committed to certain "ramp up" expenses, both direct and indirect (travel, parts, materials, supplies, etc.) which are generally priced into the entire scope of the project. If the project is canceled, delayed, terminated or significantly changed through no fault of DCC Inc. these expenses will be due and payable to DCC Inc. on a pro-rata basis. Any requests for reimbursement of these expenses will be itemized and defined.

2. Changes to Scope of Work:

DCC Inc. will notify the customer and submit a proposal if there is a required labor or material change not included in the scope of work highlighted on page one of the quote that will require DCC Inc. to expend more monies than budgeted. The customer agrees to pay DCC Inc. for such expenses plus reasonable profit and overhead (10%) if the customer desires to continue under the changed scope of work.

3. Permits and Taxes:

Permits are not included unless specifically noted otherwise. Permits, inspection fees, drawings, etc. will be provided by DCC Inc. at the cost of obtaining them. Taxes are not included in the proposal price unless specifically noted otherwise.

4. DCC Inc. Employees:

The customer agrees that they shall not hire or sub contract any DCC employee currently working on a project for the customer, or any employee of DCC Inc. who has worked on a service call or project for the customer within the last twelve (12) months.

5. Payment Terms:

Standard payment terms are net due in ten days from invoice date unless stated differently on the front of this proposal. A service charge may be charged on all past due amounts. Amounts will be considered past due 30 days after date of invoice. You may avoid a service charge or additional service charges upon payment at any time of the unpaid balance.

6. Warranty:

DCC Inc. will warranty labor for thirty (30) days. Also, installed equipment and parts are based on each manufacturer's warranty, however, labor will be charged for their warranty replacement requirements. However, DCC does not warranty labor, equipment or any items directly or indirectly that is not included in the original scope of work.

7. Indemnity:

The customer agrees to defend and indemnify DCC Inc. and its employees, agents, representatives, officers, directors, parents and subsidiaries from and against any and all claims, actions, causes of action, lawsuits, losses, damages, expenses, fees (including but not limited to attorney fees, expert fees and costs), judgments and awards (collectively the "Indemnified Claims") arising from or relating to DCC work under this Agreement or the Scope of Work under this Agreement or under any Proposal, to the proportionate extent such Indemnified Claims are caused, in whole or in part, by fault, negligence, or wrongdoing of the customer (including its agents, employees, and/or subcontractors) or any third party.

8. Limitation of DCC Liability:

With respect to any of its work performed under this Agreement or the Scope of Work or any Proposal, DCC's liability shall be limited to repairing and replacing any defective work, regardless of whether it arises from a breach of warranty, a breach of contract or DCC's negligence. This "repair and replace" remedy shall be the customer's exclusive remedy for any claims or damages arising from or relating to any defective work performed by DCC, regardless of the reason, and the customer shall not be entitled to pursue or recover any other claim, remedy or damages arising from or relating to DCC's work, including but not limited to consequential damages. Customer agrees that this limitation of liability provision is commercially responsible in light of the risks involved in DCC performing the work.

9. Force Majeure:

No party shall be liable for any failure to perform its obligations in connection with any action described in the Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, fire or other cause beyond such party's reasonable control (including any mechanical, electronic, or communication failure, but excluding failure caused by a party's financial condition or negligence).

10. Attorney Fees:

If DCC Inc. is required to hire attorneys to collect amounts owed under this agreement, the customer agrees to reimburse DCC Inc. for all attorney fees, expert fees and other legal expenses that may incur to collect such amount.

11. Incorporation by Reference:

Unless expressly agreed in writing otherwise, these standard terms and conditions are part of, and hereby incorporated by reference, all proposals submitted by DCC Inc. to the customer or credit agreement signed by the customer, and all terms and conditions of any such proposal or credit agreements.

12. Fully Integrated Contract:

The party's hereby agree that this Agreement is an integrated contract that fully sets forth each and every term and condition to which the parties have agreed regarding the subject matter of the Agreement. The parties agree that they fully set forth all of the terms and conditions of the Agreement within the four corners of the Agreement, and that no other prior or contemporaneous writings or oral promises or representations shall be admissible to prove the terms of this Agreement for any reason. This Agreement may be modified or amended only by a writing signed by both parties.

By signing the proposal the signatures of the agreement warrant that they have the authority to enter into this contract or agreement and have read the standard terms and conditions and agree to abide by them:

DATE: _____

ACCEPTED BY: _____



STANDARD FIXED PRICE AGREEMENT

CITY OF ALLEN, TEXAS Don Rodenbaugh Natatorium Leisure Pool Play Feature and Resurfacing

City of Allen
305 Century Parkway
Allen, Texas 75013

CITY OF ALLEN, TEXAS

This Agreement is made by and between the City of Allen, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and **DCC Inc.**, (hereinafter referred to as the "Contractor") for the construction of **Don Rodenbaugh Natatorium Leisure Pool Play Feature and Resurfacing**, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Requirements and Instructions to Bidders, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

n/a

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privacy or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Architect/Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect/Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections,

paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Contract is for the resurfacing of the Leisure Pool as well as the demo, removal and replacement of the aquatic play feature in the Leisure Pool.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall

furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III

CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 14 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **(30) calendar days** from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of **(\$240) per day** for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds

withheld, but no longer applicable, as liquidated damages.

3.1.3 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.4 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete

payment for all of the Work required herein, the fixed sum of **\$166,936.00 (One hundred sixty-six thousand nine hundred thirty-six).**

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect/Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect/Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Architect/Engineer and the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Architect/Engineer and upon Certificates for Payment subsequently issued to the Owner by the Architect/Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect/Engineer in such form and manner, and with such supporting data and content, as the Owner or the Architect/Engineer may require. Therein, the Contractor may request payment for **ninety percent (90%)** of that portion of the

Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect/Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect/Engineer shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect/Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect/Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect/Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder

naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and the Architect/Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 After completing work and before final inspection, the Contractor shall remove from the premises, all scaffolding, equipment, tools, and materials (including rejected materials, that are not the property of the Owner and all rubbish caused by its work. When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect/Engineer a list of items to be completed or corrected. When the Architect/Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner and the Architect/Engineer for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect/Engineer thereof in writing. Thereupon, the Architect/Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect/Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Architect/Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth herein above as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect/Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the

Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect/Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Architect/Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI

THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Architect/Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII

THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product

Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect/Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect/Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.6.3 The Contractor's authorized superintendent shall directly oversee construction 100% of the time (i.e. supervise construction onsite at all times). "The maintenance of a full-time construction supervisor shall be a material term and condition of this Agreement, the violation of which shall be deemed to be a material breach of this Agreement.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Architect/Engineer for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect/Engineer. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner and the Architect/Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect/Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect/Engineer. Approval by the Architect/Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner and the Architect/Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner or the Architect/Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR

GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a City of Allen Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall

be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Allen has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of Allen of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision. The prevailing wage rates applicable to this Agreement, are attached.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the job site and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walkways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure job site and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect/Engineer during the progress of the Work.

7.15.2 The Architect/Engineer's review of the Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Architect/Engineer to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Allen and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Architect/Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to

request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

8.1.1 When used in this Contract the term "Architect/Engineer" does not necessarily denote a duly licensed, trained or certified architect; as used herein, the term shall be used interchangeably and shall mean a designated Architect/Engineer, Architect/Engineer, or Contract Administrator (who may not be an architect or Architect/Engineer) for the Owner, said person to be designated or redesignated by the Owner prior to or at any time during the Work hereunder. The Architect/Engineer may be an employee of the Owner or may be retained by the Owner as an independent contractor but, in either event, the Architect/Engineer's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Architect/Engineer notwithstanding the contractual relationship between the Owner and Architect/Engineer. All of the Owner's instructions to the Contractor shall be through the Architect/Engineer.

In the event the Owner should find it necessary or convenient to replace the Architect/Engineer, the Owner shall retain a replacement Architect/Engineer and the status of the replacement Architect/Engineer shall be that of the former Architect/Engineer.

8.2 ARCHITECT/ENGINEER'S ADMINISTRATION

8.2.1 The Architect/Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect/Engineer as set forth in this Contract. The Architect/Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect/Engineer.

8.2.3 The Architect/Engineer shall be the initial interpreter of the requirements of the

drawings and specifications and the judge of the performance thereunder by the Contractor. The Architect/Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect/Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect/Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect/Engineer deems it necessary or advisable, the Architect/Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect/Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Architect/Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Architect/Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Architect/Engineer shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or

the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Architect/Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect/Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Architect/Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Architect/Engineer and the opposing party within ten (10) days of receipt of the Architect/Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 ***CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS*** - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the Owner's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect/Engineer written notice of, and an

opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

8.3.4 ***CLAIMS FOR ADDITIONAL COSTS*** - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Architect/Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Owner shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the Owner.

8.3.5 ***CLAIMS FOR ADDITIONAL TIME*** - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect/Engineer, for such reasonable time as the Architect/Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after

the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 FIELD ORDERS

8.4.1 The Architect/Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.5 MEDIATION

8.5.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Architect/Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Architect/Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.5.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Architect/Engineer in accomplishing the timely completion of the Project.

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform

a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X

CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect/Engineer, issued after execution of

this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect/Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect/Engineer requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of

reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect/Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Architect/Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Architect/Engineer's request or to any provisions of this Contract, it shall, if required by the Architect/Engineer or the Owner, be uncovered for the Architect/Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect/Engineer or Owner, be uncovered for the Architect/Engineer's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect/Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect/Engineer's services and expenses made necessary thereby.

11.2.2 If within **two (2) years** after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with

respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII

CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect/Engineer, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect/Engineer and the

Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Architect/Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect/Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect/Engineer, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules,

regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Architect/Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Allen until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Commercial General (Public) Liability	\$1,000,000 each occurrence; \$2,000,000 general aggregate; \$2,000,000 Umbrella/ Excess Liability
Business Auto Liability	\$1,000,000 per occurrence; \$1,000,000 aggregate or; \$1,000,000 combined single limits
Worker's Comp & Employers Liability	Statutory Limits \$1,000,000 Each Accident
Builders Risk Policy	100% of construction total
Professional Liability E & O Coverage	\$1,000,000 per occurrence.

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an "*All Risks*" of *Physical Loss* form, insuring all work in place and/or materials stored at the building site, including foundations and building equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may appear and each shall be named in the policy or policies as an "Insured." Policies shall furnish coverage at all times for the full cash value of all construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by City of Allen. If the

Contractor is installing equipment supplied by City of Allen, it shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by City of Allen. As respects buildings, the Contractor shall not terminate this insurance until they are occupied by City of Allen.

13.3 ADDITIONAL INSURED

The City of Allen, (its officers, employees and volunteers), shall be an additional insured on the Commercial General Liability (Public) Insurance Policy and the Automobile Liability Insurance Policy furnished by the Contractor. The Architect shall be named as an additional insured on the Commercial General Liability (Public) Insurance Policy furnished by the Contractor.

13.4 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the City of Allen, Parks and Recreation Department, One Civic Plaza, Allen, Texas, 75013.

13.5 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.6 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City on City of Allen Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Allen, the contractor shall furnish the City proof of identical continued coverage no later than thirty(30) days prior to the expiration date shown on the Certificate of Insurance.

13.7 PRIMARY COVERAGE

The coverage provided herein shall be primary and noncontributory with any other insurance

maintained by the City of Allen, Texas, for its benefit, including self insurance.

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change

that materially affects the provision of coverage of any person providing services on the project;

- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
 - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of

any coverage agreements for all of its employees providing services on the project, for the duration of the project;

- (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
- (C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;
- (D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (E) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of

coverage of any person providing services on the project; and

- (H) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV

MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal

sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor. **A maintenance bond shall be for a period of (2) years from the date of final acceptance of the project.**

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not be included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce, stop the Owner from insisting on strict compliance with this Contract or from recovering damages,

costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the

mail properly addressed to the other party or Architect/Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect/Engineer.

EXECUTED in single or multiple originals, this ____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

305 Century Parkway
Allen, Texas 75013
214-509-4118 (Fax)

ATTEST:

By: _____
Shelley B. George, City Secretary

EXECUTED in single or multiple originals, this ____ day of _____, 2017

CONTRACTOR

By: _____
(Signature of Authorized Officer)

(Print Name and Title)

2929 Storey Lane
(Street Address)

Dallas, TX 75220
(City/State/Zip)

(Fax)

CORPORATE ACKNOWLEDGMENT

THE STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared:

(Print Name)

(Print Title)

of _____, the Contractor designated herein above, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Contractor, a corporation, that he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2015.

Notary Public In and For

_____ County, _____

My Commission expires: _____

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Appoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and Authorize the City Manager to Execute Employment Agreements Relating to Their Appointments for a Period Ending December 31, 2018.

STAFF RESOURCE:

Cynthia Porter Gore, Municipal Court Judge

PREVIOUS COUNCIL ACTION:

Section 3.08 of the City Charter requires the City Council appointment of an Alternate Municipal Court Judge. The City Council promoted the Alternate Municipal Court Judge to the Municipal Court Judge position on January 11, 2017, thereby no longer having an Alternate Municipal Court Judge.

ACTION PROPOSED:

Appoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and Authorize the City Manager to Execute Employment Agreements Relating to Their Appointments for a Period Ending December 31, 2018.

BACKGROUND

The City of Allen filled the Municipal Court Judge vacancy with Cynthia Porter Gore, who was the Alternate Municipal Court Judge.

The Alternate Judge performs judicial services on scheduled weekends for the City and also presides over Teen Court. The Alternate Judge may also perform judicial duties in assisting Judge Gore with warrant round-ups and may perform other court related duties in the absence of Judge Gore.

Judge Gore is recommending that a contract be executed with Michelle Montemayor and Donald McDermitt for the Alternate Municipal Court Judge position and associated duties.

Ms. Montemayor is an Allen resident who currently serves as Assistant Regional Counsel of the General Counsel. She brings over twenty-five years of relevant experience as an attorney and is Licensed and in good standing with the State Bar of Texas.

Mr. McDermitt is also licensed and in good standing with the State Bar of Texas since 1978. He has practiced in Collin County since 1983 specifically in the areas of Criminal Defense, Juvenile, and representation of respondents within the Texas Family Code and the Texas Department of Family and Protective Services (CPS).

Attached is an employment agreement relating to Michelle Montemayor and Donald McDermitt performing the duties as an Alternate Municipal Court Judge.

BUDGETARY IMPACT

The Municipal Court operating budget will cover the costs associated with the Alternate Municipal Court Judge contracts.

STAFF RECOMMENDATION

Staff recommends that the City Council appoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and authorize the City Manager to execute employment agreements relating to their appointments for a period ending December 31, 2018.

MOTION

I make a motion to appoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and authorize the City Manager to execute employment agreements relating to their appointments for a period ending December 31, 2018.

ATTACHMENTS:

Employment Agreement - Montemayor

Employment Agreement - McDermitt

THE STATE OF TEXAS §
COUNTY OF COLLIN § EMPLOYMENT AGREEMENT
§

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Michelle Myers Montemayor ("Montemayor") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage and provide for the compensation of Montemayor, as an independent contractor and not as an employee, to serve as the Alternate Municipal Court Judge as provided by the City Charter and State Law; and

WHEREAS, Montemayor desires to provide services to the City as an Alternate Municipal Court Judge on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Section 1. Scope of Services

City hereby engages Montemayor, and Montemayor hereby agrees to provide services as the Alternate Municipal Court Judge every other calendar weekend or as mutually agreed to by Montemayor and the Municipal Court Judge during the term hereof in the capacity of a magistrate serving in the absence of the Municipal Court Judge, including, but not limited to, performing arraignments in the Allen City Jail, reviewing and signing arrest, blood, and search warrants, and magistrate Juveniles for the purpose of obtaining voluntary statements. The Alternate Municipal Judge shall also preside over the Municipal Court in the absence of the Municipal Court Judge, including, but not limited to, presiding over regularly scheduled docket hearings and trials. The Alternate Municipal Court Judge shall preside over Teen Court trials, which are scheduled on two evenings a month from September through May, and one evening per month during the summer.

The Alternate Municipal Court Judge shall provide assistance as needed to the Municipal Court Judge regarding the City's warrant round ups as scheduled.

Section 2. Term

Montemayor shall provide services to the City as Alternate Municipal Court Judge beginning February 15, 2017, through and including December 31, 2018. A performance and contract review shall be conducted annually. This Agreement shall automatically terminate without notice in the event Montemayor resigns or is removed from office as the Alternate Municipal Court Judge by the City Council. In the event of resignation or removal from office, Montemayor shall be paid for services rendered as of the date of termination or resignation. Nothing contained herein shall be construed to limit or prohibit the City Council from removing Montemayor as the Alternate Municipal Court Judge or to terminate this Agreement under the City Charter and applicable State Law.

Section 3. Compensation

City agrees to pay Montemayor for services rendered herein the sum of \$120.00 per hour for the term of February 15, 2017 through December 31, 2018, with a minimum 1-hour guarantee for all services actually rendered. The City shall provide payment for services within 15 days after receipt of an invoice submitted by Montemayor to the City's Finance Department.

Section 4. Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or Montemayor, as the case may be, at the address set forth below the signature of the Party.

Section 5. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 6. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the prior written consent of the City.

Section 7. Governing Law

This Agreement is governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in Collin County, Texas. Exclusive venue shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 8. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 9. Legal Construction

In the event 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, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 10. Independent Contractor

It is understood and agreed by and between the Parties that Montemayor, in satisfying the conditions of this Agreement, is acting independently, and that the City does not assume any responsibility or liability to any third-party in connection with these actions. All services to be performed by Montemayor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Montemayor shall supervise the performance of her services and shall be entitled to control the manner and means by which her services are to be performed, subject to the terms of this Agreement. City agrees during the term of this Agreement, at its costs, to obtain and maintain public official liability insurance covering the acts and omissions by Montemayor in the scope of her duties and responsibilities as Alternate Municipal Court Judge.

Section 11. Training

Montemayor agrees to participate in all required professional training related to the position of Alternate Municipal Court Judge. The City shall pay for all local (within the DFW metro area) training that has been approved in advance by the City Manager or designee. Registration costs associated with required professional training outside of the DFW area shall be paid by the City, however, all travel, lodging, and meal expenses shall be the responsibility of Montemayor.

Section 12. Effective Date

This Agreement shall become effective February 15, 2017.

EXECUTED this 15th day of February, 2017.

MICHELLE M. MYERS MONTEMAYOR

CITY OF ALLEN, TEXAS

By: _____

Michelle M. Myers Montemayor

Address: 2011 Glenmere Drive
Allen, Texas 75013

By: _____

Peter H. Vargas
City Manager

305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____

Shelly B. George, TRMC, CMC
City Secretary

THE STATE OF TEXAS §
COUNTY OF COLLIN § EMPLOYMENT AGREEMENT
§

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Donald McDermitt ("McDermitt ") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage and provide for the compensation of McDermitt, as an independent contractor and not as an employee, to serve as the Alternate Municipal Court Judge as provided by the City Charter and State Law; and

WHEREAS, McDermitt desires to provide services to the City as an Alternate Municipal Court Judge on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Section 1. Scope of Services

City hereby engages McDermitt, and McDermitt hereby agrees to provide services as the Alternate Municipal Court Judge every other calendar weekend or as mutually agreed to by McDermitt and the Municipal Court Judge during the term hereof in the capacity of a magistrate serving in the absence of the Municipal Court Judge, including, but not limited to, performing arraignments in the Allen City Jail, reviewing and signing arrest, blood, and search warrants, and magistrate Juveniles for the purpose of obtaining voluntary statements. The Alternate Municipal Judge shall also preside over the Municipal Court in the absence of the Municipal Court Judge, including, but not limited to, presiding over regularly scheduled docket hearings and trials. The Alternate Municipal Court Judge shall preside over Teen Court trials, which are scheduled on two evenings a month from September through May, and one evening per month during the summer.

The Alternate Municipal Court Judge shall provide assistance as needed to the Municipal Court Judge regarding the City's warrant round ups as scheduled.

Section 2. Term

McDermitt shall provide services to the City as Alternate Municipal Court Judge beginning February 15, 2017, through and including December 31, 2018. A performance and contract review shall be conducted annually. This Agreement shall automatically terminate without notice in the event McDermitt resigns or is removed from office as the Alternate Municipal Court Judge by the City Council. In the event of resignation or removal from office, McDermitt shall be paid for services rendered as of the date of termination or resignation. Nothing contained herein shall be construed to limit or prohibit the City Council from removing McDermitt as the Alternate Municipal Court Judge or to terminate this Agreement under the City Charter and applicable State Law.

Section 3. Compensation

City agrees to pay McDermitt for services rendered herein the sum of \$120.00 per hour for the term of February 15, 2017 through December 31, 2018, with a minimum 1-hour guarantee for all services actually rendered. The City shall provide payment for services within 15 days after receipt of an invoice submitted by McDermitt to the City's Finance Department.

Section 4. Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or McDermitt, as the case may be, at the address set forth below the signature of the Party.

Section 5. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 6. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the prior written consent of the City.

Section 7. Governing Law

This Agreement is governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in Collin County, Texas. Exclusive venue shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 8. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 9. Legal Construction

In the event 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, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 10. Independent Contractor

It is understood and agreed by and between the Parties that McDermitt, in satisfying the conditions of this Agreement, is acting independently, and that the City does not assume any responsibility or liability to any third-party in connection with these actions. All services to be performed by McDermitt pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. McDermitt shall supervise the performance of his services and shall be entitled to control the manner and means by which his services are to be performed, subject to the terms of this Agreement. City agrees during the term of this Agreement, at its costs, to obtain and maintain public official liability insurance covering the acts and omissions by McDermitt in the scope of his duties and responsibilities as Alternate Municipal Court Judge.

Section 11. Training

McDermitt agrees to participate in all required professional training related to the position of Alternate Municipal Court Judge. The City shall pay for all local (within the DFW metro area) training that has been approved in advance by the City Manager or designee. Registration costs associated with required professional training outside of the DFW area shall be paid by the City, however, all travel, lodging, and meal expenses shall be the responsibility of McDermitt.

Section 12. Effective Date

This Agreement shall become effective February 15, 2017.

EXECUTED this 15th day of February, 2017.

DONALD R. MCDERMITT

CITY OF ALLEN, TEXAS

By: _____

Donald R. McDermitt

Address: 1001 Timbercreek
Allen, Texas 75002

By: _____

Peter H. Vargas
City Manager

305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____

Shelly B. George, TRMC, CMC
City Secretary

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 14, 2017

SUBJECT: Accept the Resignation of Shirley Mangrum and
Declare a Vacancy in Place No. 5 on the Planning and
Zoning Commission.

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Accept the Resignation of Shirley Mangrum and
Declare a Vacancy in Place No. 5 on the Planning and
Zoning Commission.

BACKGROUND

On January 18th, Shirley Mangrum submitted a letter of resignation as a Commissioner of the Planning and Zoning Commission.

MOTION

I make a motion to accept the resignation of Shirley Mangrum and to declare a vacancy in Place No. 5 on the Planning and Zoning Commission.

ATTACHMENTS:

Resignation Letter

Shirley Mangrum
1231 Caledonia Court
Allen, Texas 75013

RECEIVED

JAN 18 2017

CITY OF ALLEN
CITY SECRETARY

January 18, 2017

To: Mayor Steve Terrell
CC: City Council, Peter Vargas, Bo Bass
From: Shirley Mangrum
Re: Allen Planning and Zoning Board

Mayor Terrell,

This letter is to inform you and the Allen City Council that as of today, I am resigning from the Allen Planning and Zoning Board. It has been a pleasure serving our great City and I thank you for the great opportunity to serve on this Board for the past 8 years. It has been an honor.

Again, thank you and I look forward to continuing to serve the people of this City in other wonderful ways.

Sincerely,



Shirley Mangrum

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	February 14, 2017
SUBJECT:	Receive the Investment Report for the Period Ending December 31, 2016.
STAFF RESOURCE:	Eric Cannon, Chief Financial Officer Tru Nguyen, Senior Accountant

BACKGROUND

Under the Public Funds Investment Act (the Act) the investment officer of an entity must prepare and submit to the governing body a written report of investment transactions for all funds covered by this chapter for the preceding reporting period. The report must be submitted quarterly. The attached report, for the period ending December 31, 2016, meets that requirement of the Act.

The Act requires that the following information be presented in the report: beginning market value, ending market value for the period, book value at the beginning and end of the reporting period, the fund type invested and the maturity date.

The Act also requires that the report be prepared and signed by an authorized investment officer verifying that the information presented is accurate.

The investment report summarizes all investment types and provides a summary of total investments by fund group. Government investments are listed separately and show changes in book and market value during this period. A list of definitions of terms used in the report is also included.

STAFF RECOMMENDATION

This report should be placed on the Council agenda as an information item. No action is necessary.

ATTACHMENTS:

Investment Report for the Period Ending December 31, 2016
Certify Investment Report
Definition of Terms

CITY OF ALLEN
Investment Report
October 1, 2016 to December 31, 2016

Summary of Investments by Type

Type	Value of all Investments 9/30/2016		Value of all Investments 12/31/16	
	Book	Market	Book	Market
Government Agencies	\$ 54,680,323	\$ 54,573,922	\$ 59,156,014	\$ 58,585,512
LGIP (TexPool, TexSTAR, Texas Class)	47,301,327	47,301,327	60,930,355	60,930,355
Certificates of Deposit	33,604,556	33,604,556	33,687,243	33,687,243
Municipal Bonds	1,291,771	1,288,613	1,294,410	1,285,364
TOTAL	\$ 136,877,978	\$ 136,768,419	\$ 155,068,022	\$ 154,488,474

Summary of Total Investment Book Value by Fund Group

	9/30/16	12/13/16
General Fund	\$ 22,603,662	\$ 31,570,170
Enterprise Funds	28,520,106	27,895,600
Capital Projects Funds	32,011,539	34,710,770
Debt Service Funds	1,034,378	8,566,212
Special Revenue Funds	35,446,162	33,699,687
Internal Service Funds	15,652,895	16,839,867
Trust and Agency Funds	1,609,237	1,785,716
TOTAL	\$ 136,877,978	\$ 155,068,022

Note: Addition differences due to rounding.

City of Allen

Government Agencies, Commercial Paper, and Certificates of Deposit

Maturity Date	Purchase Date	Type	Broker	CUSIP	Value at 9/30/16		Value at 12/31/16	
					Book	Market	Book	Market
12/28/16	02/21/14	FHLB	FES	3130A0C65	\$ 1,001,378	\$ 1,000,678	\$ -	\$ -
01/09/17	01/09/14	CD	ANB	9625880	\$ 3,060,473	\$ 3,060,473	\$ 3,066,082	\$ 3,066,082
01/20/17	01/20/15	CD	TSB	11974	\$ 3,123,182	\$ 3,123,182	\$ 3,130,086	\$ 3,130,086
02/15/17	10/02/12	Muni Bonds	COM	133303ZP5	\$ 301,404	\$ 301,293	\$ 302,317	\$ 300,384
04/03/17	04/02/14	CD	COB	3851-11575978	\$ 1,535,059	\$ 1,535,059	\$ 1,538,612	\$ 1,538,612
04/09/17	04/09/15	CD	TSB	11999	\$ 2,021,822	\$ 2,021,822	\$ 2,025,562	\$ 2,025,562
07/03/17	04/05/16	CD	COB	3851-11575960	\$ 1,014,110	\$ 1,014,110	\$ 1,015,673	\$ 1,015,673
07/30/17	07/30/14	CD	ANB	9631730	\$ 1,527,247	\$ 1,527,247	\$ 1,530,390	\$ 1,530,390
08/09/17	05/09/13	FFCB	FES	3133ECP24	\$ 1,000,640	\$ 998,796	\$ 1,002,383	\$ 999,412
08/14/17	08/13/15	CD	COB	3851-11577974	\$ 2,522,859	\$ 2,522,859	\$ 2,527,970	\$ 2,527,970
09/29/17	02/10/14	FHLMC	GS	3137EADL0	\$ 999,641	\$ 1,003,116	\$ 1,002,142	\$ 1,000,969
10/09/17	07/08/15	CD	COB	3851-11577560	\$ 2,525,430	\$ 2,525,430	\$ 2,530,666	\$ 2,530,666
10/26/17	10/26/15	FHLB	COM	3130A6LZ8	\$ 1,002,604	\$ 999,109	\$ 1,001,035	\$ 998,461
11/13/17	08/13/15	CD	COB	3851-11578014	\$ 2,526,204	\$ 2,526,204	\$ 2,532,063	\$ 2,532,063
11/28/17	05/28/13	FNMA	CS	3136G1M55	\$ 1,002,305	\$ 999,139	\$ 1,000,297	\$ 998,539
02/15/18	11/18/15	Muni Bonds	COM	463813ZV0	\$ 990,367	\$ 987,320	\$ 992,092	\$ 984,980
03/09/18	11/04/15	FHLB	CS	313378A43	\$ 1,012,213	\$ 1,008,153	\$ 1,015,868	\$ 1,003,577
03/14/18	01/29/16	FFCB	CS	3133EFSG3	\$ 1,504,237	\$ 1,504,349	\$ 1,507,732	\$ 1,500,165
03/29/18	03/29/16	FHLB	CS	3130A7MB8	\$ 1,499,938	\$ 1,501,485	\$ 1,503,678	\$ 1,496,247
04/09/18	07/08/15	CD	COB	3851-11577552	\$ 2,532,696	\$ 2,532,696	\$ 2,539,427	\$ 2,539,427
04/18/18	04/27/16	FFCB	COM	3133EF3B1	\$ 1,003,522	\$ 998,585	\$ 1,001,556	\$ 992,428
05/11/18	05/11/15	CD	COB	3851-11473455	\$ 3,081,175	\$ 3,081,175	\$ 3,090,244	\$ 3,090,244
05/18/18	05/18/16	FHLB	WF	3130A7VW2	\$ 1,003,616	\$ 1,001,112	\$ 1,001,110	\$ 997,218
06/06/18	08/07/15	FNMA	COM	3136G06F3	\$ 1,002,611	\$ 999,987	\$ 1,000,133	\$ 993,618
07/13/18	07/13/16	FNMA	CS	3135G0M42	\$ 1,001,899	\$ 998,380	\$ 1,004,142	\$ 995,546
07/27/18	11/04/15	FHLMC	CS	3134G73Q2	\$ 1,000,695	\$ 999,338	\$ 1,003,208	\$ 993,030
08/13/18	08/13/15	CD	COB	3851-11578006	\$ 5,071,364	\$ 5,071,364	\$ 5,087,321	\$ 5,087,321
10/26/18	10/29/15	FNMA	CS	3136G2RD1	\$ 1,004,226	\$ 1,000,233	\$ 1,001,667	\$ 1,000,452
10/29/18	10/29/15	FFCB	CS	3133EFLY1	\$ 1,003,776	\$ 1,000,074	\$ 1,001,443	\$ 993,345
11/02/18	11/02/15	FFCB	COM	3133EFMA2	\$ 1,004,058	\$ 998,636	\$ 996,398	\$ 991,880
12/28/18	06/28/16	FHLMC	COS	3134G9WB9	\$ 2,055,164	\$ 2,047,015	\$ 2,050,022	\$ 2,031,591
01/11/19	01/11/16	CD	COB	3851-11575564	\$ 3,062,937	\$ 3,062,937	\$ 3,073,148	\$ 3,073,148
02/22/19	02/22/16	FFCB	CS	3133EFLY0	\$ 1,001,112	\$ 1,000,111	\$ 1,003,977	\$ 995,145
02/27/19	01/29/16	FNMA	CS	3136FTP37	\$ 1,020,225	\$ 1,017,036	\$ 1,025,321	\$ 1,006,302
03/29/19	03/29/16	FFCB	CS	3133EFV38	\$ 1,999,897	\$ 2,000,604	\$ 2,006,130	\$ 1,992,872
03/29/19	03/29/16	FHLMC	WF	3134G8TV1	\$ 999,950	\$ 1,000,294	\$ 1,002,992	\$ 993,149
04/02/19	01/29/16	FFCB	CS	3133ECKP8	\$ 1,005,230	\$ 1,004,973	\$ 1,002,321	\$ 995,172
04/15/19	03/24/16	FHLMC	COM	3137EADZ9	\$ 1,005,823	\$ 1,004,441	\$ 1,002,251	\$ 995,953
04/26/19	04/26/16	FFCB	CS	3133EF4Y0	\$ 1,004,219	\$ 1,000,611	\$ 1,001,712	\$ 993,507
05/16/19	05/16/16	FHLMC	CS	3134G9DK0	\$ 1,004,405	\$ 1,000,734	\$ 1,001,397	\$ 991,521
05/16/19	05/16/16	FHLMC	WF	3134G9DK0	\$ 1,004,405	\$ 1,000,734	\$ 1,001,397	\$ 991,521
06/14/19	02/01/16	FHLB	COM	313379EE5	\$ 2,036,677	\$ 2,031,648	\$ 2,026,018	\$ 2,009,702
06/27/19	06/27/16	FFCB	WF	3133EGGS8	\$ 1,504,586	\$ 1,498,925	\$ 1,500,074	\$ 1,480,574
07/19/19	07/19/16	FNMA	CS	3136G3VN2	\$ 1,503,647	\$ 1,495,169	\$ 1,508,322	\$ 1,475,655
08/01/19	11/04/15	FHLMC	CS	3137EADK2	\$ 1,497,006	\$ 1,510,887	\$ 1,502,002	\$ 1,493,825
08/26/19	02/26/16	FNMA	CS	3136G2YB7	\$ 1,001,142	\$ 1,000,334	\$ 1,004,434	\$ 992,400
08/26/19	02/26/16	FNMA	WF	3136G2YB7	\$ 1,001,142	\$ 1,000,334	\$ 1,004,434	\$ 992,400
09/25/19	10/14/15	FHLB	CS	3130A6GD3	\$ 1,507,408	\$ 1,506,440	\$ 1,512,397	\$ 1,491,542
10/22/19	10/22/15	FFCB	COM	3133EFLA3	\$ 1,005,275	\$ 1,006,031	\$ 1,002,164	\$ 991,626
11/25/19	11/25/15	FNMA	CS	3136G2SU2	\$ 929,649	\$ 925,598	\$ 926,168	\$ 922,194
11/26/19	05/26/16	FNMA	CS	3136G3LV5	\$ 1,004,581	\$ 1,001,740	\$ 1,001,193	\$ 990,840
12/20/19	12/20/16	FHLB	CS	3130AABA5	\$ -	\$ -	\$ 999,008	\$ 987,469
12/27/19	12/27/16	FFCB	CS	3133EG2M6	\$ -	\$ -	\$ 1,000,443	\$ 997,833
12/30/19	06/30/16	FHLB	CS	3130A8JZ7	\$ 1,003,007	\$ 1,000,227	\$ 1,000,186	\$ 1,000,409
02/03/20	02/03/16	FFCB	CS	3133EFXM4	\$ 1,503,394	\$ 1,501,292	\$ 999,914	\$ 985,208
02/24/20	02/24/16	FFCB	COM	3133EFZT7	\$ 1,001,279	\$ 1,000,995	\$ 1,509,075	\$ 1,486,604
03/30/20	03/30/16	FFCB	COM	3133EFV20	\$ 999,893	\$ 1,001,367	\$ 1,004,767	\$ 985,289
03/30/20	03/30/16	FFCB	WF	3133EFV20	\$ 999,893	\$ 1,001,367	\$ 1,003,564	\$ 993,484
05/19/20	05/19/16	FHLB	COM	3130A7VV4	\$ 1,005,380	\$ 1,001,561	\$ 1,003,564	\$ 993,484
06/29/20	06/29/16	FFCB	WF	3133EGHP3	\$ 1,003,538	\$ 1,000,608	\$ 1,001,617	\$ 984,163
06/29/20	06/29/16	FFCB	CS	3133EGHP3	\$ 1,003,538	\$ 1,000,608	\$ 999,976	\$ 976,966
11/09/20	11/09/15	FFCB	CS	3133EFNM5	\$ 1,006,813	\$ 1,000,357	\$ 999,976	\$ 976,966
04/13/21	04/20/16	FHLB	COM	3130A7Q81	\$ 1,006,797	\$ 1,001,337	\$ 1,003,099	\$ 977,470
06/30/21	06/30/16	FNMA	WF	3136G3UD5	\$ 1,003,943	\$ 999,688	\$ 999,886	\$ 1,000,000
06/30/21	06/30/16	FNMA	WF	3136G3UD5	\$ 1,003,943	\$ 999,688	\$ 999,886	\$ 1,000,000
11/26/21	11/28/16	FHLB	FES	3130AA2K3	\$ -	\$ -	\$ 1,502,304	\$ 1,462,557
12/20/21	12/20/16	FHLB	CS	3130AAGR3	\$ -	\$ -	\$ 1,000,614	\$ 997,617
12/20/21	12/20/16	FHLB	COM	3130AAGR3	\$ -	\$ -	\$ 1,000,614	\$ 997,617
					\$89,576,650	\$89,467,091	\$ 94,137,667	\$93,558,119

Agencies	\$ 54,680,323	\$ 54,573,922	\$ 59,156,014	\$ 58,585,512
Municipal Bonds	\$ 1,291,771	\$ 1,288,613	\$ 1,294,410	\$ 1,285,364
Certificates of Deposit	\$33,604,556	\$33,604,556	\$ 33,687,243	\$33,687,243

ANB	American National Bank	FP	First Public
BC	Benchmark Securities	GS	Gilford Securities
BOA	Bank of America	LB	Legacy Bank
CB	Cathay Bank	SWS	Southwest Securities
CS	Coastal Securities	TSB	Texas Security Bank
COB	Comerica Bank	VP	View Point Bank
COM	Comerica Securities	WF	Wells Fargo
FES	First Empire Securities	ZB	Zions Natl Bank

Note: Addition differences due to rounding.

CITY OF ALLEN

Quarterly Investment Report

October 1, 2016 through December 31, 2016

We certify that the information presented in the attached quarterly investment report for the period ending December 31, 2016 is correct to the best of our knowledge. We further certify that the investments are in compliance with (a) the investment strategy contained in the City's investment policy and (b) the relevant provisions in the Public Funds Investment Act.

(signature on executed copy)
Eric Cannon, Chief Financial Officer

(signature on executed copy)
Joanne Stoehr, Assistant Chief Financial Officer

(signature on executed copy)
Tru Nguyen, Senior Accountant II

DEFINITION OF TERMS

Treasury Bill - A short-term, non-interest-bearing promissory note sold to investors at a discount by the U.S. government to finance its debt.

Treasury Bond Strip - Treasury bond which has been stripped of its coupons. It pays interest only at maturity.

Federal Agricultural Mortgage (Farmer Mac) – Created by Congress to improve the availability of mortgage credit to America's farmers, ranchers and rural homeowners, businesses and communities.

Federal Home Loan Mortgage (Freddie Mac) - A shareholder owned government sponsored enterprise established by Congress to provide a continuous flow of funds to mortgage lenders through the purchase of mortgage loans. To finance its mortgage purchase activities, Freddie Mac offers and sells its securities to investors directly and through selected dealers, underwriters and underwriting syndicates.

Federal National Mortgage Assoc. (Fannie Mae) - A shareholder owned corporation that is now regulated by an office within the Department of Housing and Urban Development. Fannie Mae purchases residential mortgage loans from primary lenders, thereby replenishing those institutions' supply of mortgage funds. To finance its loan purchases, Fannie Mae issues securities which are sold through select dealers and dealer banks.

Federal Home Loan Bank - Is comprised of the 12 Federal Home Loan Banks and the Office of Finance under the supervision of the Federal Housing Finance Board, an independent agency in the executive branch of the U.S. Government. The primary function of the Bank System is to serve the public with the purpose of enhancing the availability of residential mortgage credit by providing a readily available, low cost source of funds to its member institutions.

Farm Credit - Is a nationwide system of lending institutions which provides credit and related services to farmers, ranchers, producers and harvesters of aquatic products, rural homeowners, certain farm-related businesses, agricultural and aquatic cooperatives, rural utilities and to certain foreign or domestic entities in connection with international transactions.

Purchase Price - The amount paid for an investment.

Par Amount - The face value of an investment or the amount that will be paid if the investment is held to maturity.

Book Value - The purchase price of an investment plus interest which has accrued to a certain point in time.

Market Value - The face or par value of an investment multiplied by the premium or discount quoted on the valuation date.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

February 14, 2017

SUBJECT:

Conduct a Public Hearing and Adopt an Ordinance Approving Specific Use Permit No. 152 for a Gymnastics and Sports Training Facility use for a Portion of the Building Located on Lot 1, Block A of Lots 1 & 2, Allen Business Center II; Generally Located North of Bethany Drive and West of Greenville Avenue. [Alliance Cheer at Tech Center One - Gymnastics and Sports Training Facility]

STAFF RESOURCE:

Madhuri Mohan, AICP, Senior Planner

PREVIOUS COUNCIL ACTION:

October, 1981 - Adopted PD No. 3
May, 1985 - PD No. 3 Amendment Approved
June, 1986 - Final Plat Approved
July, 2015- PD No. 3 Amendment Approved

BOARD COMMISSION ACTION:

On January 17, 2017, the Planning and Zoning Commission voted 6 in favor (Commissioners Cocking, Trahan, Hollingsworth, Platt Jr., Mangrum, and Orr), 0 opposed, and 1 recused (Commissioner Ogrizovich) to recommend approval of the request with the addition of hours of operation to be included in the ordinance.

ACTION PROPOSED:

Conduct a Public Hearing and Adopt an Ordinance Approving Specific Use Permit No. 152 for a Gymnastics and Sports Training Facility Use for a Portion of the Building Located on Lot 1, Block A of Lots 1 & 2, Allen Business Center II; Generally Located North of Bethany Drive and West of Greenville Avenue. [Alliance Cheer at Tech Center One - Gymnastics and Sports Training Facility]

BACKGROUND

The property is generally located north of Bethany Drive and west of Greenville Avenue. The property to the north is zoned Planned Development PD No. 3 for Light Industrial LI. The properties to the west and south are zoned Planned Development PD No. 3 for Shopping Center SC. To the east (across Greenville Avenue), the properties are zoned Planned Development PD No. 46 for Community Facilities CF and Single-Family Residential District R-5.

The applicant is proposing to tenant an approximately 13,095± square foot portion of the existing building for a competitive cheerleading training facility. Staff categorizes this type of use as a Gymnastics and Sports Training

Facility use.

The property is zoned Planned Development PD No. 3 for Light Industrial LI. The Allen Land Development Code requires a Specific Use Permit SUP for a Gymnastics and Sports Training Facility use within the Light Industrial zoning district. The applicant submitted a business summary in conjunction with the SUP application.

The following is a summary of the proposed business operations:

- Regular operating hours: Monday through Friday 4:30 p.m. - 9:30 p.m. Saturday 10:00 a.m. - 6:00 p.m.; Sunday 1:00 p.m. - 9:00 p.m.
- Any special events will be held on weekends.
- The center will be staffed with a maximum of six staff members and 60 students.

The applicant is confident that parking provided will adequately support the facility because of parent drop-off and evening operating hours. Staff also believes the amount of parking is adequate for the proposed use.

There are no proposed changes to the exterior of the building.

The Specific Use Permit request has been reviewed by the Technical Review Committee.

On January 17, 2017, the Planning and Zoning Commission recommended approval of the request, with the addition of the hours of operation to be included in the ordinance.

After the Planning and Zoning Commission recommended approval of the request, the applicant discussed hours of operation with staff. While the primary activity will occur in the times indicated, general office use, employee training, and teaching of individual student lessons will occur outside the hours. The applicant generated a traffic study indicating no negative impacts to the parking outside the hours of operation that were originally listed.

The attached ordinance (With Hours of Operation) represents the recommendation made by the Planning and Zoning Commission without the benefit of a parking study. An alternate ordinance (No Hours of Operation) represents the parking study that was reviewed and approved by the Engineering and Planning Departments and will also be available for consideration by the City Council.

Both the Engineering and Planning Departments find that the activities for general office use, employee training, and teaching of individual student lessons will have no substantial impact on the site and concur that the offset of the hours of operation from the separate uses appear to allow for a shared parking experience for the tenants. Additionally, the applicant has stated that they will also have private lease agreements and will enforce parking on a private basis. For these reasons, City staff recommends approval of an alternate ordinance with no fixed hours of operation.

LEGAL NOTICES:

Public Hearing Sign Installed - January 6, 2017

Property Hearing Letter Mailed - January 6, 2017

Newspaper Notices Published - January 26, 2017

STAFF RECOMMENDATION

Staff recommends approval of the request.

MOTION

I make a motion to adopt Ordinance No. _____ for Specific Use Permit SUP No. 152 for a Gymnastics and Sports Training Facility Use for a portion of the building Lot 1, Block A of Lots 1 and 2, Allen Business Center II; generally located north of Bethany Drive and west of Greenville Avenue.

ATTACHMENTS:

Ordinance_P&Z Recommendation

Property Notification Map

Draft Minutes from the January 17, 2017, P&Z Meeting

Parking Study

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING SPECIFIC USE PERMIT NO. 152 TO ALLOW A 13,095 SQUARE FOOT PORTION OF THE BUILDING LOCATED ON LOT 1, BLOCK A OF LOTS 1 AND 2, ALLEN BUSINESS CENTER II (ALSO KNOWN AS 718 S. GREENVILLE AVENUE) PRESENTLY ZONED PLANNED DEVELOPMENT NO. 3 LIGHT INDUSTRIAL “LI” TO BE USED FOR A GYMNASTIC AND SPORTS TRAINING FACILITY USE; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, be amended by granting Specific Use Permit No. 152 for a 13,095 square foot portion of the building depicted on Exhibit “A,” and attached hereto and incorporated herein by reference, located on Lot 1, Block A of Lots 1 and 2, Allen Business Center II (also known as 718 S. Greenville Avenue) (the “Property”), which is presently zoned Planned Development No. 3 Light Industrial “LI,” to be used for a Gymnastics and Sports Training Facility use.

SECTION 2. The Property shall be used only in the manner and for the purposes provided for in the Allen Land Development Code Zoning Regulations, as heretofore amended, and as amended herein, subject to the following special conditions:

- A. The Specific Use Permit granted hereby is expressly limited to the area of the Property shown as shaded and labeled “Alliance Cheer” on Exhibit “A” hereto.
- B. Only Alliance Cheer, LLC is authorized by this Ordinance to use the Property for a Gymnastics and Sports Training Facility.
- C. Use of the Property for conducting group classes shall be solely between the hours of 4:30 p.m. through 9:30 p.m. on Mondays through Fridays; 10:00 a.m. through 6:00 p.m. on Saturdays; and 1:00 p.m. through 9:00 p.m. on Sundays.
- D. Use of the Property for conducting tournaments, show cases, or other special events in association with the Gymnastics and Sports Training Facility use shall be limited to 10:00 a.m. through 6:00 p.m. on Saturdays; and 1:00 p.m. through 9:00 p.m. on Sundays.

- E. Use of the Property for general office use, conducting employee training, and teaching of individual student lessons in association with the Gymnastics and Sports Training Facility use may be conducted at times in addition to and other than the times set forth in Paragraphs C and D, above.
- F. The minimum number of off-street parking spaces required by Section 7.04.1 of the Allen Land Development Code that would otherwise be required by using the portion of the Property shown on Exhibit "A" as a Gymnastics and Sports Training Center may be reduced to one hundred nineteen (119) for so long as (i) the portion of the Property labeled on Exhibit "A" as "Alliance Cheer" is used only for a Gymnastics and Sports Training Center and (ii) the facts set forth in the parking study attached hereto as Exhibit "B" and incorporated herein by reference relating to the operations of the Property and those who jointly use the parking areas as noted in the parking study remain substantially unchanged.
- G. The number of participants at tournaments, show cases, or other similar special events (inclusive of, but not limited to, contestants, spectators, judges, coaches, event coordinators, employees, volunteers, and others who will be present on the Property during such events) conducted in association with the Gymnastics and Sports Training Facility use shall be limited so that the number of vehicles parked on the lot on which the Property is located does not exceed available off-street parking on said lot.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this ordinance, the provisions of this ordinance shall be controlling.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS 14TH DAY OF FEBRUARY 2017.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

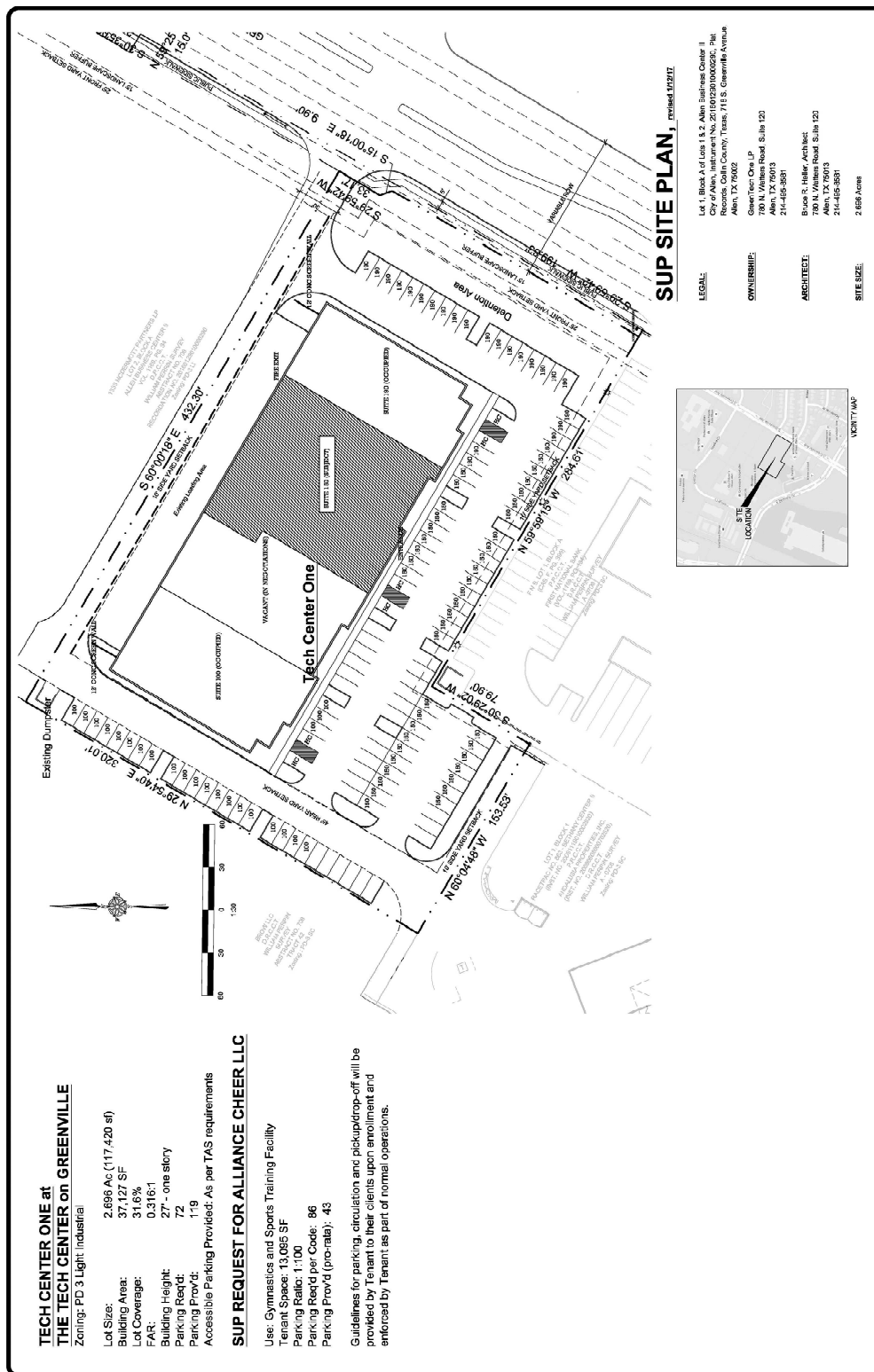
ATTEST:

Peter G. Smith, CITY ATTORNEY (kbl:2/8/17:83351)

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT “A”

Site Plan



**EXHIBIT “B”
PARKING STUDY**

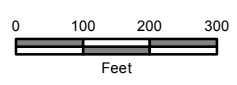
See separate attachment.



Property Ownership Notification
Alliance Cheer Tech Center One
SUP

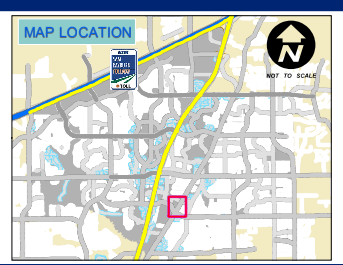
Map Legend

- 200' Notification Buffer
- Railroad
- Public Rezone
- CollinCAD Parcels



Community Development - GIS
Date Saved: 1/4/2017

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.



January 17, 2017, Planning and Zoning Commission Meeting Minutes

Public Hearing – Conduct a Public Hearing and consider a request for a Specific Use Permit SUP for a Gymnastics and Sports Training Facility use. The property is an approximately 13,095± square foot portion of the building located on Lot 1, Block A of Lots 1 & 2, Allen Business Center II; generally located north of Bethany Drive and west of Greenville Avenue (and commonly known as 718 S. Greenville Avenue). (SUP-11/29/16-117) [Alliance Cheer at Tech Center One]

Chairman Cocking stated that one member of the P&Z will be recusing himself due to a conflict of interest.

Ms. Meredith Nurge, Planner, presented the item to the Commission. She stated the item is a request for a Specific Use Permit for Alliance Cheer at Tech Center One. The property is generally located north of Bethany Drive and west of Greenville Avenue. The property to the north is zoned Planned Development PD No. 3 for Light Industrial LI. The properties to the west and south are zoned Planned Development PD No. 3 for Shopping Center SC. To the east (across Greenville Avenue), the properties are zoned Planned Development PD No. 46 for Community Facilities CF and Single-Family Residential District R-5.

The applicant is proposing to tenant an approximately 13,095± square foot portion of the existing building for a competitive cheerleading training facility. Staff categorizes this type of use as a Gymnastics and Sports Training Facility use.

The property is zoned Planned Development PD No. 3 for Light Industrial LI. The Allen Land Development Code requires a Specific Use Permit SUP for a Gymnastics and Sports Training Facility use within the Light Industrial zoning district.

Ms. Nurge explained that the applicant submitted a business summary in conjunction with the SUP application. The following is a summary of the proposed business operations:

- Regular operating hours: Monday through Friday 4:30 p.m. – 9:30 p.m.; Saturday 10:00 a.m. – 6:00 p.m.; Sunday 1:00 p.m. – 9:00 p.m.
- Any special events will be held on weekends.
- The center will be staffed with a maximum of six staff members and 60 students.

The applicant is confident that parking provided will adequately support the facility because of parent drop-off and evening operating hours. Staff also believes the amount of parking is adequate for the proposed use.

There are no proposed changes to the exterior of the building.

The Specific Use Permit request has been reviewed by the Technical Review Committee.

2nd Vice Chair Platt asked if the applicant would be in a shared facility.

Ms. Nurge said yes.

Chairman Cocking opened the Public Hearing.

Matt Sturgis, 21 Prestige Cr., Allen, Texas, spoke in opposition of the request. He voiced concerns regarding and proximity of the proposed development to surrounding similar developments. He said that

the current gyms are the only gyms allowed in the immediate area, as stated by the Planning and Zoning Commission several years ago.

Bruce Heller, 718 Greenville Ave., Allen, Texas, Applicant, spoke in support of the request. He provided a detailed explanation about the parking and the hours of operation. The proposed development has less parking than what is required; however, because of the non-peak hours of operation, parking will be adequate as it will be available due to different hours of operation of the other tenants which would not overlap with this proposed facility.

Ginger Taub, 131 Buckingham Ln., Allen, Texas, spoke in opposition of the request. She voiced concerns regarding the hours of operation and the location of the gym.

Nathan Pipitone III, 1607 Thoroughbred Ln., Allen, Texas spoke in opposition of the request. He had concerns regarding the hours of operation and the potential gym owner having previously been affiliated with a nearby gym.

Jen Brungardf, Allen, Texas, spoke in opposition of the request. She also voiced concerns regarding the potential gym owner having previously been affiliated with a nearby gym.

Chairman Cocking closed the Public Hearing.

Written opposition included:

- Brian Mazzei, 1410 Sunshine Dr., Allen, Texas - Opposed
- Krista Thornley, 710 Beaumont Ct., Allen, Texas – Opposed
- David and Lisa Hightower, 1621 Pecan Creek Ln., Allen, Texas – Opposed
- Jason Gillespie, 1226 Comanche Dr., Allen, Texas – Opposed
- Jamie Hinkel, 1720 Live Oak Ln., Allen, Texas – Opposed
- Ann Pipitone, 1602 Thoroughbred Ln., Allen, Texas – Opposed
- Kristi Baker, 1814 Northbrook Ct., Allen, Texas – Opposed
- Kathy Heurder, 2254 Enchantment Ln., Allen, Texas – Opposed

Chairman Cocking asked if the hours of operation would be the only hours allowed or if the hours could be extended past this time.

Ms. Nurge said that the hours of operation presented are the hours received from the applicant. These will be written down in the SUP.

Mr. Bo Bass, Director of Community Development, said that the Planning and Zoning Commission may limit the hours of operation, but that the applicant should ensure that the hours of operation are suitable for the development.

Mr. Heller answered yes, the hours listed in the SUP Site Plan are the intended hours.

Mr. Bass said that any hours outside of the hours that are listed would be in violation of the SUP Ordinance if Council approves the SUP.

Chairman Cocking said that he was not aware of a time when the Planning and Zoning Commission made a restriction on the number of similar uses allowed in an immediate area.

Mr. Bass said that is also not aware of any limitation on any land use. He said that staff does not look at the number of similar uses within a specific area. Instead, staff is more concerned about the functionality and life safety of the use.

Commissioner Hollingsworth said that two similar restaurants exist within that area, across the street from one another.

Commissioner Mangrum suggested that the cheer facilities join and do an event together.

Chairman Cocking said that the commission does not have a right to regulate commerce and cannot decide how many of one particular use is too many.

Motion: **Upon a motion by 1st Vice-Chair Trahan and a second by 2nd Vice-Chair Platt, the Commission voted 6 IN FAVOR, and 0 OPPOSED to approve the request for a Specific Use Permit SUP for a Gymnastics and Sports Training Facility use for the approximately 13,095± square foot portion of the building; generally located north of Bethany Drive and west of Greenville Avenue (and commonly known as 718 S. Greenville Avenue), with the addition of the hours of operation to be included in ordinance.**

The motion carried.

February 7, 2017

PK NO: 1829-15.144

PARKING DEMAND ANALYSIS

Project:

Alliance Cheer at Tech Center One

In Allen, Texas

Prepared for:

City of Allen

On behalf of:

GreenTech One LP



Steve E. Stoner

2/7/17

Prepared by:



7557 Rambler Road, Suite 1400

Dallas, Texas 75231-2388

(972) 235-3031 www.pkce.com

TX. REG: ENGINEERING FIRM F-14439

TX. REG. SURVEYING FIRM LS-10193805-00

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Table 2. Base Code Parking Requirement

LIST OF EXHIBITS:

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Exhibit 2. Hourly Profile – Cheer/Tumbling Facility
Exhibit 3. Project Hourly Profile – Tech Center One

APPENDIX

INTRODUCTION

The services of **Pacheco Koch** (PK) were retained by **GreenTech One LP**, to conduct a Parking Demand Analysis (PDA) for the proposed *Alliance Cheer* (tenant) within the development known as *Tech Center One* (the "Project") located at 718 S. Greenville Avenue in Allen, Texas. A proposed site plan (provided by the Owner) is provided at the end of this report.

GreenTech One LP is seeking a Specific Use Permit from the City to facilitate development of the Project. Submittal of a PDA, prepared by a skilled professional was requested by the City as part of the review process. This PDA was prepared in accordance with industry and local standards by registered professional engineers employed by Pacheco Koch. Pacheco Koch is a licensed engineering firm based in Dallas, Texas, that provides professional services in traffic engineering, transportation planning, parking analysis, and related fields.

Purpose

A PDA is an investigation of actual and/or published parking demand characteristics for a specific site with specific land use(s). The analysis is designed to take into consideration any site-specific factors that may affect parking demand. Therefore, the results presented in this analysis may not apply to other examples of the same land use.

Parking demand is theoretically represented by local zoning ordinances. However, in many cases, these ordinances are overly-simplified and/or do not sufficiently reflect actual parking needs. The purpose of this PDA is to project the site parking demand at full occupancy and determine if the available parking supply is sufficient. Approval of any reduction is a subject to the approval process of the City of Allen.

Project Description

The Project consists of a single building containing approximately 36,636 gross square feet of building area. The building has two existing tenants representing 43% occupancy. The proposed tenant, *Alliance Cheer*, is an athletics facility for cheerleading and tumbling with three separate studios. The use would occupy 13,095 square feet. The remainder of the building, including an existing 7,771-SF vacancy, would be occupied by Office Showroom/Warehouse uses. A summary of the building occupancy and the associated base code parking requirements is provided in **Table 1**.

Table 1. Development Program Summary

USE	AMOUNT
Suite 100	Office – 6,749 SF Warehouse – 1,806 SF Total – 8,555 SF
Suite TBD	Office – 5,828 SF Warehouse – 1,943 SF Total – 7,771 SF
Suite 150	13,095 SF
Suite 190	Office – 5,802 SF Warehouse – 1,413 SF Total – 7,215 SF
TOTAL	36,636 SF

NOTE: The development program provided above is based upon the most current and complete information available at the time of this study publication.

The site provides an off-street parking supply of 119 spaces.

Code Parking Requirement

The study site is currently zoned PD 3 - Light Industrial. The standard parking requirements are outlined in Article VII of the Land Development Code. A summary of the parking requirement per standard code rates is summarized in **Table 2**.

Table 2. Base Code Parking Requirement

LAND USE	AMOUNT	RATE	DIRECT REQUIREMENT
Office	18,379 SF	1 space per 300 GSF	61.3
Warehouse	5,162 SF	1 space per 2,000 GSF	2.6
Athletic Facility	13,095 SF	See summary*	86.0*
Total	36,636 SF	--	149.8

* A parking calculation--prepared by Owner, and approved by City--was based upon detailed use and occupancy data. A prior parking study for a similar athletic facility prepared by C&P Engineering, Ltd. and a letter explaining the operational characteristics of the proposed use were also provided by the Owner and are included in the Appendix. Pacheco Koch reviewed all information provided and concludes that the parking requirement of 86 parking spaces is reasonable and is consistent with the findings of the previous study.

NOTE: The cumulative parking requirement of 150 parking spaces for all uses exceeds the on-site parking supply of 119 spaces. However, the basis for the parking calculation is that the site will utilize shared parking as illustrated in the following section.

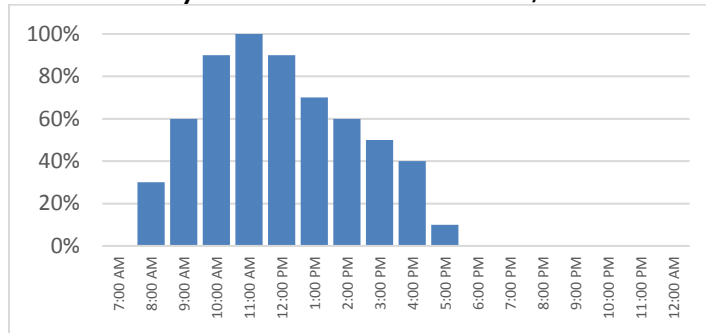
PARKING DEMAND ANALYSIS

The parking demand for the two primary uses – office showroom/warehouse and athletic facility – are complementary in nature due to hours of operation and general operational characteristics. In other words, the peak parking demand for both primary uses do not coincide, so parking spaces can be used by both uses at different times of day. The following analysis summarizes the respective parking demand characteristics.

Office Showroom/Warehouse

The typical office showroom/warehouse use, including the existing tenants at the subject site, has business hours from 8:00 AM to 5:00 PM on weekdays (closed on weekends). Based upon hourly occupancy data obtained from visitation statistics at similar businesses¹, the parking demand profile on a typical business day is graphically illustrated in Exhibit 1.

Exhibit 1. Hourly Profile – Office Showroom/Warehouse Use

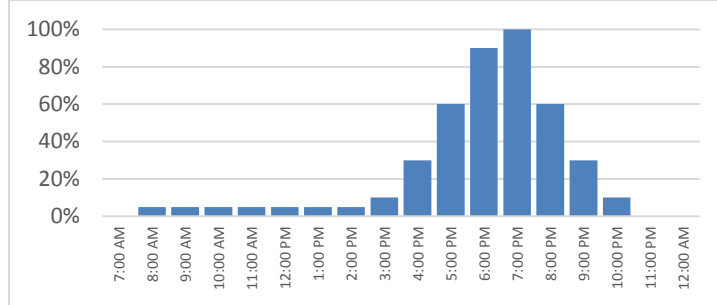


As summarized in the graph, the peak parking demand for the office showroom/warehouse use occurs during the 11:00 AM hour.

Cheerleading/Tumbling Athletic Facility

The typical cheerleading/tumbling facility conducts group instruction from 4:30 PM-10:00 PM on weekdays. Office hours and private instruction may begin as early as 8:00 AM. Most facilities also have additional business hours on weekends; however, the weekend analysis is not included in this study since the office showroom/warehouse businesses are typically closed during this time, and available parking is abundant. Based upon hourly occupancy data obtained from visitation statistics of similar businesses¹, the parking demand profile on a typical business day is graphically illustrated in Exhibit 2.

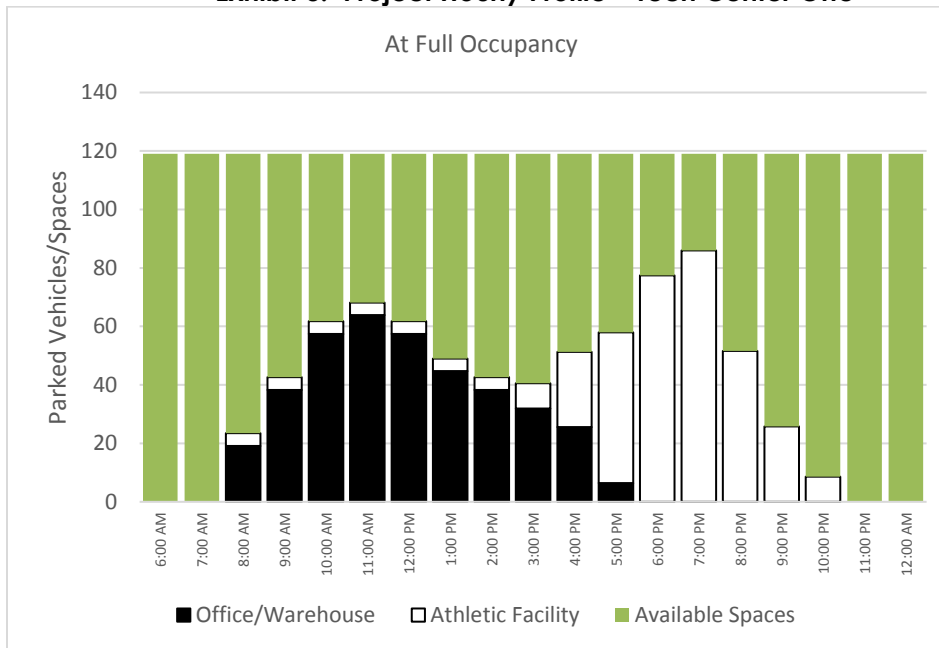
¹ Based upon hourly visitation data of individual businesses obtained by Google from aggregated and anonymized visitation data. Data available in Google Maps.

Exhibit 2. Hourly Profile – Cheer/Tumbling Facility

As summarized in the graph, the peak parking demand for the cheerleading/tumbling facility use occurs during the 7:00 PM hour.

Projected Site Parking Demand

Using the respective City code requirements as the peak parking demand, the hourly parking demand for both land uses at full occupancy (i.e., no vacancies) were tabulated. As summarized graphically in Exhibit 3, the peak parking demands for the two uses are offset. The overall peak parking demands are anticipated to occur during the 11:00 AM hour and the 7:00 PM hour on weekdays. The parking demand during the overlapping hours of operation (generally 3:00-5:00 PM) are during the off-peak times for both uses and, therefore, do not cumulatively result in a peak condition. For all hours of a typical day, the parking supply of 119 spaces provided on site is anticipated to provide sufficient parking for the proposed land uses.

Exhibit 3. Project Hourly Profile – Tech Center One

SUMMARY OF FINDINGS

The following findings and recommendations are based upon buildout of the subject property in accordance with the development scenario outlined in the *Project Description* section of this report.

FINDING: The office showroom/warehouse uses on site generally operate during the hours of 8:00 AM to 5:00 PM on weekdays. The peak parking demand for the uses typically occur during the late morning-noon period on weekdays.

FINDING: The proposed cheerleading/tumbling athletic facility is expected to conduct group activity from 4:30 PM to 10:00 PM on weekdays. Office hours and private instruction may begin as early as 8:00 AM on weekdays. Additional hours of operation may also be provided on weekends; however, the office showroom/warehouse uses are expected to be closed on the weekends. The peak weekday parking demand for the athletic facility is expected to occur during the early evening hours, which does not coincide with the other uses on site.

FINDING: Due to the complementary nature of the parking demands for the uses on the subject site, the parking supply of 119 spaces is expected to provide sufficient parking to accommodate the site at full occupancy.

END OF MEMO

TECH CENTER ONE at

THE TECH CENTER on GREENVILLE

Zoning: PD 3 Light Industrial

Lot Size:	2.696 Ac (117,420 sf)
Building Area:	37,127 SF
Lot Coverage:	31.6%
FAR:	0.316:1
Building Height:	27' - one story
Parking Req'd:	72
Parking Prov'd:	119
Accessible Parking Provided:	As per TAs requirements

SUP REQUEST FOR ALLIANCE CHEER LLC

Use: Gymnastics and Sports Training Facility

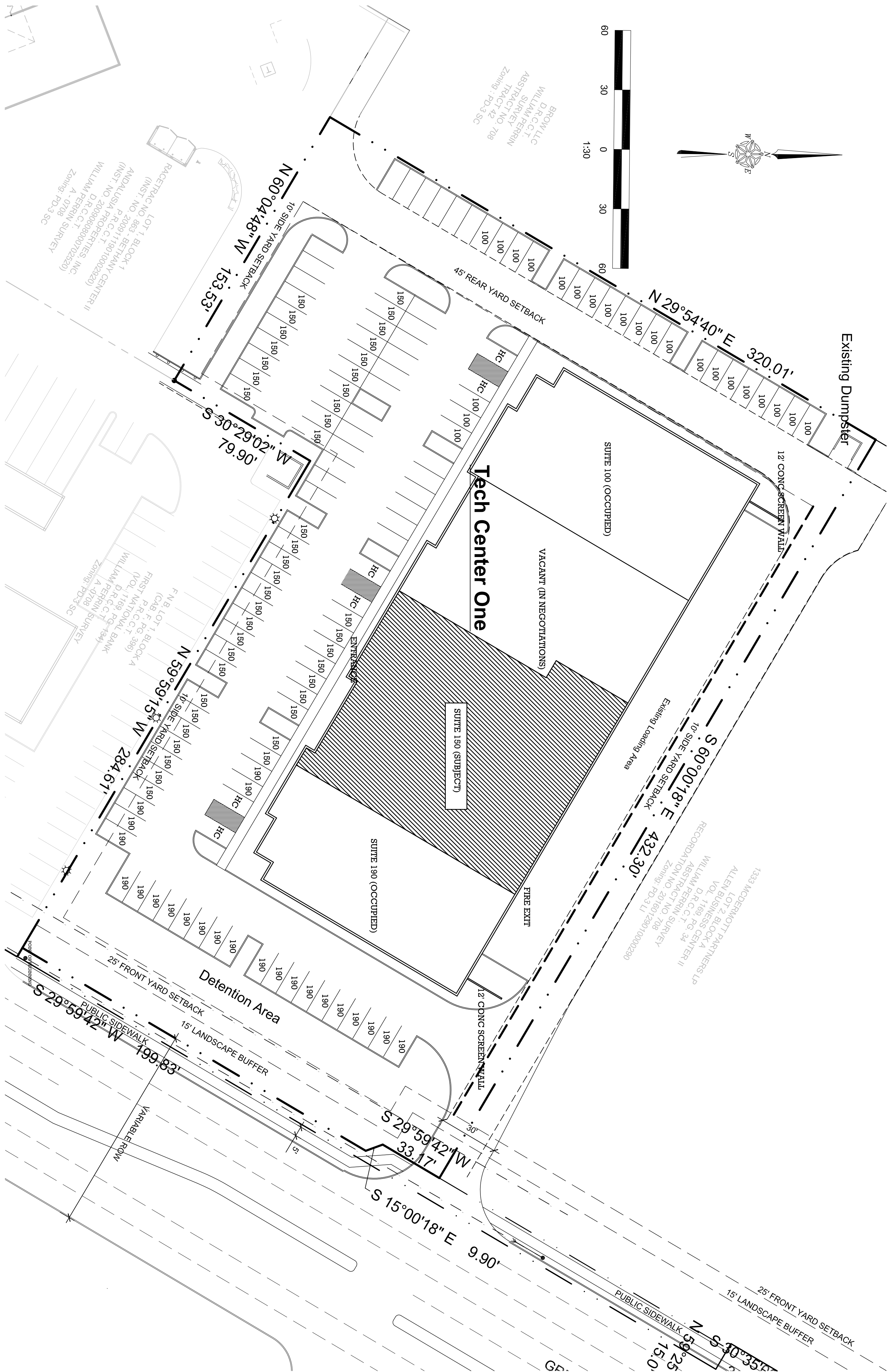
Tenant Space: 13,095 SF

Parking Ratio: 1:100

Parking Req'd per Code: 86

Parking Prov'd (pro-rata): 43

Guidelines for parking, circulation and pickup/drop-off will be provided by Tenant to their clients upon enrollment and enforced by Tenant as part of normal operations.



SUP SITE PLAN, revised 1/12/17

LEGAL:

Lot 1, Block A of Lots 1 & 2, Allen Business Center II
City of Allen, Instrument No. 20160129010000290, Plat
Records, Collin County, Texas, 718 S. Greenville Avenue,
Allen, TX 75002

OWNERSHIP:

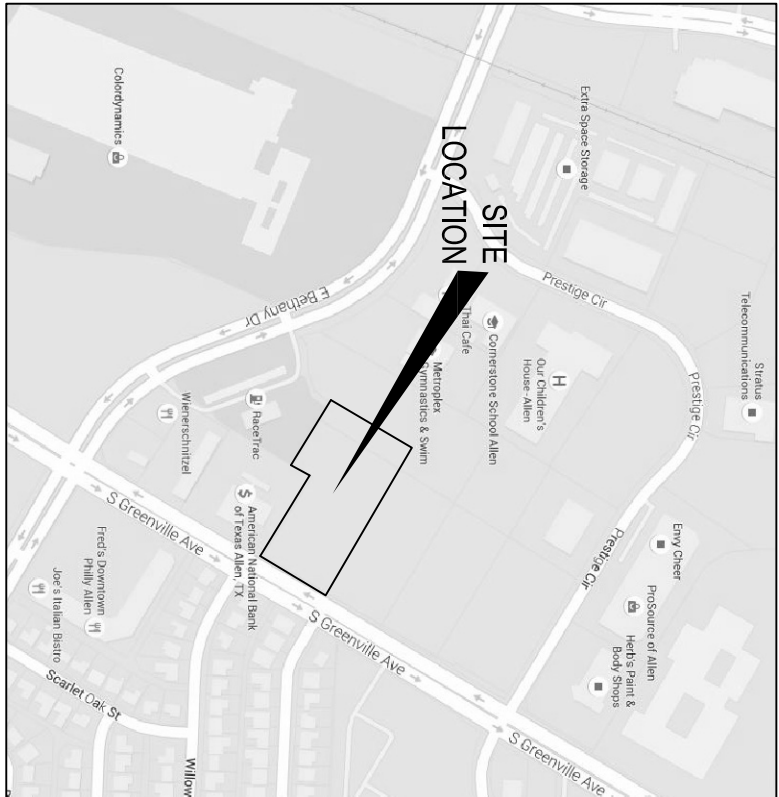
GreenTech One LP
780 N. Waters Road, Suite 120
Allen, TX 75013
214-495-8581

ARCHITECT:

Bruce R. Heller, Architect
780 N. Waters Road, Suite 120
Allen, TX 75013
214-495-8581

SITE SIZE:

2.696 Acres



APPENDIX

EXHIBIT "B"
PARKING STUDY

**ENVY CHEER
CHEER AND TUMBLE SCHOOL
PARKING STUDY**

Prepared for
Envy Cheer
December 7, 2012

By
C&P Engineering, Ltd.
Dannie Cummings, P.E.



Dannie Cummings
12-7-2012



C&P Engineering, Ltd.

1801 Gateway Blvd. • Suite 101 • Richardson, Texas 75080
(972) 644-2800 • Texas Registration No. F-3185

EXHIBIT "B"
PARKING STUDY (Continued)

**ENVY CHEER
PARKING STUDY
CITY OF ALLEN**

BACKGROUND DATA

Envy Cheer is a cheer and tumble school located in the City of Plano at 961 Avenue N, Suite 200. They currently lease a total of approximately 5,000 s.f. in adjacent suites (#200 and #300) and use only 15 parking spaces for staff and students.

They offer classes primarily after school and conduct a few morning classes on Saturday and from 1:00 to 7:30 on Sundays. Their peak class schedule occurs between 4:00 and 10:00 Monday through Thursday. On Saturday and Sunday the viewing area is closed so students are dropped off and off-street parking does not occur. Envy Cheer's class schedule for 2012 - 2013 has been attached to this report.

Envy Cheer does not host competition meets or show cases. When they are involved in such special events, they occur at remote locations such as the Dallas Convention Center, the Garland Events Center, or the UNT Super Pit.

The other suites within the Plano building are occupied by the following businesses:

Let's Party with 2:00 p.m. - 8:00 p.m. hours of operation;
Track Studio Music Lessons with 3:00 p.m. to 9:00 p.m. hours of operation;
Recording Sessions with 8:00 a.m. to 12:00 a.m. hours of operation;
the Flooring Center with 8:00 a.m. to 8:00 p.m. hours of operation;
the Pool Stick Company with 8:00 a.m. to 6:00 p.m. hours of operation; and
the Semi-Conductor Company with 8:00 a.m. to 6:00 p.m. hours of operation.

EXHIBIT "B"
PARKING STUDY (Continued)

PURPOSE OF STUDY

Envy Cheer is moving their facility from their present location in Plano to a new location in Allen with approximately 7,700 s.f. of space. The City of Allen's parking standards do not have a specific "cheer and tumble school" category. As a result the land use that the City subsequently applied to Envy Cheer resulted in their need to provide over 70 parking spaces for their facility. This is almost five times the number of spaces that Envy Cheer currently uses for their operation in Plano.

The City of Allen's Land Development Code in Section 7.04.1 "Vehicle Parking" provides for the following.

The Director and Director of Engineering may jointly grant a modification to off-street parking requirements when necessary for the efficient operation of the subject use. Such a modification in parking spaces shall be justified through the development of a parking study prepared by a professional engineer or transportation planner which demonstrates need, reviews industry standards, and proposes a modification that will not result in a parking deficiency.

C&P was engaged to conduct a parking study to determine and quantify the actual number of off-street parking spaces currently required by its facility in Plano.

EXHIBIT "B"
PARKING STUDY (Continued)

STUDY METHODOLOGY

To determine the actual number of off-street parking spaces currently required by Envy Cheer's Plano facility, we developed the following five step process.

1. Engage a qualified traffic data collection company.
2. Identify the time period during which to collect parking data.
3. Determine the data to collect.
4. Analyze and evaluate the collected data to determine the peak number of parking spaces used by Envy Cheer and research industry standards for possible parking rates for this type of facility.
5. Prepare a report to summarize the overall parking study process and present the off-street parking findings.

CONDUCTING THE PARKING STUDY

The following paragraphs summarize and describe the five steps listed in the Study Methodology in the previous section of this report.

TRAFFIC DATA COLLECTION COMPANY

Metrocount, located in Plano, was engaged to collect the parking data. They have been collecting traffic data in the DFW area for over 30 years.

IDENTIFY TIME PERIOD

Based on the hours of operation during which classes were offered we chose the following time period for our data collection: 4:00 - 7:00 p.m. during a Monday through Thursday weekday.

EXHIBIT "B"
PARKING STUDY (Continued)

DETERMINE THE DATA TO COLLECT

Data collectors were positioned both in the front of the building and in the back of the building to observe vehicles with passengers that entered and exited the Envy Cheer site.

Data was collected relating to "parked" vehicles. We collected data pertaining to the number of vehicles that parked in parking spaces at Envy Cheer's site and the number of vehicles that left parking spaces at Envy Cheer's sites. We defined these vehicles as those whose occupants all left their vehicles and entered the Envy Cheer site and those whose occupants all exited from the Envy Cheer site and entered their vehicles.

The "parked" vehicles data was recorded by the exact time that a vehicle either parked in a parking space or exited from a parking space between 4:00 and 7:00 on Tuesday August 21.

We also collected data relating to "drop off" students. We defined these vehicles as those vehicles that pulled up to the Envy Cheer facility and either dropped off or picked up a student. They did not park. This data was collected in five minute intervals between 4:00 and 7:00 p.m. on Tuesday August 21.

The field data sheets showing the actual data collected have been attached to this report.

ANALYZE AND EVALUATE THE PARKING DATA

Table 1 summarizes the parking data that was collected by Metrocount.

TABLE 1
PARKING DATA

TIME PERIOD	PARKED VEHICLES		DROP OFF VEHICLES	
	ARRIVE	DEPART	DROP OFF	PICK UP
4:00 - 4:30	4	5	1	0
4:30 - 5:00	10	0	4	0
5:00 - 5:30	2	1	1	1
5:30 - 6:00	2	7	1	0
6:00 - 6:30	1	2	1	0
6:30 - 7:00	6	13	5	0
TOTAL	25	28	13	1

EXHIBIT "B"
PARKING STUDY (Continued)

During any one 30 minute period of the parking data the maximum number of customer parking spaces needed was 10 which occurred during the 4:30 - 5:00 time period. During all other 30 minute time periods, more vehicles unparked than parked.

During that same time period of 4:30 - 5:00, four vehicles were recorded dropping off students. Potentially these four vehicles could have chosen to park. If we combine the parked and drop off vehicles during this 30 minute peak period, we get a potential maximum customer parking need at the existing Plano site of 14 spaces. The Owner indicated a need for two staff parking spaces which results in a maximum parking need at the existing Plano site of 16 spaces. This correlates well with the Owner's original statement of using 15 spaces for his current operations.

The new site in Allen will increase the available space by approximately 50%. By applying this factor to the Plano maximum parking need quantified in the preceding paragraph we obtain a maximum parking need for the new Allen site of 24 spaces.

We researched available parking data as collected and documented by the Institute of Transportation Engineers, the Eno Foundation, and the Urban Land Institute. Data for businesses such as a cheer and tumble school or other gymnastics type facilities were not available. The closest possibly similar land uses were health and athletic clubs.

PREPARE REPORT

C&P has prepared this report to document the process that we used to determine the actual number of off-street parking spaces that the Envy Cheer facility in Plano actually needs for its customers.

Our study has determined that during a typical peak period the potential number of off-street spaces actually needed in Plano was 16. With an approximate 50% increase in the square footage at the new site in Allen we recommend that 24 parking spaces be used as the number of off-street spaces that the new Envy Cheer facility in Allen be required to provide.

CLOSING

We have appreciated the opportunity to assist the owners of the Envy Cheer facility in the preparation of this parking study for your new site in Allen. Please do not hesitate to contact our office should you have any questions or comments concerning this report.

ENVY CHEER 2012-2013

EXHIBIT "B" PARKING STUDY (Continued)

Sunday	Monday	Tuesday	Wednesday	Thursday	Saturday
12:45-2:45 Jr 2	4:00-5:00 ASA Cheer	4:00-5:00 ASA Leopards	4:15-5:00 Standing BHS Class	4:30-5:30 Tumble 1-2 Tumble 3-4	9:30-12:30 SR 4
2:30-4:45 Jr3	4:45-5:45 Tumble 1-2 Tumble 2-3	4:45-5:45 Tumble 1-2	4:30-5:30 Tumble 2-3	5:30-6:30 Tumble 2-3	9:30-10:30 Tumble 1-2
4:45-7:45 Sr 5	5:00-7:00 Rec	5:00-7:00 Rec	5:00-6:00 ASA Cowboys	5:30-7:30 JR2	
	5:45-6:45 Flight Class	5:45-6:45 Tumble 2-3	5:30-7:30 JR 3	6:30-7:30 Tumble 3-4	
	6:45-9:00 SR 4	6:45-7:45 Tumble 3-4 Flight Class	7:30-9:30 SR 5	7:30-8:30 Flight Class Tumble 4-5	
		7:45-8:45 Tumble 4-5			
		8:00-8:45 Standing Tucks Class			

****Last week of the month is BRING A FRIEND to TUMBLE**

****2nd FRIDAY of every month is FLIPPIN FRIDAY NIGHT 6:30-8:30 \$10.00**

1-2 Tumbling: A lot of focus is put on the basic of tumbling: ie Round-offs, hand stands, and introduction into back handspring.

2-3 Tumbling: Round off handspring series, front walk over through, back handspring step-out's, and standing back handspring series.

3-4 Tumbling: Round off back handspring tuck, specialty passes through a tuck, standing back handspring tuck, and standing tucks are the focal point of this class. As well as introducing the students into proper layout techniques.

4-5 Tumbling: Layouts, standing to layout, fulls, standing fulls, and standing to fulls are the main skills worked on in this class.

****Students with a standing tuck are recommended for this class only. ****

Standing BHS Classes: \$45.00

Standing Tuck Classes: \$45.00

Registration Fee: \$45.00

Flight Class: \$20.00

Tumbling Classes: \$65.00

EXHIBIT "B"
PARKING STUDY (Continued)

East Side (Main Entrance)				961 Ave N - Plano, TX	
				Smith 200	8-21-12
	DROP-OFF (CARS)	PICK-UP (CARS)		CAR PARKED (TIME)	CAR LEAVES (TIME)
4:00-4:10	1	1		4:16	4:18
4:10-4:20				4:20	4:21
4:20-4:30				4:20	4:23
4:30-4:40	1	1		4:23	4:24
4:40-4:50	1	1		4:27	4:25
4:50-5:00	11	2		4:42	5:02
5:00-5:10		1	1	4:43	5:42
5:10-5:20	1	1		4:45	5:43
5:20-5:30				4:45	5:44
5:30-5:40	1	1		4:54	5:49
5:40-5:50				4:55	5:50
5:50-6:00				4:57	5:51
6:00-6:10				4:58	5:51
6:10-6:20				5:00	6:07
6:20-6:30	1	1		5:08	6:09
6:30-6:40	1	1		5:13	6:44
6:40-6:50	11	4		5:45	6:47
6:50-7:00				5:48	6:54
				6:06	6:56
				6:31	6:57
				6:37	6:58
				6:41	6:58
				6:45	6:58
				6:47	6:58
				6:57	6:59
					6:59
					6:59
					7:00
METER COUNT					
9125 Concho Drive, Plano, TX					
Near High School					

EXHIBIT "B"
PARKING STUDY (Continued)

West Side (Rear Entrance)				961 Ave N - Plano, TX	
				Sheet 240	8-21-12
TIME	DRIVE-OFF (CARS)	PICK-UP (CARS)	IS R	CAR PARKED (TIME)	CAR LEAVES (TIME)
4:00 - 4:10	0	0	0	0	0
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JaRyCo Development, LLC
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Allen, TX 75013
Tel: (214) 495-8581
www.jaryco.com

VIA E-MAIL/HAND DELIVERY

February 1, 2017

Bo Bass
Madhuri Mohan
City of Allen
305 Century Parkway
Allen, TX 75013

RE: Alliance Cheer SUP

Dear Bo and Madhuri:

I know we are meeting in the morning but thought it might be helpful to provide the information below for review prior to our meeting.

We are always as concerned, possibly more so, than the city, with any potential parking issues created by a tenant. These types of problems only create challenges with our other tenants and ultimately lower the value of our asset. Sixteen years ago on our first Allen project, The Atrium at 1333 McDermott, we had a tenant that grew very quickly and created a parking problem. We resolved the problem but the time and effort required to do so made Cindy and I realize that we never wanted to re-live that experience. We modified our leases whereby any creation of such problems is a default under the lease that is required to be corrected. The default does not terminate the lease, it simply required the tenant change their processes to avoid causing the problem while they continue to pay rent. Our lease with Alliance Cheer contains these default provisions. In addition, we maintain a parking spreadsheet on all JaRyCo properties that tracks code required, lease required and anticipated actual parking use by each tenant so that we make sure we do not create a problem during the leasing of a project.

Special type uses always need to be analyzed carefully. We shared the same concern as the city staff when we were first approached by Alliance Cheer. Given the limited use types in the typical ordinance for parking counts, a detailed review of the actual tenant operations is the best way to determine tenant demand and usage requirements. We did that with Alliance Cheer and became very comfortable with the anticipated parking needs. Per the parking breakdown previously provided to staff and attached, using the ordinance requirements, a need of 86 spaces would be required. In reviewing the actual business model for Alliance Cheer, the anticipated parking demand will be much less.

Our primary concern was the peak activity times (worst case scenario) for the facility. There are no competitions at this facility, only training and practice activities. Nearly all of Alliance Cheer's clients will be school age children and most do not drive, therefore they are brought to the facility by their parents. Historically, less than half of the parents stay to watch practice (especially the cheer practices which last 2-1/2 hours) and simply drop off the children, go run errands or go back home and return an hour later to pick up their child. The maximum size cheer team is 20 individuals. With three training floors, that would result in a total of 60 clients at any one time. With half of the parents staying, that would create a need for 30 parking spaces, well less than the 43 allotted to this facility even during daytime hours.

The anticipated weeknight scheduling for the facility is as follows:

Tumbling Floor:	Class Times of 4:30 pm – 5:20 pm, 5:30 pm – 6:20 pm, 6:30 pm – 7:20 pm, 7:30 pm – 8:20 pm and 8:30 pm – 9:20 pm.
Cheer Floor A:	Cheer Team Practice at 6:00 pm – 8:30 pm
Cheer Floor B:	Cheer Team Practice at 7:00 pm – 9:30 pm

The Saturday and Sunday schedules are only cheer team practices that will only be using two of the floors at any one time. As you can see, the session times are staggered to avoid a huge “shift change” parking requirement. In addition, typically only one floor will be in use while our other typical 8:00 am – 5:00 pm tenants are at the property. With a total of 119 parking spaces at this property, we will have more than enough parking for the peak periods of use.

The second concern was the off-peak usage during the day when our other tenants are present. Based on a pro-rata distribution of parking based on tenant square footage, 36% of the parking, or 43 spaces would be allocated to Alliance Cheer during the day. There would be no public scheduled activities at the facility on a regular basis during the non-peak times. The activities during these times would be staff activities, individual and small group extra training with a coach or perhaps a cheer team (but only the ones that are old enough to drive during the day) that would practice. The maximum use if a cheer team did practice would be 20 clients and even if each of them drove separately, that team and a few staff people would only use slightly over half of the allocated parking. Again, none of these activities are open to the public.

Thank you for sending the parking study prepared in 2012 by C& P Engineering for Envy Cheer. I reviewed and found that the basis of that study matches nearly identically the proposed operations of Alliance Cheer. That study recommended a total parking need for the 7,700 sf facility (two training floors) to be 24 spaces. In comparing those recommendations with the size of Alliance Cheer, 41 parking spaces are needed if calculated on a square footage basis or 36 parking spaces are needed if calculated on the number of training floors. These parking space requirements can be met even in our daytime conditions (we are providing 43 spaces) and are less than one third of our 119 total parking spaces at the property.

As we have discussed, there have been no parking issues at Envy Cheer that the City is aware of. This likely validates the parking study prepared. When comparing the properties, the 21 Prestige Circle location has a total parking count on site of 62 spaces or a 1.2 per thousand parking ratio to the total building size. Tech Center One provides a 3.2 per thousand parking ratio. The parking provided for Envy Cheer ranges from 2.78 – 3.2 per thousand depending if you use the space square footage on their website or in their SUP. We are providing parking for Alliance Cheer at a ratio of 3.3 per thousand.

If we ever have a parking problem due to Alliance Cheer, I will be first to get the Landlord call from an angry tenant. I don't want that call and I certainly will never let the situation escalate to where the city needs to get involved. I look forward to finding a way to present this project to the City Council and obtaining approval of our SUP so that we can proceed with bringing this tenant and their services to the citizens of Allen.

Sincerely,



Bruce R. Heller
President

Tech Center One

Alliance Cheer LLC

<u>Use</u>	<u>Size (sf)</u>	Code Parking <u>Ratio</u>	Code Parking <u>Required</u>
Training	7644	100	77
Office/Restrooms/Storage	1014	300	4
Reception/Pro-Shop	843	200	5
Parent Waiting	496		Parking already covered with participant in training area above
Circulation	3098		Open space between training floors and other areas, no occupants to drive parking count
Total Parking Required based on space breakdown			86

Notes:

1. Full usage of each training floor consists of a team of 20 participants. Based on three training floors, a total of 60 parking spaces would be required instead of the 77 noted above.
2. Historical operating data indicates that less than half of the parents remaining to watch practice which would indicate a total of 30 parking spaces needed per session for participant parking.