



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
APRIL 11, 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. Presentation of a Blue Star Flag to a Family of Allen Service Personnel Currently Serving in the U.S. Armed Forces.
3. Introduction and Presentation of Miss Allen 2017, Spencer Davis, and Miss Allen's Outstanding Teen 2017, Annie Lu.
4. Presentation of Proclamations by the Office of the Mayor.
5. Presentation of the Animal Shelter Advisory Committee's Annual Report by Vice-Chairperson Matt McGee.

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.]

6. Approve Minutes of the March 14, 2017, Regular City Council Meeting.
7. Approve the Minutes of the April 3, 2017, Triad Meeting of the Allen City Council, Allen ISD Board of Trustees, and Allen-Fairview Chamber of Commerce Executive Board.

8. Adopt a Resolution Suspending the Effective Date of Oncor Electric Delivery Company's Request to Increase Electric Utility Rates for 90 Days.
9. Adopt an Ordinance Amending the Code of Ordinances Chapter 9, "Motor Vehicles and Traffic," in Order to Amend the Speed Limit on the Main Lanes of US75, Within the Corporate Limits of the City, to 70 miles per hour.
10. Authorize the City Manager to Execute an Addendum to the Master Facilities Agreement with Emerson Farm Company, Ltd., and Darling Homes of Texas, LLC, Relating to Montgomery Farms Development and Dedication of 7+/- acres of Park Land.
11. Authorize the City Manager to Execute a Consent to the Assignment and Assumption of Entry License Agreement by Montgomery Improvement District West, Ltd., to Darling Homes of Texas, LLC.
12. Authorize the City Manager to Execute a Contract with David's Auto Body Repair for Automotive Paint and Body Repair Services for One Year with the Option to Renew Annually for Four Additional Terms for an Annual Amount of \$75,000.
13. Authorize the City Manager to Execute a Contract with Griffith Roofing Company and RL Murphey Commercial Roof Systems, LP, for Various Roof Repairs as Needed for One Year with the Option to Renew Annually for Two Additional Terms for an Annual Amount of \$75,000.
14. Authorize the City Manager to Execute a Contract with Intermountain Slurry Seal, Inc., for Micro-Surfacing Seal Treatment in the Fountain Park Phase 2 and Walden Park Estates Subdivisions in the Amount of \$123,637.02.
15. Authorize the City Manager to Execute a Contract with Identity Management Consultants, LLC, for the Conception, Procurement and Installation of LED Scrolling Message Monument Signs at Various Locations Through an Interlocal Agreement with Buy Board in the Amount of \$149,298.98.
16. Authorize the City Manager to Award the Annual Contract for Park Equipment and Furnishings with The Playwell Group through an Interlocal Agreement with Buy Board for an Annual Amount of \$150,000.
17. Authorize the City Manager to Execute a Purchase and Sales Agreement with Mildred Ottaway, for the Purchase of Property at 714 N. Federal Drive, Allen, Texas 75013 in the Amount of \$510,000.
18. Award Bid and Authorize the City Manager to Execute a Contract with Field Turf USA, Inc., for the Construction and Installation of Artificial Turf at Watters Branch Community Park Softball Complex, Fields 1 - 4 in the Amount of \$2,517,596.
19. Award Bid and Authorize the City Manager to Execute a Contract with Schmoldt Construction, Inc., for Construction of the Watters Branch Community Park Phase 1 Project in the Amount of \$7,372,895.72.
20. Receive the Summary of Property Tax Collections as of February 2017.

Regular Agenda.

21. Conduct a Public Hearing and Adopt an Ordinance Establishing Planned Development No. 127 for Corridor Commercial and Adopt Development Regulations, a Concept Plan, Building Elevations, and a Sign Plan for a 60± acres of Land Generally Located at the Southeast Corner Custer Road and Sam Rayburn Tollway. [Cornerstone Village at Allen - Mixed-Use]

Other Business.

22. Calendar.
 - April 24 - May 2, 2017 - City of Allen General Election Early Voting Period
 - May 6, 2017 - Election Day, 7 a.m. - 7 p.m.
23. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

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, April 7, 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:	April 11, 2017
SUBJECT:	Presentation of a Blue Star Flag to a Family of Allen Service Personnel Currently Serving in the U.S. Armed Forces.
STAFF RESOURCE:	Shelley B. George, City Secretary

BACKGROUND

The City of Allen wishes to honor our Allen area service personnel currently serving in the U.S. Armed Forces by presenting a Blue Star Flag to their families. The Blue Star Flag, whose history dates back to World War I, is displayed in the family's window when a loved one is currently serving in the Armed Forces. The Service flag is an official banner authorized by the Department of Defense for display by families who have members serving in the Armed Forces during any period of war or hostilities the United States may be engaged in for the duration of such hostilities. The Service flag, also called the Blue Star Flag, was designed and patented by WWI Army Captain Robert L. Queisser of the 5th Ohio Infantry who had two sons serving on the front line. The flag quickly became the unofficial symbol of a child in service.

Mayor Terrell and the Allen City Council will present a Blue Star Flag to Mr. and Mrs. Gene Terrell, grandparents of PFC Brandon Tate, proudly serving our country in the United States Army. He is stationed in South Korea at Camp Davis with the B-Troop 1-4 CAV.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	April 11, 2017
SUBJECT:	Introduction and Presentation of Miss Allen 2017, Spencer Davis, and Miss Allen's Outstanding Teen 2017, Annie Lu.
STAFF RESOURCE:	Shelley B. George, City Secretary

BACKGROUND

Ms. Bobby Scott, Executive Director of the Local Scholarship Pageant, will formally introduce and present Miss Allen 2017, Spencer Davis, and Miss Allen's Outstanding Teen 2017, Annie Lu, to the Allen City Council. Both were crowned on Saturday, November 5, 2016. They will compete in the Miss Texas Pageant scheduled to be held at the Eisemann Center beginning on June 24, 2017.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	April 11, 2017
SUBJECT:	Presentation of Proclamations by the Office of the Mayor.
STAFF RESOURCE:	Shelley B. George, City Secretary
ACTION PROPOSED:	Presentation of Proclamations by the Office of the Mayor.

BACKGROUND

Mayor Terrell will present the following proclamations:

- Presentation of a Proclamation to Coach Jerry Best and the Allen High School Wrestling Team Proclaiming 2017 as "Allen Eagles Wrestling Team Year."
- Presentation of a Proclamation to Wendy Hanna, Executive Director of The Turning Point, Proclaiming April 2017 as "Sexual Assault Awareness and Prevention Month."
- Presentation of a Proclamation to the Keep Allen Beautiful Board Proclaiming April 15, 2017, as "Great American Cleanup Day."
- Presentation of a Proclamation to Shellie Taylor, City of Allen Public Safety Communication Manager, Proclaiming April 9-15, 2017, as "Public Safety Telecommunicators Week."
- Presentation of a Proclamation to Allison Harper, City of Allen Animal Control Supervisor, Proclaiming April 9-15, 2017, as "Animal Control Officer Appreciation Week."
- Presentation of a Proclamation to Allison Harper, City of Allen Animal Control Supervisor, Proclaiming April 9-15, 2017, as "Bite Prevention Week."

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Approve Minutes of the March 14, 2017, Regular City Council Meeting.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

MARCH 14, 2017

Present:

Stephen Terrell, Mayor

Councilmembers:

Gary L. Caplinger, Mayor Pro Tem

Kurt Kizer

Ross Obermeyer

Joey Herald (absent)

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 6:30 p.m. on Tuesday, March 14, 2017, in the City Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas.

- 1. Introduction of Devita Widmer, Chair of the Library Board.**
- 2. Update Regarding Water and Electric Transmission Cases at the Public Utility Commission of Texas.**
- 3. Committee Updates from City Council Liaisons.**
- 4. 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, March 14, 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 7:04 p.m. on Tuesday, March 14, 2017, in the Council Chambers of the Allen City

Hall, 305 Century Parkway, Allen, Texas. Mayor Terrell announced Councilmember Herald was not in attendance as he was representing the City at the National League of Cities Congressional City Conference.

Pledge of Allegiance

Public Recognition

1. **Citizen's Comments.**
2. **Presentation of a Blue Star Flag to a Family of Allen Service Personnel Currently Deployed by the U.S. Armed Forces.**

Mayor Terrell presented the family of Staff Sergeants Amanda Jones and Shanelle Jimenez a Blue Star Flag in recognition of their dedicated service to the United States and the City of Allen.

3. **Recognition of the Parks and Recreation Department for Awards Received at the Texas Recreation and Park Society (TRAPS) Conference.**
 - 2017 Jerry D. Garrett Memorial Young Professional Award – Travis Cuniff, Recreation Services Manager.
 - 2017 TRAPS Academy of Leadership Development graduates – Billy Diaz, Youth Programs Supervisor and Heidi Miller, Center Supervisor at Joe Farmer Recreation Center.
4. **Presentation of the Texas Municipal Library Directors Association (TMLDA) Achievement of Library Excellence Award.**
5. **Presentation of the Library Board's Annual Report by Chairperson Devita Widmer.**

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Brooks, the Council voted six (6) for and none (0) opposed to adopt all items on the Consent Agenda as follows:

6. **Approve Minutes of the February 28, 2017, Regular City Council Meeting.**
7. **Adopt a Resolution Establishing the 2017 State Legislative Program for the City of Allen.**

RESOLUTION NO. 3459-3-17: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING A STATE LEGISLATIVE PROGRAM; AND, PROVIDING AN EFFECTIVE DATE.

8. **Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Grant Through the Government Transportation Alternative Set-Aside Program, Administered by the North Central Texas Council of Governments (NCTCOG).**

RESOLUTION NO. 3460-3-17: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, HEREINAFTER REFERRED TO AS "APPLICANT," DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE APPLICANT IN DEALING WITH THE REGIONAL TRANSPORTATION

COUNCIL ASSOCIATED WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS, HERINAFTER REFERRED TO AS "GRANTOR," FOR THE PURPOSE OF PARTICIPATING IN THE 2017 CALL FOR PROJECTS THROUGH THE TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM, HEREINAFTER REFERRED TO AS THE "PROGRAM"; CERTIFYING THAT THE APPLICANT IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE APPLICANT DESIRES TO SUBMIT A PROJECT; CERTIFYING THAT THE APPLICANT CAN FUND ALL PROJECT COSTS; AND PROVIDING AN EFFECTIVE DATE.

9. **Authorize the City Manager to Amend the Contract for the Purchase of Medical Supplies with Bound Tree Medical, Henry Schein Matrix Medical, Life Assist, and Midwest Medical Supply to a Total Annual Amount of \$158,500.**
10. **Authorize the City Manager to Execute a Contract with T-Mobile USA, Inc. for Cellular Equipment and Service for an Average Annual Amount of \$79,800 with Three (3) Optional One-Year Renewals through the State of Texas Department of Information Resources (DIR) Purchasing Program.**
11. **Authorize the City Manager to Execute an Economic Development Incentive Agreement with Cyrus One, LLC.**
12. **Receive the Unaudited Financial Report for the Period Ending December 31, 2016.**

The motion carried.

Regular Agenda

13. **Motion to Accept the Fiscal Year 2015-2016 Comprehensive Annual Financial Report (CAFR).**

MOTION: Upon a motion made by Councilmember Kizer and a second by Councilmember Obermeyer, the Council voted six (6) for and none (0) opposed, to accept the 2015-2016 Comprehensive Annual Financial Report. The motion carried.

14. **Conduct a Public Hearing and Adopt an Ordinance Establishing Standards of Care Necessary for a Day Care Licensing Exemption for Youth Camp Programs Operated by the Allen Parks and Recreation Department.**

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

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

ORDINANCE NO. 3461-3-17: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING STANDARDS OF CARE NECESSARY FOR A DAY CARE LICENSING EXEMPTION FOR YOUTH CAMP PROGRAMS OPERATED BY THE CITY OF ALLEN PARKS AND RECREATION DEPARTMENT; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Sedlacek and a second by Councilmember Brooks, the Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 3461-3-17, as previously captioned, establishing standards of care necessary for a day care licensing exemption for youth camp programs operated by the Allen Parks and Recreation Department. The motion carried.

15. Conduct a Public Hearing and Adopt an Ordinance for Specific Use Permit No. 153 for a Minor Automotive Repair Use for an Approximately 1,400± Square Foot Portion of a Building Generally Located South of Allen Drive and East of US Highway 75. [North Dallas Auto Tint - Minor Automotive Repair]

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

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

ORDINANCE NO. 3462-3-17: 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, BY GRANTING SPECIFIC USE PERMIT NO. 153 AUTHORIZING AN APPROXIMATELY 1,400± SQUARE FOOT PORTION OF A BUILDING LOCATED ON LOT 2, WILLIAM F. CHESTER ADDITION (ALSO KNOWN AS 605 N. CENTRAL EXPY.) PRESENTLY ZONED FOR SHOPPING CENTER "SC" TO BE USED FOR A MINOR AUTOMOTIVE REPAIRS USE; 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 Mayor Pro Tem Caplinger and a second by Councilmember Brooks, the Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 3462-3-17, as previously captioned, for Specific Use Permit No. 153 for Minor Automotive Repair use for North Dallas Auto Tint. The motion carried.

16. Conduct a Public Hearing and Adopt an Ordinance for Specific Use Permit No. 154 for Fitness and Health Center Use for an Approximately 2,130± Square Foot Portion of a Building Generally Located South of Stacy Road and West of Curtis Lane. [Circuit 31 Fitness - Fitness and Health Studio]

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

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

ORDINANCE NO. 3463-3-17: 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, BY GRANTING SPECIFIC USE PERMIT NO. 154 AUTHORIZING AN APPROXIMATELY 2,130± SQUARE FOOT PORTION OF THE BUILDING LOCATED ON LOT 1R3, BLOCK A, WATTERS VILLAGE (ALSO KNOWN AS 939 STACY RD.), PRESENTLY ZONED PLANNED DEVELOPMENT NO. 86 FOR SHOPPING CENTER "SC" TO BE USED FOR A FITNESS AND HEALTH CENTER 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.

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Mayor Pro Tem Caplinger, the Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 3463-3-17, as previously captioned, for Specific Use Permit No. 154 for Fitness and Health Center use for Circuit 31 Fitness. The motion carried.

Other Business

17. Calendar.

- March 28 - City Council Meeting Cancelled
- March 28-29 - Collin County Days in Austin
- April 3 - TRIAD Meeting
- April 1 @ 11 a.m. – Ribbon Cutting for Allen Historic Water Station Interpretive Trail

18. Items of Interest.

- Council wished happy birthday to Councilmember Brooks' wife, Juli, and extended congratulations to his daughter, Brenna, as she commits to the University of Washington.

Executive Session

Executive Session was not held.

Adjournment

MOTION: Upon a motion made by Councilmember Brooks and a second by Councilmember Kizer, the Council voted six (6) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:56 p.m. on Tuesday, March 14, 2017. The motion carried.

These minutes approved on the 11th day of April 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Approve the Minutes of the April 3, 2017, Triad Meeting of the Allen City Council, Allen ISD Board of Trustees, and Allen-Fairview Chamber of Commerce Executive Board.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

**ALLEN CITY COUNCIL /
ALLEN ISD BOARD OF TRUSTEES /
ALLEN-FAIRVIEW CHAMBER EXECUTIVE COMMITTEE
TRIAD MEETING
APRIL 3, 2017**

Allen City Council:

Stephen Terrell, Mayor
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
Chris Flanigan, Director of Engineering
Bill Hawley, Fire Chief
Tim Dentler, Director of Parks and Recreation
Brian Harvey, Police Chief

Chamber of Commerce Executive Committee:

Jill Hawkins, Chair
Ray Dunlap, Chair-Elect
Tony Trevino, Treasurer
Tim Kaiser, Immediate Past President
Steve Hrapkiewicz, At-Large
Carey Patrick, At-Large
Sharon Mayer, CEO

Chamber of Commerce Staff:

Rhonda Ptak, Member Services and Events Director
Saundra Midkiff, Membership Director

AIISD Board of Trustees:

Louise Master, President
Jimmy Trotter, Vice President (absent)
Amy Gnadt, Secretary
Susan Olinger, Board Member
Carl Clemencich, Board Member
John Montgomery, Board Member
Kelley Rowley, Board Member

AIISD Staff:

Scott Niven, Superintendent
Robin Bullock, Assistant Superintendent for School
Leadership and Support
Shelia Straughan Smith, Assistant Superintendent
for Human Resources
Jennifer Wilhelm, Assistant Superintendent for
Learner Services
Greg Cartwright, Chief Financial Officer
Maroba Zoeller, Chief Governmental Relations
Officer
Tim Carroll, Chief Information Officer
Daniel Pitcock, Chief Operations Officer
Deron Robinson, General Counsel
Lenore Yurkovich, Executive Assistant to the
Superintendent and Board

1. Call to Order and Announce a Quorum is Present.

With a quorum of the members present, the TRIAD Meeting was called to order by Mayor Terrell, Secretary Gnadt and Chair Hawkins at 6:13 p.m. on Monday, April 3, 2017, in the Training Room at the Allen Independent School District Service Center located at 1451 North Watters Drive, Allen, Texas 75013.

2. Update on Road Projects (US 75, Ridgeview Drive, Stacy Road).

Mr. Flanigan provided an update on road projects within the City of Allen.

3. Update on Park Projects (Ford Pool, Watters Branch Park).

Mr. Dentler provided an update on park projects within the City of Allen.

4. Update on School Resource Officer (SRO) Program.

Chief Harvey provided an update on the SRO program within the Allen Independent School District.

5. Update on Construction Projects and Enrollment Growth.

Mr. Pitcock provided an update on the various school pre-construction and constructions projects underway by the District. He also provided an update on the projected enrollment growth of the District through the 2022-2023 school year.

6. Update on the Legislative Agendas.

Mr. Hawley and President Masters provided an update on legislative topics that may impact the City and District as part of the 85th Legislative Session.

7. Update from the Allen-Fairview Chamber of Commerce.

Chair Hawkins reviewed activities and events held by the Chamber during the past year.

8. Items of Interest. *[Announcements Regarding Local Civic and Charitable Events, Meetings, Fundraisers and Awards]*

- Next TRIAD Meeting Date - Monday, October 2, 2017 – City will host.
- Community Announcements

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 TRIAD Meeting at 7:46 p.m. on Monday, April 3, 2017. The motion carried.

These minutes approved on the 11th day of April 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: April 11, 2017

SUBJECT: Adopt a Resolution Suspending the Effective Date of Oncor Electric Delivery Company's Request to Increase Electric Utility Rates for 90 Days.

STAFF RESOURCE: Eric Ellwanger, Assistant City Manager

ACTION PROPOSED: Adopt a Resolution Suspending the Effective Date of Oncor Electric Delivery Company's Request to Increase Electric Utility Rates for 90 Days.

BACKGROUND

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about March 17, 2017 with cities retaining original jurisdiction (including the City of Allen) seeking to increase system-wide transmission and distribution rates by \$317 million or approximately 7.5% over present revenues. The Company is asking the cities to approve an 11.8% increase in residential rates and a 0.5% increase in street lighting rates. If approved, a residential customer using 1,000 kWh per month would see a bill increase of about \$6.68 per month.

This Resolution suspends the April 21, 2017 effective date of the Company's rate increase for the maximum period permitted by law to allow the City, working in conjunction with the Steering Committee of Cities Served by Oncor, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Oncor's rate request is deemed administratively approved.

The City of Allen is a member of a 156-city coalition known as the Steering Committee of Cities Served by Oncor ("Steering Committee"). The Steering Committee has been in existence since the late 1980s. The Committee took on a formal structure in the early 1990s when cities served by the former TXU gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by per capita assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for the last 30 years.

Although Oncor has increased rates many times over the past few years, this is the first comprehensive base rate case for the Company since January, 2011.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution suspending the effective date of Oncor Electric Delivery Company's Request to Increase Electric Utility Rates for 90 Days.

MOTION

I make a motion to adopt Resolution No. _____ suspending the effective date of Oncor Electric Delivery Company's Request to Increase Electric Utility Rates for 90 Days.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SUSPENDING THE APRIL 21, 2017, EFFECTIVE DATE OF ONCOR ELECTRIC DELIVERY COMPANY'S REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE.

WHEREAS, on or about March 17, 2017, Oncor Electric Delivery Company (Oncor), pursuant to PURA §§ 33.001 and 36.001 filed with the City of Allen a Statement of Intent to increase electric transmission and distribution rates in all municipalities exercising original jurisdiction within its service area effective April 21, 2017; and,

WHEREAS, the City of Allen is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee") and will cooperate with the 156 similarly situated city members and other city participants in conducting a review of the Company's application and in hiring and directing legal counsel and consultants to prepare a common response and to negotiate with the Company prior to setting reasonable rates and direct any necessary litigation; and,

WHEREAS, PURA § 36.108 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days after the date the rate change would otherwise be effective; and,

WHEREAS, PURA § 33.023 provides that costs incurred by Cities in ratemaking proceedings are to be reimbursed by the regulated utility.

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

SECTION 1. The April 21, 2017, effective date of the rate request submitted by Oncor on or about March 17, 2017, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

SECTION 2. As indicated in the City's resolution approving membership in the Steering Committee, the Executive Committee of the Steering Committee is authorized to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations regarding reasonable rates, and to intervene and direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Public Utility Commission.

SECTION 3. The City's reasonable rate case expenses shall be reimbursed by Oncor.

SECTION 4. It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5. A copy of this Resolution shall be sent to Oncor, Care of Howard Fisher, Oncor Electric Delivery Company, LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 11TH DAY OF APRIL 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	April 11, 2017
SUBJECT:	Adopt an Ordinance Amending the Code of Ordinances Chapter 9, "Motor Vehicles and Traffic," in Order to Amend the Speed Limit on the Main Lanes of US75, Within the Corporate Limits of the City, to 70 miles per hour.
STAFF RESOURCE:	Chris Flanigan, Director of Engineering
ACTION PROPOSED:	Adopt an Ordinance Amending the Code of Ordinances Chapter 9, "Motor Vehicles and Traffic," in Order to Amend the Speed Limit on the Main Lanes of US75, Within the Corporate Limits of the City, to 70 miles per hour.

BACKGROUND

With the recently constructed additional main lanes of U.S. 75, it is appropriate to re-examine and adjust the speed limits established for US75. The Texas Transportation Commission (TTC) has enacted a minute order that establishes the speed limit on the main lanes of US75 at 70 mph. The order from the TTC, dated February 2015, was adopted when the project was under construction and the City has refrained from adopting the new increased speed limit, until such time as the corridor is ready. The TTC order establishes 70 mph along the main lanes of US75 in Richardson, Plano, Allen, and McKinney. It is expected the change will not be implemented in Plano until such time as construction on the President George Bush Turnpike interchange is complete (late 2018). However, it is expected that Richardson, Allen, and McKinney will adopt this change in the interim.

The Texas Department of Transportation (TxDOT) will be conducting a speed study along all segments of the frontage roads within our community. Another amendment, addressing any change in speed limits, will be forthcoming at a later date when that speed study has been completed by TxDOT.

BUDGETARY IMPACT

Staff anticipates no budgetary impact. The Texas Department of Transportation will install new signage along the main lanes of US75.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt an ordinance amending the Code of Ordinances, Chapter 9, 'Motor Vehicles and Traffic', in order to amend the speed limit on the main lanes of US75, within the corporate limits of the City, to 70 miles per hour.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances, Chapter 9, 'Motor Vehicles and Traffic', in order to amend the speed limit on the main lanes of US75, within the corporate limits of the City, to 70 miles per hour.

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 9, "MOTOR VEHICLES AND TRAFFIC," ARTICLE V, "OPERATION OF VEHICLES," DIVISION 2, "SPEED REGULATIONS," SECTION 9-135(a), TO AMEND THE MAXIMUM PRIMA FACIE SPEED LIMIT FOR U.S. 75 MAIN LANES WITHIN THE CORPORATE LIMITS OF THE CITY OF ALLEN; PROVIDING FOR A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 545.356 of the Transportation Code, provides that whenever the governing body of the City shall determine upon the basis of an engineering and traffic investigation that any prima facie speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway within the City, taking into consideration the width and condition of the pavement and other circumstances on such portion of said street or highway, as well as the usual traffic thereon, said governing body may determine and declare a reasonable and safe prima facie speed limit thereat or thereon by the passage of an ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the street or highway; and,

WHEREAS, the City Council of the City of Allen, Texas, upon the basis of an engineering and traffic investigation finds it necessary to alter prima facie maximum speed limits established by Section 545.356 of the Transportation Code, the following prima facie speed limits hereafter indicated for vehicles are hereby determined and declared to be reasonable and safe; and such speed limits are hereby fixed at the rate of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof.

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

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 9, "Motor Vehicles and Traffic," Article V, "Operation of Vehicles," Division 2, "Speed Regulations," Section 9-135(a) in part to establish the maximum prima facie speed limit upon U.S. 75 Main Lanes within the corporate limits of the city to read as follows:

"Sec. 9-135. Streets other than expressways and freeways.

(a)

Street	Extent	Speed Limit (miles per hour)
ADD		
U.S. 75 Main Lanes	All portions within the city, generally	70

”

SECTION 2. The Director of Engineering or designee shall erect appropriate signals, signage, and markings giving notice of the maximum prima facie speed limit established herein.

SECTION 3. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, 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 Code of Ordinances, 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 Code of Ordinances, 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 or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage and publication as required by law, however, the maximum prima facie speed limits established herein shall not take effect until the Director of Engineering or his designee has erected appropriate signage giving notice of the maximum prima facie speed limits therefore and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 11TH DAY OF APRIL 2017.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	April 11, 2017
SUBJECT:	Authorize the City Manager to Execute an Addendum to the Master Facilities Agreement with Emerson Farm Company, Ltd., and Darling Homes of Texas, LLC, Relating to Montgomery Farms Development and Dedication of 7+/- acres of Park Land.
STAFF RESOURCE:	Tim Dentler, Director of Parks and Recreation
PREVIOUS COUNCIL ACTION:	On July 26, 2006, City Council authorized the City Manager to execute a master facilities agreement for the development of Montgomery Farms with Emerson Farm Company, Ltd.
ACTION PROPOSED:	Authorize the City Manager to Execute an Addendum to the Master Facilities Agreement with Emerson Farm Company, Ltd., and Darling Homes of Texas, LLC, Relating to Montgomery Farms Development and Dedication of 7+/- acres of Park Land.

BACKGROUND

With the ongoing development in and around Montgomery Farm, parkland dedication or fees in lieu of, are a requirement of the Land Development Code and the Development Agreement. It was determined during the initial stages of development that any park land dedication or fees would be determined at a later date. The development now has reached a point at which the final development areas are being submitted through the Planning and Zoning process triggering the need to establish either land dedication or fees.

Staff has worked with the developer to identify a tract of land adjacent to the existing Sun Creek Park that would be suitable for preservation but would add value to what is already in existence. While the land currently has some restrictions for development through the Connemara Conservancy, there are provisions that allow development of trail through the property, which is the primary reason for obtaining this acreage.

City of Allen staff along with legal counsel have worked with Emerson Farm Company staff and legal counsel to create an addendum to the original Master Facilities Agreement allowing for the dedication of the land to the City of Allen for Parkland purposes. This includes partial assignment of the Master Facilities Agreement to Darling Homes.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute an addendum to Master Facilities Agreement with Emerson Farm Company, Ltd., and Darling Homes of Texas, LLC, relating to

Montgomery Farms Development and dedication of 7+/- acres of park land.

MOTION

I make a motion to authorize the City Manager to execute an addendum to the Master Facilities Agreement with Emerson Farm Company, Ltd., and Darling Homes of Texas, LLC, relating to Montgomery Farms Development and dedication of 7+/- acres of park land.

ATTACHMENTS:

Addendum to Masters Facilities Agreement

Partial Assignment of Master Facilities Agreement to Darling Homes

Survey

After Recording, Return to:

Office of the City Secretary
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

ADDENDUM TO MASTER FACILITIES AGREEMENT

This **ADDENDUM TO MASTER FACILITIES AGREEMENT** ("Addendum") is entered as of April ____, 2017 (the "Effective Date") by and between the **City of Allen**, a Texas home rule municipality ("City"), and **Emerson Farm Company, Ltd.**, a Texas limited partnership ("Owner"), and **Darling Homes of Texas, LLC**, a Texas limited liability company ("Darling"). (City, Owner, and Darling are collectively referred to herein as "the Parties" or independently as a "Party".)

RECITALS

WHEREAS, on or about July 26, 2006, Owner and City entered into that certain *Master Facilities Agreement for Montgomery Farms* (the "Agreement") setting forth certain agreements and obligations relating to the development of property owned and or controlled by Owner as of the effective date of the Agreement and described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, a true and correct copy of the Agreement was filed February 26, 2007, as Instrument No. 20070226000253940 in the Official Public Records of Collin County, Texas; and

WHEREAS, Article III of the Agreement titled "Park Land Dedication" sets forth certain requirements of Owner relating to the conveyance of one or more portions of the Property to City for development and use as public park land ("Park Land") pursuant to applicable provisions of the Allen Land Development Code; as amended (the "ALDC") or for the payment of funds to City in lieu of the conveyance of such tracts of land ("Park Land Fees"), such conveyance and/or payments to be made in association with the approval of the final plats of various phases of the Property; and

WHEREAS, City has to date consented to the deferral by Owner of the conveyance of Park Land and the payment of Park Land Fees with respect the approval of the final plats of portions of the Property approved prior to the Effective Date of this Addendum; and

WHEREAS, Owner has sold and conveyed to Darling a substantial portion if not all of the remaining portions of the Property pursuant to that certain Special Warranty Deed dated August 15, 2016, recorded as Instrument No. 20160817001074140 in the Official Public Records of Collin County, Texas; and

WHEREAS, in conjunction with the sale from Owner to Darling, Owner has partially assigned to Darling the Agreement (the “Assignment”), and the City desires to consent to such Assignment; and

WHEREAS, Owner has offered to convey to City the real property described in Exhibit “B” attached hereto and incorporated herein by reference (the “Park Property”), in full satisfaction of Owner’s and/or Darling’s obligations pursuant to Article III of the Agreement and the applicable provisions of the ALDC; and

WHEREAS, City desires to accept the conveyance of the Park Property from Owner in full satisfaction of Owner’s and/or Darling’s obligations under Article III of the Agreement and applicable provisions of the ALDC subject to the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth in this Addendum, the Parties agree as follows:

1. **Performance of Article III: Conditions.** Upon satisfaction of the following conditions, City agrees to acknowledge and declare Owner and Darling to be in full and complete satisfaction of Owner’s and/or Darling’s obligations set forth in Article III of the Agreement as it relates to the development of the Property:
 - A. Owner signs and delivers in recordable form a special warranty deed to City in a form reasonably acceptable to City conveying to City good and indefeasible fee simple interest to the Park Property, free and clear of all reservations, liens and encumbrances, save and except existing easements affecting the Park Property recorded in the Official Public Records of Collin County, Texas;
 - B. Owner, at Owner’s sole cost, causes the issuance to City of a Texas owner’s policy of title insurance in the amount of \$500,000, inclusive of the T-3 Survey endorsement;
 - C. Owner, at Owner’s sole cost, causes the preparation and delivery to City and Title Company of a survey of the Park Property prepared by a registered professional surveyor satisfactory to Title Company for purpose of issuing the T-3 Survey endorsement in association with issuance of the title policy;
 - D. Owner, at Owner’s sole cost, causes issuance of a tax certificate showing the state of payment of ad valorem taxes assessed against the Park Property;

- E. Owner pays all property taxes for current and prior years, to the extent not previously paid, with current year taxes being prorated to the date of conveyance of the Park Property to City; provided, however, Owner shall not be required to pay the additional tax and interest required by Texas Tax Code §23.55 unless the Chief Appraiser of the Collin Central Appraisal District determines conveyance of the Park Property to City results in a change in use that requires the payment of such additional tax and interest, in which case Owner shall be solely responsible for payment of such additional tax and interest; and
- F. The Park Property is released from any easements or restrictive covenants that may be applicable to the Park Property to the extent such restrictive covenants (1) prohibit City from developing and using all or any portion of the Park Property as a public park and recreation area, including, but not limited to, the development of “hike and bike” trails, and (2) require the payment of any assessment, dues, or other fees to a property owners’ or homeowner’s association or any other party. City acknowledges and agrees that the Conservation Easement Agreement, recorded in Volume 5849, Page 4355 in the Official Public Records of Collin County, Texas, as amended by the Partial Release and First Amendment of Conservation Easement Agreement, recorded as Instrument No. 20160728000974260 in the Official Public Records of Collin County, Texas (as amended, the “CEA”) is a permitted encumbrance against the Park Property because (i) Section 8 and Exhibit D to the CEA allow for development of public hike and bike trails, streets, and parking lots, which are consistent with the City’s use of the Park Property as a public park and recreation area, including hike and bike trails and (ii) the CEA does not require the payment of any assessments, dues, or other fees to an owners association or any other party.
2. **Title Company.** For purposes of this Addendum, “Title Company” shall mean North American Title Co. 1210 Saint Ann Court, 1201 North Harwood St. Dallas, Texas 75201, ATTN. Mr. Charles Badgett.
3. **Rejection of Park Property; Termination.** Notwithstanding Section 1 above to the contrary, if, after reviewing the survey, title commitment, and the recorded easements and restrictions affecting the Park Property (excluding the CEA, which is hereby permitted as set forth above), but before acceptance of the deed to the Park Property, City’s Director of Parks and Recreation determines the Park Property is not suitable for development of a public park and recreation area, or restrictions existing on the Park Property cannot or will not be removed, City, acting through its City Manager, may reject the offer of the Park Property and terminate this Addendum upon delivery of written notice of termination to Owner.

4. **Notice of Satisfied Conditions.** Upon satisfaction of all of the conditions set forth in Section 1, above, City agrees to sign and record in the Official Public Records of Collin County, Texas, a notice declaring in substance that Owner and Darling have fully and completely performed all of the obligations of Article III of the Agreement with respect to the development of the Property, including, but not limited to, those portions of the Property that have not yet been subject to an approved final plat pursuant to the ALDC.
5. **Agreement Not Amended.** This Addendum does not, and is not intended to, amend the Agreement, which remains in full force and effect. This Addendum is intended to address solely the Owner's and/or Darling's satisfaction of the obligations set forth in Article III of the Agreement and does not relieve Owner, Darling, or any other successor in title to any portion of the Property from the performance of any other obligation set forth in the Agreement.
6. **Notices.** When notice is permitted or required by this Addendum, it shall be in writing and shall be deemed delivered when delivered in person or on the date when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the parties at the address set forth below. Either Party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

If intended for Owner, to:

Emerson Farm Company, Ltd.
% President, Emerson Partners, Inc.
10821 Sanden Dr.
Dallas, TX 75238

With Copies to:

Gregg Davis
Thompson Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201

In intended for City, to:

City of Allen, Texas
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With Copies to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard St., Suite 1800
Dallas, Texas 75201

Director of Parks and Recreation
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

In intended for Darling, to:

Ryan Huey
Darling Homes of Texas, LLC
2500 Legacy Drive, Suite 100
Frisco, Texas 75034

With Copies to:

Grant Bannen
Bush, Rudnicki, Shelton
4025 Woodland Park Blvd., Suite 190
Arlington, Texas 76013

7. **Binding Effect.** This Addendum shall be binding on and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
8. **Assignment.** Owner and Darling shall not assign or transfer their rights or obligations under this Addendum in whole or in part to any other person or entity without the prior written consent of City, which consent will not be unreasonably withheld.
9. **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Addendum shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.
10. **Governing Law.** The validity of this Addendum and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Addendum shall be in a State Court of competent jurisdiction in Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
11. **Entire Agreement.** This Addendum embodies the entire agreement between the Parties and supersedes all prior Agreements, understandings, if any, relating to the Park Property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the Party against whom enforcement is sought.
12. **Recordation of Agreement.** A duplicate original of this Addendum shall be recorded in the Official Public Records of Collin County, Texas.
13. **Recitals.** The Recitals to this Addendum are incorporated herein as part of this Addendum.
14. **Exhibits.** All exhibits to this Addendum are incorporated herein by reference for all purposes wherever reference is made to the same.
15. **Counterparts.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
16. **Headings.** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.
17. **Consent to Assignment.** City hereby consents to the Assignment and agrees to promptly execute and acknowledge City's signature page to such Assignment to further evidence such consent, the form of which Assignment having been reviewed and found reasonably acceptable to City.

(Signatures on Following Pages)

SIGNED AND AGREED as of the Effective Date.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2017, by Peter H. Vargas, City Manager of the City of Allen, Texas, on behalf of said municipality.

Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

SIGNED AND AGREED as of the Effective Date.

OWNER:

EMERSON FARM COMPANY, LTD., a Texas
Limited Partnership

By: Emerson Farm Company General
Partner, Ltd., a Texas limited
partnership, its general partner

By: Farm Company GP, LLC, a Texas
limited liability company, its general
partner

By: _____
Phillip L. Williams, President

OWNER'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2017,
by Phillip L. Williams, President, Farm Company GP, LLC, a Texas limited liability company,
general partner of Emerson Farm Company General Partner, Ltd., a Texas limited partnership,
general partner of Emerson Farm Company, Ltd., a Texas limited partnership, on behalf of said
company and partnerships.

Notary Public, State of Texas

Printed Name: _____

My Commission expires: _____

SIGNED AND AGREED as of the Effective Date.

DARLING:

DARLING HOMES OF TEXAS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DARLING'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2017,
by _____, _____ of Darling Homes of Texas,
LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

Printed Name: _____

My Commission expires: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2017,
by _____, _____ of Darling Homes of Texas,
LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

Printed Name: _____

My Commission expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

TRACT 1

BEING a tract of land situated in the David H. Nix Survey, Abstract No. 668, and being located in the City of Allen, Collin County, Texas, and being a part of that tract of land described as Tract 2 in deed to Emerson Farm Company, Ltd. as recorded in Volume 5105, Page 3414 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a point for the most southwesterly corner of that tract of land described as Tract B in Alma Road Right-of-Way Dedication Deed to the City of Allen, Texas as recorded in Document No. 03-0110815, D.R.C.C.T., said point being the intersection of the southeasterly right-of-way line of Alma Drive (120 feet wide) with the west line of said Tract 2;

THENCE North 62 degrees 46 minutes 51 seconds East, along said southeasterly right-of-way line, a distance of 849.20 feet to the POINT OF BEGINNING;

THENCE North 62 degrees 46 minutes 51 seconds East, continuing along said southeasterly right-of-way line, a distance of 279.43 feet to a point for corner;

THENCE departing said southeasterly right-of-way line and across said Tract 2, the following courses and distances:

South 34 degrees 03 minutes 33 seconds East a distance of 55.47 feet;
South 18 degrees 12 minutes 19 seconds East a distance of 77.43 feet;
South 01 degree 49 minutes 16 seconds West a distance of 37.54 feet;
South 26 degrees 12 minutes 05 seconds West a distance of 80.19 feet;
South 21 degrees 39 minutes 53 seconds East a distance of 58.57 feet;
South 11 degrees 42 minutes 41 seconds West a distance of 118.69 feet;
South 22 degrees 18 minutes 54 seconds East a distance of 36.67 feet;
South 09 degrees 00 minutes 14 seconds West a distance of 25.77 feet;
South 67 degrees 41 minutes 25 second West a distance of 30.59 feet;
North 29 degrees 28 minutes 44 seconds West a distance of 136.49 feet;
South 85 degrees 49 minutes 39 seconds East a distance of 26.36 feet;
North 06 degrees 15 minutes 53 seconds East a distance of 55.17 feet;
North 21 degrees 33 minutes 24 seconds West a distance of 43.22 feet;
South 35 degrees 00 minutes 44 seconds West a distance of 51.15 feet;

North 42 degrees 33 minutes 37 seconds West a distance of 60.82 feet;
North 02 degrees 49 minutes 19 seconds East a distance of 144.58 feet;
South 88 degrees 26 minutes 01 seconds West a distance of 16.10 feet;
South 08 degrees 15 minutes 14 seconds West a distance of 196.19 feet;
North 00 degrees 58 minutes 17 seconds East a distance of 76.04 feet;
North 45 degrees 02 minutes 45 seconds West a distance of 43.52 feet;
South 85 degrees 53 minutes 27 seconds East a distance of 32.06 feet;
North 03 degrees 17 minutes 00 seconds East a distance of 53.73 feet;
South 55 degree 16 minutes 55 seconds West a distance of 56.04 feet;
North 04 degrees 03 minutes 40 seconds East a distance of 52.43 feet;

THENCE South 89 degrees 36 minutes 24 seconds West, a distance of 51.10 feet to the POINT OF BEGINNING AND CONTAINING 59,891 square feet or 1.375 acres of land, more or less.

TRACT 2 - ANGEL FIELD WEST

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, and being located in the City of Allen, Collin County, Texas, and being parts of those tracts of land described as Angel Field West, Angel Field East and 98.266 Acre Tract in deed to Emerson Farm Company, Ltd. as recorded in Volume 5034, Page 158 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and also being part of a tract of land described in deed to The Montgomery Farm Company, as recorded in Volume 1033, Page 891, D.R.C.C.T., and being more particularly described as follows:

COMMENCING at the southwest corner of that tract of land described as Right-of-Way Bethany Drive in deed to the City of Allen, Texas as recorded in Volume 3918, Page 1167, D.R.C.C.T.;

THENCE South 71 degrees 26 minutes 26 seconds East, a distance of 84.23 feet to the POINT OF BEGINNING, said point being on the southerly right-of-way line of Bethany Drive (variable width right-of-way) as dedicated in Volume 5093, Page 2663, D.R.C.C.T.;

THENCE South 45 degrees 57 minutes 32 seconds East, departing said southerly right-of-way line and along the west line of a tract of land described in Collin County Court At Law Number 2, Cause Number 002-1427-03, a distance of 34.63 feet to a point for corner;

THENCE South 00 degrees 13 minutes 04 seconds West, continuing along said west line, a distance of 280.02 feet to the point of curvature of a circular curve to the right having a radius of 312.00 feet, whose chord bears South 07 degrees 00 minutes 43 seconds West, a distance of 51.64 feet;

THENCE Southwesterly, continuing along said west line and along said curve to the right, through a central angle of 09 degrees 29 minutes 37 seconds for an arc distance of 51.70 feet to the point of curvature of a circular curve to the right having a radius of 1040.75 feet, whose chord bears South 15 degrees 22 minutes 49 seconds West, a distance of 171.35 feet;

THENCE Southwesterly, continuing along said west line and along said curve to the right, through a central angle of 09 degrees 26 minutes 38 seconds for an arc distance of 171.54 feet to the point of tangency;

THENCE South 20 degrees 16 minutes 14 seconds West, continuing along said west line, a distance of 112.68 feet to the point of curvature of a circular curve to the left having a radius of 1095.00 feet, whose chord bears South 11 degrees 18 minutes 22 seconds West, a distance of 341.25 feet;

THENCE Southwesterly, continuing along said west line and along said curve to the left, through a central angle of 17 degrees 55 minutes 44 seconds for an arc distance of 342.65 feet to the point of tangency;

THENCE South 02 degrees 20 minutes 30 seconds West, continuing along said west line, a distance of 301.43 feet to a point on the common line between said Angel Field West, and the tract of land described in deed to Southwest Guaranty Trust Company, as recorded in Collin County Clerk's number 96-0105327;

THENCE North 88 degrees 17 minutes 09 seconds West, departing said west line and along said common line, a distance of 381.62 feet to a point for corner;

THENCE North 01 degree 06 minutes 57 seconds East, continuing along said common line a distance of 202.42 feet to a point for;

THENCE North 88 degrees 23 minutes 06 seconds West, continuing along said common line, a distance of 292.19 feet to a point for corner on the east line of said Montgomery Farm Tract;

THENCE South 01 degree 49 minutes 29 seconds West, departing said common line and along the common line between said Montgomery Farm Tract and said Southwest Guaranty Trust Company Tract, a distance of 110.00 feet to a point for corner;

THENCE North 88 degrees 23 minutes 06 seconds West, departing said common line and across said Montgomery Farm Tract, a distance of 215.00 feet to a point for corner;

THENCE North 01 degree 49 minutes 29 seconds East, continuing across said Montgomery Farm Tract, a distance of 346.36 feet to a point for corner

THENCE North 01 degree 41 minutes 29 seconds East, passing the north line of said Montgomery Farm Tract, at a distance of 484.85 feet and continuing across said 98.266 Acre Tract, for a total distance of 544.98 feet to a point for corner on said southerly right-of-way line, said point being the point of curvature of a nontangent circular curve to the left, having a radius of 1133.50 feet, whose chord bears North 71 degrees 44 minutes 45 seconds East, a distance of 178.22 feet;

THENCE Northeasterly, along said southerly right-of-way and along said curve to the left, through a central angel of 09 degrees 01 minute 04 seconds for an arc distance of 178.40 feet to the point of tangency;

THENCE North 67 degrees 14 minutes 13 seconds East, continuing along said southerly right-of-way a distance of 150.27 feet to the point of curvature of a circular curve to the right, having a radius of 1016.50 feet, whose chord bears North 72 degrees 45 minutes 45 seconds East, for a distance of 195.75 feet;

THENCE Northeasterly, continuing along said southerly right-of-way and along said curve to the right, through a central angel of 11 degrees 03 minutes 03 seconds for an arc distance of 196.06 feet to the point of curvature of a circular curve to the right, having a radius of 3152.01 feet, whose chord bears North 82 degrees 58 minutes 45 seconds East, a distance of 515.59 feet;

THENCE Northeasterly, continuing along said southerly right-of-way and along said curve to the right, through a central angel of 09 degrees 22 minutes 57 seconds for an arc distance of 516.16 feet to the POINT OF BEGINNING AND CONTAINING 1,033,753 square feet or 23.73 acres of land, more or less.

TRACT 2 - MONTGOMERY MEWS

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, and being located in the City of Allen, Collin County, Texas, and being a part of that tract of land described in deed to The Montgomery Farm Company as recorded in Volume 1033, Page 891 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being a part of that tract of land described as 98.266 Acre Tract in deed to Emerson Farm Company, Ltd. as recorded in Volume 5034, Page 158 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a point for the northwest corner of that tract of land described as Angel Field West in said Emerson Farm Company, Ltd. Deed, said point being on the south line of said 98.266 Acre Tract;

THENCE North 01 degree 41 minutes 29 seconds East, departing said south line and across said 98.266 Acre Tract, a distance of 138.77 feet to a point for corner on the south right-of-way line of Bethany Drive (variable width right-of-way) as recorded in Volume 5093, Page 2663, D.R.C.C.T.;

THENCE South 67 degrees 14 minutes 13 seconds West, along said south right-of-way line, a distance of 52.15 feet to the point of curvature of a circular curve to the right having a radius of 1133.50 feet, whose chord bears South 87 degrees 06 minutes 36 seconds West a distance of 770.64 feet;

THENCE Southwesterly, along said south right-of-way line and said curve to the right, through a central angle of 39 degrees 44 minutes 46 seconds for an arc length of 786.31 feet to the point of tangency;

THENCE North 73 degrees 01 minute 01 second West, continuing along said south right-of-way line, a distance of 103.00 feet to the point of curvature of a circular curve to the left having a radius of 1016.50 feet, whose chord bears North 74 degrees 47 minutes 58 seconds West a distance of 63.24 feet;

THENCE Northwesterly, continuing along said south right-of-way line and along said curve to the left, through a central angle of 03 degrees 33 minutes 54 seconds for an arc length of 63.25 feet to the POINT OF BEGINNING;

THENCE South 12 degrees 33 minutes 49 seconds West, departing said south right-of-way line, a distance of 381.32 feet to a point for corner;

THENCE North 87 degrees 33 minutes 10 seconds West, a distance of 229.08 feet to a point for corner;

THENCE South 06 degrees 05 minutes 31 seconds West, a distance of 507.21 feet to a point for corner;

THENCE South 55 degrees 01 minute 07 seconds West, a distance of 272.35 feet to a point for corner;

THENCE North 88 degrees 19 minutes 18 seconds West, a distance of 279.36 feet to a point for corner;

THENCE North 36 degrees 33 minutes 48 seconds West, a distance of 213.30 feet to a point for corner;

THENCE North 55 degrees 39 minutes 55 seconds West, a distance of 134.06 feet to a point for corner;

THENCE North 30 degrees 58 minutes 12 seconds West, a distance of 99.54 feet to a point for corner;

THENCE North 52 degrees 22 minutes 20 seconds West, a distance of 76.82 feet to a point for corner;

THENCE North 22 degrees 55 minutes 58 seconds West, a distance of 113.85 feet to a point for corner on the east line of a sanitary sewer easement recorded in County Clerk's document number 92-0018726, D.R.C.C.T.;

THENCE North 43 degrees 02 minutes 28 seconds East, along said east line, a distance of 109.18 feet to a point for corner;

THENCE North 13 degrees 32 minutes 45 seconds East, continuing along said east line, at a distance of 392.51 feet departing said east line and continuing across the aforementioned 98.266 Acre Tract for a total distance of 585.59 feet to a point for corner on the aforementioned south right-of-way line of Bethany Drive, said point being on a circular curve to the left having a radius of 2,015.50 feet, whose chord bears South 82 degrees 56 minutes 01 second East a distance of 754.43 feet;

THENCE Southeasterly, along said south right-of-way line and said curve, through a central angle of 21 degrees 34 minutes 26 seconds for an arc length of 758.91 feet to the point of reverse curvature of a circular curve to the right having a radius of 1,016.50 feet, whose chord bears South 85 degrees 09 minutes 05 seconds East a distance of 302.92 feet;

THENCE Southeasterly, continuing along said south right-of-way line and along said curve to the right, through a central angle of 17 degrees 08 minutes 18 seconds for an arc length of 304.06 feet to the POINT OF BEGINNING and CONTAINING 920,990 square feet or 21.14 acres of land, more or less.

TRACT 2A

BEING a tract of land situated in the David H. Nix Survey, Abstract No. 668, and the T.G. Kennedy Survey, Abstract No. 500, and being located in the City of Allen, Collin County, Texas, and being a part of that tract of land described in deed to The Montgomery Farm Company as recorded in Volume 1033, Page 891 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being a part of that tract of land described as 98.266 Acre Tract in deed to Emerson Farm Company, Ltd. as recorded in Volume 5034, Page 158 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being more particularly described as follows:

COMMENCING at a point on the southeasterly line of that tract of land described as Tract B in Alma Road Right-of-Way Dedication Deed to the City of Allen, Texas as recorded in County Clerk's Document No. 03-0110815, D.R.C.C.T., said point being the intersection of the southeasterly right-of-way line of Alma Drive (variable width, 120 feet wide at this point) with the southerly right-of-way line of Bethany Drive (variable width right-of-way) as recorded in Volume 5136, Page 4915, D.R.C.C.T.;

THENCE South 77 degrees 01 minute 03 seconds East, along said southerly right-of-way line, a distance of 29.28 feet to a point for corner;

THENCE South 34 degrees 03 minutes 33 seconds East, continuing along said south right-of-way line, a distance of 28.20 feet to the POINT OF BEGINNING;

THENCE South 34 degrees 03 minutes 33 seconds East, continuing along said south right-of-way line, a distance of 73.96 feet to the point of curvature of a circular curve to the left having a radius of 2020.50 feet, whose chord bears South 36 degrees 18 minutes 23 seconds East a distance of 158.45 feet;

THENCE Easterly, continuing along said south right-of-way line and along said curve to the left, through a central angle of 04 degrees 29 minutes 40 seconds for an arc distance of 158.49 feet to the point of compound curvature of a circular curve to the left having a radius of 600.00 feet, whose chord bears South 42 degrees 06 minutes 22 seconds East a distance of 74.36 feet;

THENCE Easterly, continuing along said south right-of-way line and along said curve to the left, through a central angle of 07 degrees 06 minutes 19 seconds for an arc distance of 74.41 feet to the point of reverse curvature of a circular curve to the right having a radius of 600.00 feet, whose chord bears South 43 degrees 43 minutes 59 seconds East a distance of 40.33 feet;

THENCE Easterly, continuing along said south right-of-way line and along said curve to the right, through a central angle of 03 degrees 51 minutes 07 seconds for an arc distance of 40.34 feet to the point of reverse curvature of a circular curve to the left having a radius of 2015.50 feet, whose chord bears South 56 degrees 58 minutes 36 seconds East a distance of 1054.84 feet;

THENCE Easterly, continuing along said south right-of-way line and along said curve to the left, through a central angle of 30 degrees 20 minutes 23 seconds for an arc distance of 1067.27 feet to a point for corner;

THENCE departing said south right-of-way line and over and across the aforementioned Montgomery Farm Company tract, the following courses and distances to points for corners:

South 13 degrees 32 minutes 45 seconds West a distance of 585.59 feet;

South 43 degrees 02 minutes 28 seconds West a distance of 109.18 feet;

North 22 degrees 55 minutes 58 seconds West a distance of 88.27 feet;

South 87 degrees 41 minutes 13 seconds West a distance of 169.42 feet;
North 14 degrees 51 minutes 03 seconds West a distance of 96.04 feet;
North 45 degrees 28 minutes 41 seconds West a distance of 117.50 feet;
North 29 degrees 23 minutes 45 seconds West a distance of 600.88 feet;
North 36 degrees 34 minutes 14 seconds West a distance of 78.04 feet;
South 89 degrees 31 minutes 48 seconds East a distance of 16.60 feet;
North 71 degrees 29 minutes 25 seconds East a distance of 22.94 feet;
North 16 degrees 31 minutes 04 seconds East a distance of 9.85 feet;
North 73 degrees 27 minutes 07 seconds West a distance of 77.47 feet;
North 46 degrees 55 minutes 01 seconds East a distance of 19.18 feet;
North 33 degrees 41 minutes 02 seconds West a distance of 9.65 feet;
South 70 degrees 37 minutes 25 seconds West a distance of 48.51 feet;
North 21 degrees 51 minutes 33 seconds West a distance of 43.39 feet;
North 81 degrees 19 minutes 56 seconds West a distance of 123.25 feet;
North 25 degrees 07 minutes 20 seconds West a distance of 86.11 feet;
North 16 degrees 34 minutes 20 seconds West a distance of 107.31 feet;
North 8 degrees 40 minutes 19 seconds East a distance of 113.26 feet;
North 23 degrees 05 minutes 40 seconds West a distance of 36.83 feet;
North 11 degrees 05 minutes 01 seconds East a distance of 26.80 feet;
North 25 degrees 23 minutes 59 seconds East a distance of 69.22 feet;
North 16 degrees 26 minutes 18 seconds West a distance of 121.26 feet;

THENCE North 55 degrees 56 minutes 17 seconds East a distance of 48.26 feet to the POINT OF BEGINNING and CONTAINING 590,087 square feet or 13.55 acres of land, more or less.

TRACT 2B

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, and being located in the City of Allen, Collin County, Texas, and being a part of that tract of land described as 98.266 Acre Tract in deed to Emerson Farm Company, Ltd. as recorded in Volume 5034, Page 00158 of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being a part of that tract of land described in deed to The Montgomery Farm Company as recorded in Volume 1033, Page 891, D.R.C.C.T., and being more particularly described as follows:

COMMENCING at the northwest corner of that tract of land described as Angel Field West in deed to Emerson Farm Company, Ltd. as recorded in Volume 5034, Page 00158, D.R.C.C.T.;

THENCE North 01 degree 41 minutes 29 seconds East, along the prolongation of the west line of said Angel Field West, a distance of 138.77 feet to a point on the south right-of-way line of Bethany Drive (variable width right-of-way);

THENCE South 67 degrees 14 minutes 13 seconds West, along said south right-of-way line, a distance of 52.15 feet to the point of curvature of a circular curve to the right having a radius of 1133.50 feet, whose chord bears South 71 degrees 44 minutes 45 seconds West a distance of 178.22 feet;

THENCE Westerly, continuing along said south right-of-way line and along said curve to the right, through a central angle of 09 degrees 01 minute 04 seconds for an arc distance of 178.40 feet to the POINT OF BEGINNING;

THENCE South 01 degree 41 minutes 29 seconds West, departing said south right-of-way line and across said Montgomery Farm Company tract, a distance of 544.98 feet to a point for corner;

THENCE South 01 degree 49 minutes 29 seconds West, continuing across said Montgomery Farm Company tract, a distance of 364.36 feet to a point for corner;

THENCE South 88 degrees 23 minutes 06 seconds East, continuing across said Montgomery Farm Company tract, a distance of 215.00 feet to a point for corner on the common line between said Montgomery Farm Company tract and that tract of land described in deed to Southwest Guaranty Trust Company, Accepting Trustee of the William S. Montgomery Family Trust 1994 Dated August 3, 1994 as recorded in County Clerk's Document No. 96-0105327, D.R.C.C.T.;

THENCE South 01 degree 49 minutes 29 seconds West, continuing along said common line, a distance of 1484.18 feet to a point for corner ;

THENCE South 54 degrees 32 minutes 31 seconds East, continuing along said common line, a distance of 215.37 feet to a point for corner;

THENCE South 03 degrees 48 minutes 31 seconds East, continuing along said common line, a distance of 261.32 feet to a point for corner;

THENCE departing said common line and over and across said Montgomery Farm Company tract, the following courses and distances to points for corners:

North 40 degrees 02 minutes 05 seconds West a distance of 115.52 feet;

North 23 degrees 27 minutes 55 seconds West a distance of 96.68 feet;

North 37 degrees 21 minutes 52 seconds West a distance of 80.34 feet;
North 51 degrees 28 minutes 35 seconds West a distance of 352.18 feet;
North 79 degrees 47 minutes 41 seconds West a distance of 246.16 feet;
North 56 degrees 28 minutes 11 seconds West a distance of 252.96 feet;
North 65 degrees 05 minutes 17 seconds West a distance of 279.98 feet;
North 71 degrees 33 minutes 21 seconds West a distance of 164.55 feet;
North 86 degrees 31 minutes 20 seconds West a distance of 128.88 feet;
North 80 degrees 57 minutes 40 seconds West a distance of 56.20 feet;
North 47 degrees 57 minutes 40 seconds West a distance of 119.00 feet;
North 75 degrees 57 minutes 40 seconds West a distance of 71.00 feet;
North 40 degrees 57 minutes 40 seconds West a distance of 71.01 feet;
North 24 degrees 58 minutes 11 seconds West a distance of 92.28 feet;
North 48 degrees 20 minutes 46 seconds West a distance of 146.85 feet;
North 14 degrees 25 minutes 31 seconds West a distance of 153.47 feet;
North 11 degrees 26 minutes 05 seconds East a distance of 189.70 feet;
North 04 degrees 17 minutes 38 seconds West a distance of 167.97 feet;
North 19 degrees 20 minutes 58 seconds West a distance of 86.61 feet;
North 65 degrees 51 minutes 26 seconds West a distance of 117.36 feet;
North 32 degrees 43 minutes 19 seconds East a distance of 46.50 feet;
South 88 degrees 19 minutes 18 seconds East a distance of 279.36 feet;
North 55 degrees 01 minute 07 seconds East a distance of 272.35 feet;
North 06 degrees 05 minutes 31 seconds East a distance of 507.21 feet;
South 87 degrees 33 minutes 10 seconds East a distance of 229.08 feet;

THENCE North 12 degrees 33 minutes 49 seconds East, continuing across said Montgomery Farm Company tract, a distance of 381.32 feet to a point on a circular curve to the right having a radius of 1016.50 feet, whose chord bears South 74 degrees 47 minutes 58 seconds East a distance of 63.24 feet, said point being on the aforementioned south right-of-way line of Bethany Drive;

THENCE Southeasterly, continuing along said south right-of-way line and along said curve to the right, through a central angle of 03 degrees 33 minutes 55 seconds for an arc distance of 63.25 feet to the point of tangency;

THENCE South 73 degrees 01 minute 01 second East, continuing along said south right-of-way line, a distance of 103.00 feet to the point of curvature of a circular curve to the left having a radius of 1133.50 feet, whose chord bears South 88 degrees 22 minutes 52 seconds East a distance of 600.65 feet;

THENCE Easterly, continuing along said south right-of-way line and along said curve to the left, through a central angle of 30 degrees 43 minutes 42 seconds for a distance of 607.91 feet to the POINT OF BEGINNING AND CONTAINING 2,939,666 square feet or 67.49 acres of land, more or less.

Exhibit "B"
Description of the Park Property

BEING a tract of land situated in the J. Wilcox Survey, Abstract No. 1017, City of Allen, Collin County, Texas, the subject tract being a portion of a tract conveyed to Montgomery Tree Farms, LLC according to the deed recorded in Document No. 20090713000874160 of the Deed Records, Collin County, Texas (DRCCT), with the subject tract being more particularly described as follows:

BEGINNING at a point on the southeast line of Alma Drive, a variable width public right-of-way, for the northeast corner of a tract conveyed to the City of Allen (for park purposes) recorded in Volume 5195, Page 1107 DRCCT;

THENCE N 62°46'33" E, 29.99 feet along the southeast line of Alma Drive to a point from which a 5/8" iron rod with plastic cap found bears N 62°46'33" E, 773.37 feet;

THENCE departing Alma Drive, into said Montgomery Tree Farms tract, the following:

S 16°03'31" E, 155.55 feet;

S 22°38'43" E, 182.73 feet;

S 25°08'09" E, 829.02 feet;

S 11°50'18" E, 92.05 feet;

N 66°04'21" W, 69.58 feet;

S 81°49'16" W, 87.69 feet;

S 13°09'01" W, 85.31 feet;

S 18°32'28" E, 60.18 feet;

S 74°07'52" W, 57.09 feet;

N 78°36'19" W, 58.49 feet;

N 16°55'49" W, 138.22 feet;

N 68°48'23" W, 121.89 feet;

S 83°21'44" W, 68.92 feet;

And N 64°58'47" W, 62.60 feet to a point on the east line of Lot 1, Block B of the Dedication of Park & Flood Plain Land to the City of Allen, recorded in Cabinet J, Page 583, Plat Records, Collin County, Texas;

THENCE N 01°38'30" E, along the east line of Lot 1, passing at 565.81 feet the northeast corner thereof and the southeast corner of said City of Allen tract, and continuing along the east line thereof a total distance of 1079.08 feet to the POINT OF BEGINNING with the subject tract containing 330,252 square feet or 7.582 acres of land.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF COLLIN §

**PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER FACILITIES
AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF MASTER FACILITIES AGREEMENT FOR MONTGOMERY FARMS (this "Assignment") is made as of _____, 2016 by **EMERSON FARM COMPANY, LTD.**, a Texas limited partnership ("EFC" or "Assignor") and **DARLING HOMES OF TEXAS, LLC**, a Texas limited liability company ("Darling" or "Assignee").

WHEREAS, the City and EFC entered into that certain Master Facilities Agreement for Montgomery Farms, dated July 26, 2006 ("MFA") and recorded as Clerk's Instrument No. 20070226000253940 in the Collin County Real Property Records, which encumbers certain real property being purchased by Darling from EFC of even date herewith (the "Property"), which real property is described in Exhibit A, attached hereto and incorporated herein, and

WHEREAS, in connection with the transfer and conveyance of the Property to Darling, EFC has agreed to assign its rights and obligations under the MFA for the Property to Darling.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment of MFA. Effective as of the date hereof, EFC hereby conveys and assigns to Darling all of EFC's rights and obligations as Owner under the MFA for the Property, but not otherwise.
2. Assumption of MFA. Effective as of the date hereof, Darling hereby accepts the rights under the MFA and assumes and agrees to perform all obligations of EFC under and in connection with the MFA as they relate to the Property, but not otherwise.
3. Obligations of EFC. EFC shall continue to be responsible for all its obligations incurred prior to the date of this Assignment and all obligations and duties under the MFA for any real property that is not a part of the Property (unless such obligations are assumed by a third party). Darling is not by this Assignment assuming, and it expressly disclaims, any

obligations, debts, or responsibilities incurred by EFC prior to the date of this Assignment, which such obligations, debts, and responsibilities shall remain with and be the sole responsibility of EFC. Darling does not assume and it expressly disclaims any assumption of obligations, debts, and responsibilities under the MFA for real property that is not a part of the Property.

4. Warranties and Representations of EFC. EFC represents and warrants to Darling that EFC has not assigned any right under the MFA with respect to the Property to any third party. Darling shall be entitled to enforce all remedies available at law or in equity for EFC's breach of the warranties and representations contained in this paragraph.

5. Further Cooperation. EFC agrees to reasonably cooperate with Darling in executing any further consents and documents that may be requested by Darling from time to time to more effectively carry out the terms of this Assignment.

6. Miscellaneous. All capitalized terms used but not defined herein shall have the same meaning as provided in the MFA.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

EFC:

EMERSON FARM COMPANY, LTD.,
a Texas limited partnership

By: Emerson Farm Company General Partner, Ltd.,
a Texas limited partnership, its general partner

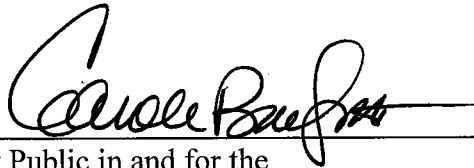
By: Farm Company GP, LLC,
a Texas limited liability company, its
general partner

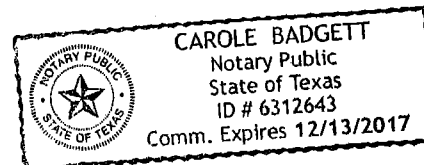
By: 
Philip L. Williams, its Manager

By: 
Richardson Beard, its Manager

THE STATE OF TEXAS §
COUNTY OF DALLAS §

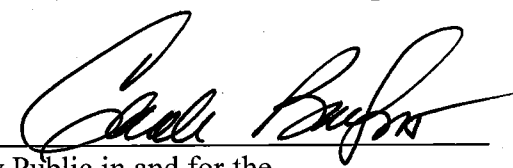
This instrument was acknowledged before me on August 10, 2016, by Philip L. Williams, Manager of Farm Company GP, LLC, a Texas limited liability company, the general partner of Emerson Farm Company General Partner, Ltd., a Texas limited partnership, the general partner of EMERSON FARM COMPANY, LTD., a Texas limited partnership, on behalf of said limited partnership.

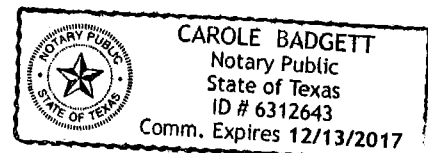

Notary Public in and for the
State of Texas



THE STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on August 10, 2016, by Richardson Beard, Manager of Farm Company GP, LLC, a Texas limited liability company, the general partner of Emerson Farm Company General Partner, Ltd., a Texas limited partnership, the general partner of EMERSON FARM COMPANY, LTD., a Texas limited partnership, on behalf of said limited partnership.


Notary Public in and for the
State of Texas



DARLING:

DARLING HOMES OF TEXAS, LLC,
a Texas limited liability company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Its: _____

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2016,
by _____, _____ of Darling Homes Of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

Notary Public in and for the State of Texas

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2016,
by _____, _____ of Darling Homes Of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

Notary Public in and for the State of Texas

By its signature below, the City of Allen, Texas consents to the foregoing partial assignment from Emerson Farm Company, Ltd. to Darling Homes of Texas, LLC of the Master Facilities Agreement for Montgomery Farms dated July 26, 2006, executed by and between Emerson Farm Company, Ltd. and the City of Allen, Texas, recorded as Clerk's Instrument No. 20070226000253940 in the Collin County Real Property Records.

CITY OF ALLEN, TEXAS

A Texas municipality

By: _____
Peter Vargas, City Manager

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2016, by _
Peter Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said
municipality.

Notary Public in and for the State of Texas

EXHIBIT A

Legal Description

Estates North and South:

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, City of Allen, Collin County, Texas, the subject tract being a portion of a tract conveyed to Emerson Farm Company, Ltd. according to the deed recorded in Document No. 2004-0086358 of the Deed Records, Collin County, Texas (DRCCT), and a portion of a tract conveyed to Emerson Farm Co., Ltd., recorded in Volume 5034, Page 158 DRCCT, and a portion of a tract conveyed to Montgomery Tree Farms, LLC, recorded in Document No. 20090713000874160 DRCCT, and being all of Lot 1R, Block 1, Williams-Old Bethany Addition, an addition recorded in Cabinet 2013, Page 549 of the Plat Records, Collin County, Texas (PRCCT), with the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod with plastic cap stamped "SPIARSENG" set on the south line of Bethany Drive, a variable width right-of-way conveyed to the City of Allen by deed recorded in Document No. 2002-0013695 DRCCT, for the northwest corner of Angel Field West, an addition to the City of Allen, recorded in Cabinet 2015, Page 2, Plat Records, Collin County, Texas (PRCCT);

THENCE along the common line thereof, the following:

S 01°06'57" W, 145.34 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

N 88°53'03" W, 6.00 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

S 01°06'57" W, 489.89 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

S 73°36'01" E, 141.63 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

Around a tangent curve to the left having a central angle of 06°24'31", a radius of 322.50 feet a chord of S 76°48'16" E - 36.05 feet an arc length of 36.07 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And S 01°51'21" W, 132.75 feet to a 5/8" iron rod with plastic cap stamped "BURY" found for the southwest corner of said JBGL Hawthorne tract and for the northwest corner of a tract conveyed to William S. Montgomery, Jr., Trustee of the William S. Montgomery, Jr. Trust U/A MMM 2005 Descendants Trust, recorded in Document No. 20140908000969950 DRCCT;

THENCE along the common line thereof, the following:

S 01°51'21" W, 1594.96 feet to a 1/2" iron rod found;

S 54°33'31" E, 216.22 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And S 03°48'31" E, passing at 261.50 feet the southwest corner of said Montgomery tract, continuing into and through said Montgomery Tree Farms tract a total distance of 321.42 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

THENCE into and through said Montgomery Tree Farms tract, the following:

N 27°38'41" W, 51.32 feet;

N 49°44'07" W, 110.52 feet;

N 27°44'17" W, 130.89 feet;

N 52°47'38" W, 245.97 feet;

N 74°23'45" W, 213.31 feet;

N 73°57'43" W, 300.86 feet;

N 57°22'47" W, 221.79 feet;

N 61°13'05" W, 263.75 feet;

S 88°08'19" W, 157.10 feet;

N 64°16'57" W, 51.10 feet;

And N 51°36'50" W, 27.21 feet;

THENCE N 09°48'32" E, passing at 89.20 feet a 1/2" iron rod with plastic cap stamped "Halff Assoc." found for the southeast corner of Lot 2, Block 1, Williams-Old Bethany Addition, and for a westerly southeast corner of Lot 1R, Block 1, Williams-Old Bethany Addition, and continuing along the common line thereof a total distance of 349.94 feet to a 1/2" iron rod with plastic cap stamped "Halff Assoc." found;

THENCE N 80°11'28" W, 164.28 feet continuing along the common line thereof to a 1/2" iron rod with plastic cap stamped "Halff Assoc." found;

THENCE S 09°48'32" W, continuing along the common line thereof, passing at 192.78 feet a 1/2" iron rod with plastic cap stamped "Halff Assoc." found for the southwest corner of said Lot 2 and the easterly southwest corner of Lot 1R, and continuing into said Montgomery Tree Farms tract a total distance of 241.99 feet;

THENCE into and through said Montgomery Tree Farms tract, the following:

N 61°55'37" W, 54.53 feet;

N 36°35'51" W, 178.70 feet;

N 45°21'35" W, 153.24 feet;

N 03°17'43" W, 145.96 feet;

N 03°29'38" E, 207.64 feet;

N 05°49'55" W, 147.33 feet;

N 20°23'14" W, 52.24 feet;

And N 52°39'55" W, 94.07 feet;

THENCE N 32°23'06" E, passing at 41.55 feet the most westerly corner of said Emerson Farm Company tract, and continuing along the most westerly line thereof a total distance of 88.17 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set for the most southerly corner of The Meadow at Montgomery Farm, an addition recorded in Cabinet R, Page 73 PRCCT;

THENCE along the common line thereof, the following:

N 38°20'39" E, 51.51 feet to a 5/8" iron rod with plastic cap stamped "ZOLLAR" found;

S 77°05'44" E, 112.12 feet to a 5/8" iron rod with plastic cap stamped "ZOLLAR" found;

N 79°42'41" E, 135.76 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

N 56°30'25" E, 135.77 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

N 33°18'28" E, 135.76 feet to an "X" set in concrete;

N 09°32'21" E, 431.14 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set on the south line of Monica Drive, a 45 foot right-of-way;

S 87°32'35" E, 186.39 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

S 42°22'35" E, 24.00 feet to a 5/8" iron rod with plastic cap stamped "ZOLLAR" found;

S 87°22'35" E, 50.00 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

N 02°37'25" E, 169.65 feet to an "X" set in concrete;

Around a tangent curve to the right having a central angle of 20°32'04", a radius of 175.00 feet a chord of N 12°53'27" E - 62.38 feet an arc length of 62.72 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

N 23°09'29" E, 77.30 feet to a point in a bridge;

Around a tangent curve to the left having a central angle of 12°43'27", a radius of 232.50 feet a chord of N 16°47'46" E - 51.53 feet an arc length of 51.63 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

N 10°26'02" E, 25.48 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

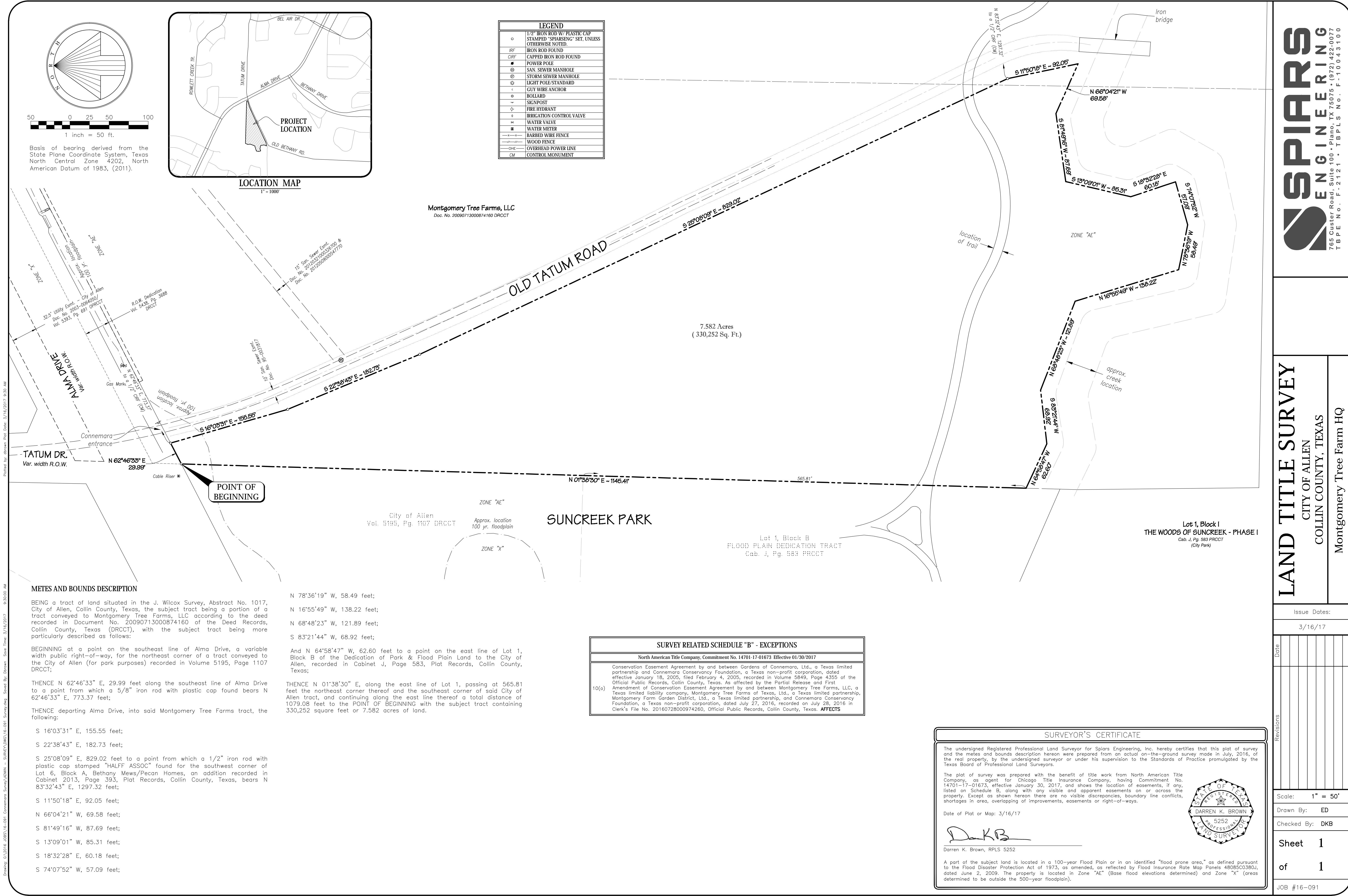
And around a non-tangent curve to the right having a central angle of 50°32'50", a radius of 20.00 feet, a chord of N 36°50'52" E - 17.08 feet, an arc length of 17.64 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set on the south line of Bethany Drive;

THENCE along the south line of Bethany Drive, the following:

Around a non-tangent curve to the right having a central angle of 03°32'41", a radius of 1016.50 feet, a chord of S 74°47'57" E - 62.88 feet, an arc length of 62.89 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

S 73°01'36" E, 103.53 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And around a tangent curve to the left having a central angle of 32°58'56", a radius of 1133.50 feet a chord of S 89°31'04" E - 643.52 feet an arc length of 652.50 feet to the POINT OF BEGINNING with the subject tract containing 3,249,632 square feet or 74.601 acres of land.



SPIARS
ENGINEERING
765 Custer Road, Suite 100 • Plano, TX 75075 • (972) 422-0077
TBPE No. F-2121 • TBPLS No. F-10043100

LAND TITLE SURVEY

CITY OF ALLEN

COLLIN COUNTY, TEXAS

Montgomery Tree Farm HQ

Issue Dates:

3/16/17

Date

Revisions

Scale: 1" = 50'

Drawn By: ED

Checked By: DKB

Sheet 1

of 1

JOB #16-091

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	April 11, 2017
SUBJECT:	Authorize the City Manager to Execute a Consent to the Assignment and Assumption of Entry License Agreement by Montgomery Improvement District West, Ltd., to Darling Homes of Texas, LLC.
STAFF RESOURCE:	Chris Flanigan, Director of Engineering
PREVIOUS COUNCIL ACTION:	<p>On December 13, 2005, City Council authorized the City Manager to execute a License Agreement between the City of Allen and Montgomery Improvement District West Ltd. for the construction and maintenance of entry features across Hanna Street and Brett Drive.</p> <p>On November 10, 2015, City Council authorized the City Manager to execute a first amendment to the license agreement with Montgomery Improvement District West, Ltd. related to the maintenance of the entry feature across Brett Drive.</p> <p>On November 10, 2015, City Council authorized the City Manager to execute a License Agreement with Montgomery Park HOA, Inc. related to the maintenance of the entry feature across Hannah Street.</p>
ACTION PROPOSED:	Authorize the City Manager to Execute for a Consent to the Assignment and Assumption of Entry License Agreement by Montgomery Improvement District West, Ltd., to Darling Homes of Texas, LLC.

BACKGROUND

Montgomery Improvement District West Ltd. (MIDW) constructed architectural entry features that span across the entry ways at Hanna Street and Brett Drive. The entry features consist of a bent steel arbor structure (Hanna Street) as well as a tunnel structure (Brett Drive) meant to create a unique entry to the Montgomery Park (on the north) and the Meadow (on the south) neighborhoods. MIDW has been responsible for maintenance and upkeep of the entry features.

In early 2015, MIDW and the Montgomery Park HOA requested that the original license agreement for the entry features with MIDW be amended to reference only the arbor over Brett Drive and that a new entry feature maintenance license be entered between the City and Montgomery Park HOA, Inc. to provide for the HOA's maintenance of the entry feature over Hanna Street. The amendment and new agreement, respectively,

were approved by the City Council and signed by the respective parties in November 2015. As a result of the amendment and new agreement, MIDW is now responsible only for insurance, ownership, and maintenance of the entry feature across Brett Drive and the Montgomery Park HOA is solely responsible for insurance, ownership, and maintenance of the entry feature across Hanna Street.

Now that the development of property south of Bethany Drive is underway and Montgomery Farm Estates will soon be built, it is appropriate at this time for the existing agreement with MIDW (for maintenance responsibility of the structure over Brett Drive) to be assigned to the new property owner - Darling Homes.

Ultimately, the agreement will be assigned further to the Estates of Montgomery Farm HOA. Furthermore, this assignment is being recommended in conjunction with the approval of an addendum to Master Facilities Agreement with Emerson Farm Company, Ltd. and Darling Homes of Texas, LLC relating to Montgomery Farms development (also proposed on this agenda).

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a Consent to the Assignment and Assumption of Entry License Agreement by Montgomery Improvement District West, Ltd., to Darling Homes of Texas, LLC.

MOTION

I make a motion to authorize the City Manager to execute a Consent to the Assignment and Assumption of Entry License Agreement by Montgomery Improvement District West, Ltd., to Darling Homes of Texas, LLC.

ATTACHMENTS:

Assignment and Assumption Of Entry License Agreement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF COLLIN §

ASSIGNMENT AND ASSUMPTION OF ENTRY LICENSE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF ENTRY OF LICENSE AGREEMENT (this "Assignment") is made as of August 15, 2016 by MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD., a Texas limited partnership ("MIDW" or "Assignor") and DARLING HOMES OF TEXAS, LLC, a Texas limited liability company ("Darling" or "Assignee").

WHEREAS, the City and MIDW entered into that certain Entry License Agreement, executed December 14, 2005, as amended by the First Amendment to License Agreement, executed November 11, 2015 ("Entry License Agreement"). A true and correct copy of the First Amendment to License Agreement, which includes a copy of the initial Entry License Agreement is attached hereto and incorporated herein as Exhibit A and

WHEREAS, in connection with the transfer and conveyance of certain real property affected by the Entry License Agreement to Darling, MIDW has agreed to assign its rights and obligations under the Entry License Agreement to Darling.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment of Entry License Agreement. Effective as of the date hereof, MIDW hereby conveys and assigns to Darling all of MIDW's rights and obligations as Licensee under the Entry License Agreement.

2. Assumption of Entry License Agreement. Effective as of the date hereof, Darling hereby accepts the rights under the Entry License Agreement and assumes and agrees to perform all obligations of MIDW under and in connection with the Entry License Agreement.

3. Obligations of MIDW. MIDW shall continue to be responsible for all its obligations incurred prior to the date of this Assignment, and Darling is not by this Assignment assuming, and it expressly disclaims, any obligations, debts, or responsibilities

incurred by MIDW prior to the date of this Assignment, which such obligations, debts, and responsibilities shall remain with and be the sole responsibility of MIDW.

4. Warranties and Representations of MIDW. MIDW represents and warrants to Darling that MIDW has not assigned any right under the Entry License Agreement to any third party. Darling shall be entitled to enforce all remedies available at law or in equity for MIDW's breach of the warranties and representations contained in this paragraph.

5. Further Cooperation. MIDW agrees to reasonably cooperate with Darling in executing any further consents and documents that may be requested by Darling from time to time to more effectively carry out the terms of this Assignment.

6. Miscellaneous. All capitalized terms used but not defined herein shall have the same meaning as provided in the Entry License Agreement. All recitals are incorporated herein as if fully set forth.

[Signatures Follow]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

MIDW:

**MONTGOMERY IMPROVEMENT DISTRICT WEST,
LTD., a Texas Limited Partnership**

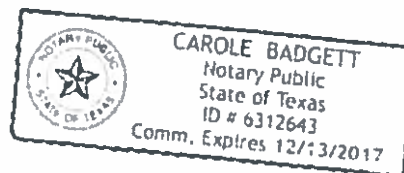
By: Emerson Partners, Inc., a Texas corporation, its
General Partner

By: *PL Williams*
Name: Philip L. Williams
Its: President

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on *August 10* 2016, by Philip L. Williams, President of Emerson Partners Inc., a Texas corporation, in its capacity as the general partner of MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD., a Texas limited partnership, on behalf of said limited partnership.

Carole Badgett
Notary Public in and for the State of Texas



DARLING:

DARLING HOMES OF TEXAS, LLC,
a Texas limited liability company

By: [Signature]
Name: Ryan Huey
Title: VP-Land Acquisition

By: [Signature]
Name: Andrew Green
Its: VP-Finance

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 12 day of August, 2016,
by Ryan Huey, VP-Land Acquisition of Darling Homes of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

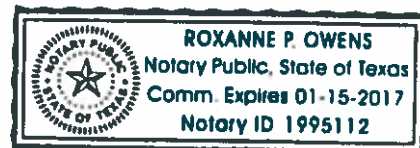
[Signature]
Notary Public in and for the State of Texas

STATE OF Texas §
§
COUNTY OF Collin §



This instrument was acknowledged before me on the 12 day of August, 2016,
by Andrew Green, VP-Finance of Darling Homes of Texas, LLC, a
Texas limited liability company, on behalf of said limited liability company.

[Signature]
Notary Public in and for the State of Texas



By its signature below, the City of Allen, Texas consents to the foregoing assignment from Montgomery Improvement District West, Ltd. to Darling Homes of Texas, LLC of the Entry License Agreement dated December 14, 2005, executed by and between Montgomery Improvement District West, Ltd. and the City of Allen, Texas, as amended by the First Amendment to License Agreement, dated November 11, 2015.

CITY OF ALLEN, TEXAS
A Texas municipality

By: _____
Peter Vargas, City Manager

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2016, by _
Peter Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said
municipality.

Notary Public in and for the State of Texas

Exhibit A

Copy of First Amendment to License Agreement and the Entry License Agreement

[attached]

COPY

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**First Amendment
to
License Agreement**

This First Amendment ("Amendment") is made by and between City of Allen, Texas ("City") and Montgomery Improvement District West, Ltd. ("Licensee") acting by and through their authorized representatives, to be effective as of the date ("Amendment Effective Date") of execution by both City and Licensee. City and Licensee are hereafter collectively referred to as "the Parties" or individually as "Party."

WITNESSETH:

WHEREAS, City and Licensee executed the License Agreement ("2005 License Agreement") attached as Annex 1, pertaining and applicable to the rights-of-way of, and certain improvements above and across, Hanna Street (north of Bethany Drive) and Brett Drive (south of Bethany Drive); and

WHEREAS, City and MIDW desire to and do hereby amend the 2005 License Agreement so that, from and after the Amendment Effective Date: (i) the 2005 License Agreement as amended by this Amendment ("Amended License Agreement") continues to pertain and apply to the right-of-way of and certain improvements above and across Brett Drive; and (ii) the 2005 License Agreement no longer applies or pertains to the right-of-way of and certain improvements above and across Hanna Street;

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendments to 2005 License Agreement.** The 2005 License Agreement is hereby amended as follows:
 - A. Each and every reference to "Hanna Street" in the 2005 License Agreement is deleted and removed.
 - B. The definition of the term "Improvements" in Article I is amended by deleting the phrase "collectively mean an entry feature as depicted in Exhibit "B" above and across Hanna Street and..."
 - C. The word "Premises" wherever it appears shall read "Licensed Premises."
 - D. The definition of the term "Licensor" in Article I is deleted.

- E. Section 4.1 is amended by inserting the phrase "and the license granted herein" after the word "Agreement."
- F. Section 4.9(a) is amended by replacing the word "Licensor" with the word "City."
- G. Section 4.9 is amended by adding a new paragraph (i) to read as follows:
 - (i) In addition to any other remedies available to City pursuant to this Agreement, in the event Licensee fails to maintain the insurance required by this Agreement and to provide City proof of such coverage, City may purchase such insurance coverage at Licensee's expense. In the event City purchases insurance on behalf of Licensee pursuant to this Section 4.9(i), Licensee shall reimburse City for any amounts paid for the purchase of such insurance not later than five (5) days after receipt of written demand for such reimbursement. In the event Licensee fails pay such funds within the time required herein, City may seek to collect such funds from Licensee through any lawful means and all costs of collection related thereto, including, but not limited to, costs of court and reasonable attorneys fees. Licensee's failure to deliver to City a certificate of insurance as required by this Section 4.9 on or before the fifth (5th) day after delivery by City of written demand for proof that all required insurance is in effect shall create a presumption that Licensee has failed to purchase such insurance coverage.
- H. Section 4.14 is amended by adding the following at the end of the section:

Notwithstanding anything to the contrary herein, Licensee's obligation to restore the Licensed Premises following removal of the Improvements shall not include or require removal of any portion of the paved areas, curbs, sidewalks, paved trails located within the Licensed Premises which have been constructed since the effective date of this Agreement and which are owned and maintained by City, or to the extent otherwise agreed in writing by City prior to commencement of any work related to restoring the Licensed Premises.
- I. The address for Peter G. Smith in Section 4.17 is amended to read "500 North Akard, 1800 Ross Tower, Dallas, Texas 75201.
- J. The address for notices to Licensee as stated in Section 4.17 is amended to read:

to Licensee: Montgomery Improvement District West, Ltd.
c/o Emerson Partners, Inc.
1204 Old Bethany Road
Allen, Texas 75013

with a copy to: Gregg C. Davis
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201.

K. A new Section 4.26 is added and shall read as follows:

4.26 **No Property Interest:** The Parties acknowledge and agree that this Agreement and the license granted herein is merely contractual in nature and does not constitute a conveyance of any interest in real property by City to Licensee.

2. **Use of Defined Terms.** Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the 2005 License Agreement.
3. **Amended License Agreement.** This Amendment amends and is incorporated as part of the 2005 License Agreement, and each and all references to the "Agreement" or the 2005 License Agreement are hereafter deemed to be references to the Amended License Agreement.
4. **Effective Date.** This Amendment shall become effective upon the later of (i) the date this Amendment bears the signatures of the authorized representatives of all of the Parties and (ii) the effective date of a license agreement between City and the Montgomery Park HOA, Inc. ("MPHOA") granting a license to the MPHOA providing access to and for the purpose of maintaining, repairing, replacing and removing certain improvements constructed over City's Hanna Street right-of-way and originally constructed pursuant to the 2005 License Agreement ("the Hanna Street Improvements"). Licensee understands, acknowledges, and agrees that until the foregoing described license agreement between City and MPHOA is effective, Licensee remains obligated to the City to maintain, repair, replace, and/or remove the Hanna Street Improvements to the extent required by the provisions of the 2005 License Agreement without consideration to any amendments as stated in this Amendment.

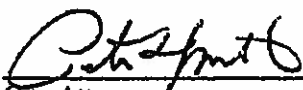
[Remainder of page intentionally left blank; signatures follow]

EXECUTED this 11 day of November, 2015.


CITY OF ALLEN, TEXAS

By: 
Peter H. Vargas, City Manager

APPROVED AS TO FORM:


City Attorney

MONTGOMERY IMPROVEMENT DISTRICT
WEST, LTD.

By: 
Philip L. Williams, President

By: 
Richardson Beard, Senior Vice President

LICENSEE'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 26 day of October, 2015, by Philip L. Williams, President, and Richardson Beard, Senior Vice President, of Montgomery Improvement District West, Ltd., a Texas limited partnership, on behalf of said limited partnership.



Brenda W. Moore
Notary Public, State of Texas

My Commission expires:

9-10-19

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 11 day of November, 2015, by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas home rule municipality, on behalf of said municipality.



Y. Linette Magana
Notary Public, State of Texas

My Commission Expires:

06.04.17

ANNEX 1
2005 LICENSE AGREEMENT
[See Attached]

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

License Agreement

This Agreement ("Agreement") is made by and between City of Allen, Texas ("City") and Montgomery Improvement District West, Ltd. ("Licensee") acting by and through their authorized representatives.

WITNESSETH:

WHEREAS, City owns the street rights-of-way known as Hanna Street and Brett Drive; and

WHEREAS, Licensee desires to construct an entry feature above and across Hanna Street and an entry feature above and across Brett Drive as depicted in Exhibit "A" (the "Improvements"); and

WHEREAS, Licensee has requested the City allow the use and occupancy of (including access to) the air space above Brett Drive and Hanna Street as described and depicted in Exhibit "B" (the Licensed Premises") for the purpose of Licensee constructing, installing, maintaining, repairing, replacing and removing the Improvements in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Article I
Definitions**

For the purposes of this Agreement, each of the following shall have the meanings set forth herein unless the context clearly requires otherwise:

"Approved Plans" shall mean the design and construction plans for the Improvements approved by the City Engineer, or designee.

"City" shall mean the City of Allen, Texas.

"Commencement Date" means the last date on which each of the following has occurred: (i) preparation and approval of the approved plans for the Improvements; (ii) issuance by all applicable governmental authorities of necessary permits for the construction of the Improvements; (iii) commencement of grading for the Improvements pursuant to Approved Plans; (iv) commencement of construction of the Improvements pursuant to Approved Plans; and

(v) issuance by all applicable governmental authorities of the necessary permits and approvals for construction of the Improvements pursuant to the Approved Plans.

"Completion of Construction" shall mean the last date on which the following has occurred: (i) the construction of the Improvements have been substantially completed; and (ii) the City has conducted a final inspection of the Improvements.

"Effective Date" shall mean the last date of execution hereof.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action or omission (unless caused by acts of omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Improvements" shall mean collectively mean an entry feature as depicted in Exhibit "B" above and across Hanna Street and an entry feature as depicted in Exhibit "B" above and across Brett Drive and the Licensed Premises, as more fully described in the Approved Plans and submittals filed with the City.

"Licensed Premises" shall mean the street right-of-way, real property and the air space above and across as described in Exhibit "B".

"Licensee" shall mean Montgomery Improvement District West, Ltd, or permitted assignee.

"Licensor" shall mean the City of Allen, Texas.

Article II

Purpose

Purpose: City hereby grants Licensee a license, pursuant to the terms of this Agreement, for the purpose of having access to and constructing, installing, maintaining, repairing replacing and removing the Improvements within the Licensed Premises.

Article III

Term

Term: The term of this Agreement shall be perpetual, subject, however, to termination by the parties as provided herein.

Article IV
Miscellaneous

4.1 **Non-exclusive:** This Agreement is nonexclusive and is subject to any existing public or private utility, drainage or communications easement and/or facility located in, on, under, above, across or upon the Licensed Premises, to all vested rights presently owned any utility or communication company, public or private for the use of the Licensed Premises for facilities presently located within the boundaries of the Licensed Premises and to any existing lease, license, or other interest in the Licensed Premises granted by City to any individual, corporation or other entity, public or private now or hereafter.

4.2 **Environmental Protection:** Licensee shall not use or permit the use of the Licensed Premises for any purpose that may be in violation of any laws pertaining to the health of the environment, including without limitation, the comprehensive environmental response, compensation and liability act of 1980 ("CERCLA"), the resource conservation and recovery act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. Licensee warrants that the permitted use of the Licensed Premises will not result in the disposal or other release of any hazardous substance or solid waste on or to the Licensed Premises and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the property or adjoining property by Licensee. The terms "hazardous substance" and "release" shall have the meaning specified in CERCLA and the term "solid waste" and "disposal (or dispose)" shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, to the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. Except for the sole negligence or willful conduct of the City, its officers, agents and employees, the Licensee shall indemnify and hold City harmless from and against all costs of environmental clean up to the Licensed Premises and contiguous City property resulting from Licensee's use of the Licensed Premises under this Agreement.

4.3 **Licensee to Make Repairs.** Licensee, at Licensee's own cost and expense, at all times during the Term, agrees to keep and maintain, or cause to be kept and maintained, the Licensed Premises and the Improvements in a good state of appearance and repair, reasonable wear and tear and casualty excepted. Licensee shall perform such maintenance and repair as may be necessary. Without limiting the generality of the foregoing provisions of this Section, it is understood that Licensee's obligations with respect to the maintenance and repair of the Licensed Premises and the Improvements include the repair and replacement of all structural items, including the foundation, lighting, in, under, across and above the Licensed Premises and the Improvements, and all paving, driveways, and sidewalks constructed in connection with the Improvements. Except for the sole negligence or willful conduct of the City, its officers, agents and employees, the City shall have no duty, obligation or liability to make any repairs, replacements, or alterations to the Improvements or the Licensed Premises, or any portion

thereof, at any time during the Term. Without limiting the generality of the foregoing provisions of this Section, Licensee shall: (i) conduct regular inspections of the Improvements and of the Licensed Premises for compliance with applicable state and local laws and regulations, for health and safety standards, cleanliness, good order, condition, and repair; (ii) periodically paint and refurbish the Improvements; and (ii) cause the Improvements to be repaired and maintained in good condition.

4.4 **Mechanic's liens not permitted:** Licensee shall fully pay all labor and materials used in, on or about the Licensed Premises and will not permit or suffer any mechanic's or material man's liens of any nature be affixed against the Licensed Premises by reason of any work done or materials furnished to the Licensed Premises at Licensee's instance or request.

4.5 **Future City Use:** This Agreement is made expressly subject and subordinate to the right of City to use the Licensed Premises for any public purpose whatsoever or to grant the right to use the Licensed Premises to others. In the event that City shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation or removal of the Improvements shall be necessary or convenient for City's use of the Licensed Premises, Licensee shall at its sole cost and expense make or cause to be made such modifications, removal or relocation of the Improvements as is required so as to not interfere with the City's or City's assigns' use of the Licensed Premises. A minimum of three (3) months written notice for the exercise of the above action shall be given by City and Licensee shall commence to make the required modification, relocation or removal within thirty (30) days after receipt of such notice and to complete the same within ninety (90) days thereafter. The Licensee shall be responsible for and shall promptly pay any reasonable expenses incurred by the City for the modification, relocation or removal of the Improvements in the event the Licensee fails to timely take the required actions.

4.6. **Construction of Improvements,** Licensee shall be required to obtain all permits and approvals from all governmental agencies having jurisdiction for the design, construction and installation of the Improvements. Prior to application for the necessary permits and approvals from the City the Licensee shall submit detailed plans and specifications, including elevations and architectural renderings for the Improvements for review and approval by the City. The Licensee agrees to cause Commencement of Construction to begin on or before February 1, 2006 and to cause Completion of Construction of the Improvements to occur on or before December 31, 2006, subject to events of Force Majeure.

4.7 **Compliance with laws:** Licensee agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensee.

4.8 **Release and Indemnification:** Licensee shall defend, protect and keep City, its officers, agents, employees and invitees forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the construction, installation, maintenance, repair and use of the

LICENSE AGREEMENT - Page 4 76173

Licensed Premises and Improvements by the Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, contractors or assigns or those holding under Licensee. Licensee shall at all times defend, protect and indemnify and it is the intention of the parties hereto that Licensee hold City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including attorney's fee, arising out of or from any accident or other occurrence on or about the Licensed Premises causing personal injury, death or property damage resulting from use of the Improvements or Licensed Premises by Licensee, its agents, employees, customers and invitees, except when caused by the negligence or willful misconduct of City, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against City for its willful misconduct. Licensee shall at all times defend, protect, indemnify and hold the City, its officers, agents, employees and invitees harmless against and from any and all loss, cost, damage, or expense, including attorney's fees arising out of, or from any and all claims or causes of action resulting from any failure of Licensee, its officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof. Licensee hereby releases and waives all claims against the City, its officers, agents, employees and invitees for damages, court costs, attorney fees, expenses and actions of any kind arising or allegedly to arise by reason of this Agreement including the repair, damage, destruction, relocation and removal of the Improvements by Licensee; does further agree to indemnify and hold harmless the City, its officers, agents, employees and invitees from and against any such claims, damages, attorney fees and expenses.

4.9 Insurance. Throughout the Term, Licensee shall, at Licensee's expense obtain and maintain the following insurance policies and in accordance with the following terms and conditions:

- (a) Commercial general liability insurance for bodily injury, death or property damage, insuring Licensee and naming Licensor as an additional insured, against all claims, demands, or actions relating to the Premises on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use. In addition to other remedies provided in this Lease, if Licensee fails to maintain the insurance required by this Section, City may, but is not obligated to, obtain such insurance and Licensee shall pay to City upon demand as additional rental the premium cost thereof plus interest at the Maximum Rate from the date of payment by City until repaid by Licensee.
- (b) Worker's Compensation and Employer's Liability insurance.
- (c) Commercial General Liability insurance insuring operations hazard, independent contractor hazard, contractual liability and products and completed operations liability, in limits not less than \$2,000,000.00 combined single limit for each occurrence for bodily injury, personal injury and property damage liability.

- (d) Insurance covering all Improvements located or being constructed on the Licensed Premises against loss or damage from perils covered by an all risk or special form policy. This insurance is to be carried by insurance companies authorized or admitted to transact business in Texas with a Best's Insurance Rating of A or A+ or better, selected by Licensee and approved by City, which approval shall not be unreasonably withheld. The insurance shall be in amounts not less than eighty (80%) percent of the full insurable value of the Improvements and any other improvements included on the Licensed Premises.
- (e) Construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Premises. This insurance must be carried by insurance companies authorized or admitted to transact business in Texas with a Best's Insurance Rating of A or A+ or better, selected by Licensee and approved by City, which approval shall not be unreasonably withheld. The insurance will have limits of not less than \$100,000.00 for property damage and \$300,000.00 for one person and \$2,000,000.00 for one accident for personal injury and must protect Licensee and City, as well as any other person or persons Licensee may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the Premises.
- (f) Prior to any use of the Licensed Premises and prior to Commencement of Construction, the Licensee shall furnish to City certificates of insurance showing that the Licensee is in compliance with the insurance coverage requirements of this Section and indicating the exclusions from coverage, if any. All insurance required by this Section shall be primary and noncontributing with any insurance that may be carried by City. City reserves the right, from time to time throughout the Term, to increase the minimum insurance limits set out herein to ensure that adequate insurance is being maintained.
- (g) All insurance and certificate(s) of insurance shall contain the following provisions: (i) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (ii) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (iii) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (h) The City may during the Term reasonably increase and/or modify the types and amounts insurance upon thirty (30) days prior written notice to Licensee.

right to enter upon the Improvements in order to (a) inspect the Improvements thereon; and (b) confirm that Licensee is compliance with the terms and conditions of this Agreement.

4.11 Damage to Premises. If, during the Term, the Improvements are wholly or partially destroyed or damaged by fire, or any other casualty whatsoever (collectively called a "Casualty"), Licensee shall immediately take such action as may be required to remove the Improvements, or portion thereof and any trash from the Licensed Premises so as to not interfere with the public use the street right-of-ways, or other public ways within the Licensed Premises. Licensee shall within thirty (30) days after such Casualty provide the City with written notice of Licensee's intent to restore, reconstruct, replace or remove the Improvements and the estimated time period for commencement and completion of such work. The Licensee shall commence such work within sixty (60) days after such Casualty. In the event the Improvements are wholly destroyed or damaged by a Casualty the Licensee may at its option terminate this Agreement and remove the Improvements and restore the Licensed Premises to the its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted.

4.12 Payment of Insurance Proceeds. In the event that proceeds of insurance are to be used to repair, replace, restore or reconstruct the Improvements destroyed by Casualty ("Restoration"), the following provisions shall pertain:

- (a) Prior to the commencement of such Restoration, the plans and specifications for the Restoration must be approved by City (such approval not to be unreasonably withheld or delayed).
- (b) If, in the reasonable judgment of City, the costs of the Restoration will exceed the amount of the Insurance Proceeds, Licensee may: (i) terminate this Agreement and remove the Improvements and restore the Licensed Premises to the its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted; or (ii) give satisfactory proof or assurances to City that the funds required to meet such deficiency (such funds to be provided by Licensee) are or will be available for such purpose;
- (c) If at the time of the occurrence of the Casualty, or at any time thereafter during Restoration, there exists a default by Licensee, or any circumstance which, with the giving of notice or the passage of time, or both, would constitute such a default, then Licensee shall, if demanded by City, deliver the Insurance Proceeds to a third party escrow agent designated by City. In such event, the Insurance Proceeds will be advanced by the Escrow Agent in installments during the period of the Restoration, except for a final installment to be advanced following the period of the Restoration. Each installment (except the final installment) is to be advanced by the Escrow Agent in an amount not to exceed ninety percent (90%) of the value of the work completed since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by an independent supervising architect selected and paid by City, together with a

reasonable showing of bills for labor and material, and evidence satisfactory to CITY that no lien affidavit has been filed in the records where the filing of liens for any labor or material in connection with such work are to be filed. The final payment or disbursement of the Insurance Proceeds deposited shall be in an amount sufficient to make the total advance equal to the entire cost of any Restoration, and shall be made upon a proper certificate of completion by an independent architect, but in no event shall the Escrow Agent be required to advance more than the balance of the Insurance Proceeds on deposit. It is expressly agreed that if this Agreement shall be terminated for Licensee's default at any time prior to release or payment to Licensee of any of the Insurance Proceeds as provided in this Section, all of the Insurance Proceeds not therefore paid to Licensee shall be the sole property of Licensee, and shall be delivered by the Escrow Agent to Licensee no later than 180 days after termination of this Agreement provided the Licensee has removed the Improvements from the Licensed Premises and restored the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted. In the event the Licensee has not removed the Improvements from the Licensed Premises and restored the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises, reasonable wear and tear excepted, then the Escrow agent shall first pay to the City the actual costs or if not yet incurred by the City the estimated reasonable cost for the removal of the Improvements from the Licensed Premises and restoration of the Licensed Premises to its condition prior to Licensee's use of the Licensed Premises; and the remaining balance of the Insurance Proceeds, if any shall be paid to Licensee and shall be the sole property of Licensee. The City shall have the right until 180 days after termination of this Agreement to declare the Improvements to be abandoned by Licensee and to become the property of the City, and to use any remaining Insurance Proceeds to repair and rebuild, or to remove, the Improvements.

4.13 Eminent Domain. If all or part of the Improvements and/or the Licensed Premises is taken under power of eminent domain (which term as used in this Agreement shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Agreement shall terminate as of the date of taking, or possession by the condemning authority.

4.14 Action upon termination: At such time as this Agreement may be terminated for any reason whatsoever, Licensee shall, at its sole expense and costs, remove the Improvements and appurtenances owned or leased by it, situated in, under or attached to the Licensed Premises and shall restore the Licensed Premises to the condition of the Licensed Premises prior to Licensee's use of the Licensed Premises wear and tear excepted.

4.15 Assignment: Property Owner Association: Licensee shall not assign or transfer its rights under this Agreement to any other person or entity without the prior written consent of
LICENSE AGREEMENT – Page 8

City, which consent will not be unreasonably withheld. Notwithstanding, the foregoing Licensee may, in connection with the transfer of ownership of the Improvements, assign its rights under this Agreement to a property owners association incorporated as a Texas non-profit corporation for the purpose of owning and maintaining the Improvements provided: (i) the City Attorney has reviewed and approved the property owners association agreement, covenants and restrictions, the articles of incorporation and by laws; and (ii) the Licensee has provided sufficient proof of the valid existence and operation of the property owners association as a Texas non-profit corporation to the City Attorney. Prior to the conveyance of the Improvements to the property owners association the Licensee must provide a reserve fund equivalent to two months' dues based on full property owners' association membership. At a minimum, the property owner association agreements, covenants and restrictions establishing and creating the property owner's association required herein shall contain and/or provide for the following: (i) provisions acceptable to the city attorney for the establishment and organization of the property owners' association and the adoption of bylaws for said property owners' association, including provisions requiring that the owner(s) of any lot or lots within the applicable subdivision and any successive purchaser(s) to automatically and mandatorily become a member of the property owners' association; (ii) the initial term of the agreement, covenants and restrictions establishing and creating the property owners' association shall be for a 25-year period and shall automatically renew for successive ten-year periods, and the property owners' association may not be dissolved without the prior written consent of the city; (iii) provisions acceptable to the city attorney to ensure the continuous and perpetual use, operation, maintenance and/or supervision of the Improvements and to establish a separate reserve fund for the capital repair and replacement of the Improvements prior to the conveyance of the Improvements by the Licensee; (iv) provisions prohibiting the amendment of any portion of the property owner's association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of the Improvements without the prior written consent of the city; (v) the right and ability of the city or its lawful agents, after due notice to the property owners' association, to maintain, repair, and remove the Improvements and to perform the responsibilities of the property owners' association and its board of directors if the property owners' association fails to do so in compliance with any provisions of the agreements, covenants or restrictions of the property owner's association or of any applicable city codes or regulations; to assess the property owners association for all costs incurred by the city in performing said responsibilities if the property owner's association fails to do so; and/or to avail itself of any other enforcement actions available to the city pursuant to state law or city codes or regulations; and (vi) provisions indemnifying and holding the city harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney's fees and costs of suit, incurred or resulting from the city's maintenance, repair or removal of the Improvements.

4.16 Termination: This Agreement may be terminated in any of the following ways:

- a. Written Agreement of both parties;
- b. By City giving Licensee six (6) months prior written notice;
- c. By City upon failure of Licensee to perform its obligations as set forth in this Agreement, subject to events of Force Majeure, if Licensee has not cured any

failure within thirty (30) days of written notification by City of such failure or if such failure cannot be cured within such 30-day period, Licensee has not cured such failure within a reasonable period of time thereafter, not to exceed ninety (90) days, so long as Licensee is diligently prosecuting the same;

d. As set forth in Sections 4.11, 4.12, and 4.13 herein.

4.17 **Notice:** When notice is permitted or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or on the date when placed, postage prepaid in the United States mail, certified return receipt requested, and addressed to the parties at the address set forth below. Either party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

to City: Peter H. Vargas
City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

with a copy to: Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
500 North Akard
1800 Lincoln Plaza
Dallas, Texas 75201

to Licensee: Montgomery Improvement District West, Ltd.
% Emerson Partners, Inc.
10005 Technology Blvd. West,
Suite 151
Dallas, TX 75220

with a copy to: William S. Dahlstrom
Jackson Walker, L.L.P.
901 Main Street
Suite 6000
Dallas, Texas 75202

4.18 **Governing law:** This Agreement is governed by the laws of the State of Texas; and venue for any action shall be in the state district court of Collin County, Texas. The parties agree to submit to the jurisdiction of said court. ~~_____~~

4.19 **Binding effect:** This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.
LICENSE AGREEMENT – Page 10 76175

4.20 **Entire Agreement:** This Agreement embodies the entire Agreement between the parties and supersedes all prior Agreements, understandings, if any, relating to the property and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

4.21 **Recitals:** The recitals to this Agreement are incorporated herein by reference.

4.22 **Exhibits:** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made in this Agreement.

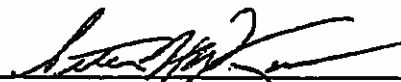
4.23 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

4.24 **Headings:** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.

4.25 **Survival of Covenants:** Any of the representatives, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

EXECUTED this 14th day of December, 2005.

City of Allen, Texas

By: 
Peter H. Vargas, City Manager

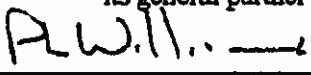
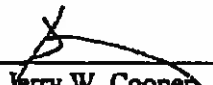
Approved as to Form:


Peter G. Smith, City Attorney

MONTGOMERY IMPROVEMENT DISTRICT WEST, LTD.,

a Texas limited partnership

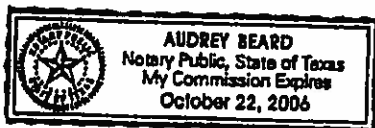
By: Emerson Partners, Inc., a Texas Corporation,
its general partner

By:  or 
Philip L. Williams or Jerry W. Cooper
President Executive Vice President

LICENSEE'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 7th day of December, 2005, by Philip L. Williams, the President of Emerson Partners, Inc., a Texas Corporation, general partner of Montgomery Improvement District West, Ltd., on behalf of said limited partnership.



Audrey Beard
Notary Public, State of Texas

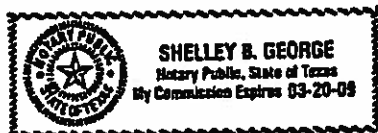
My Commission expires:

10-22-06

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 14th day of December, 2005, by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said municipality.

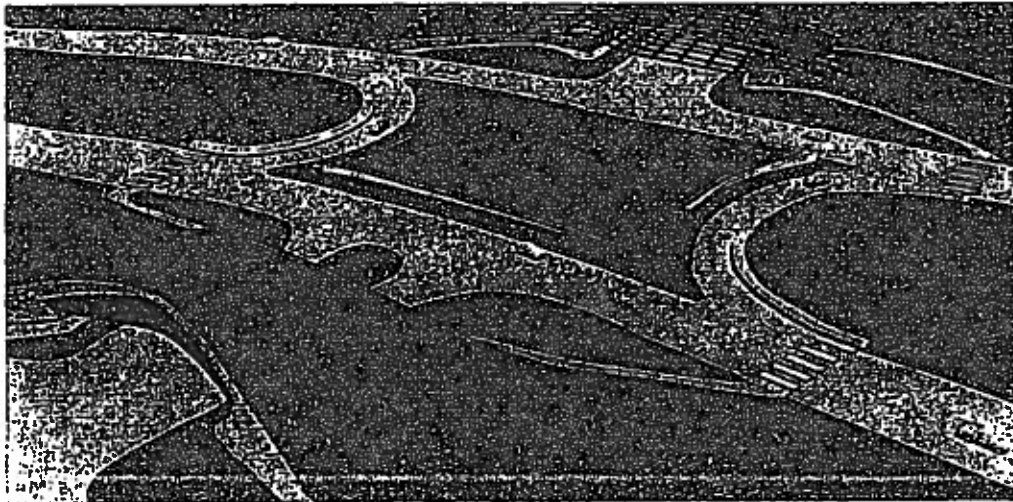


Shelley B. George
Notary Public, State of Texas

My Commission Expires:

03-20-09

Exhibit "A"
Description of Entry Features



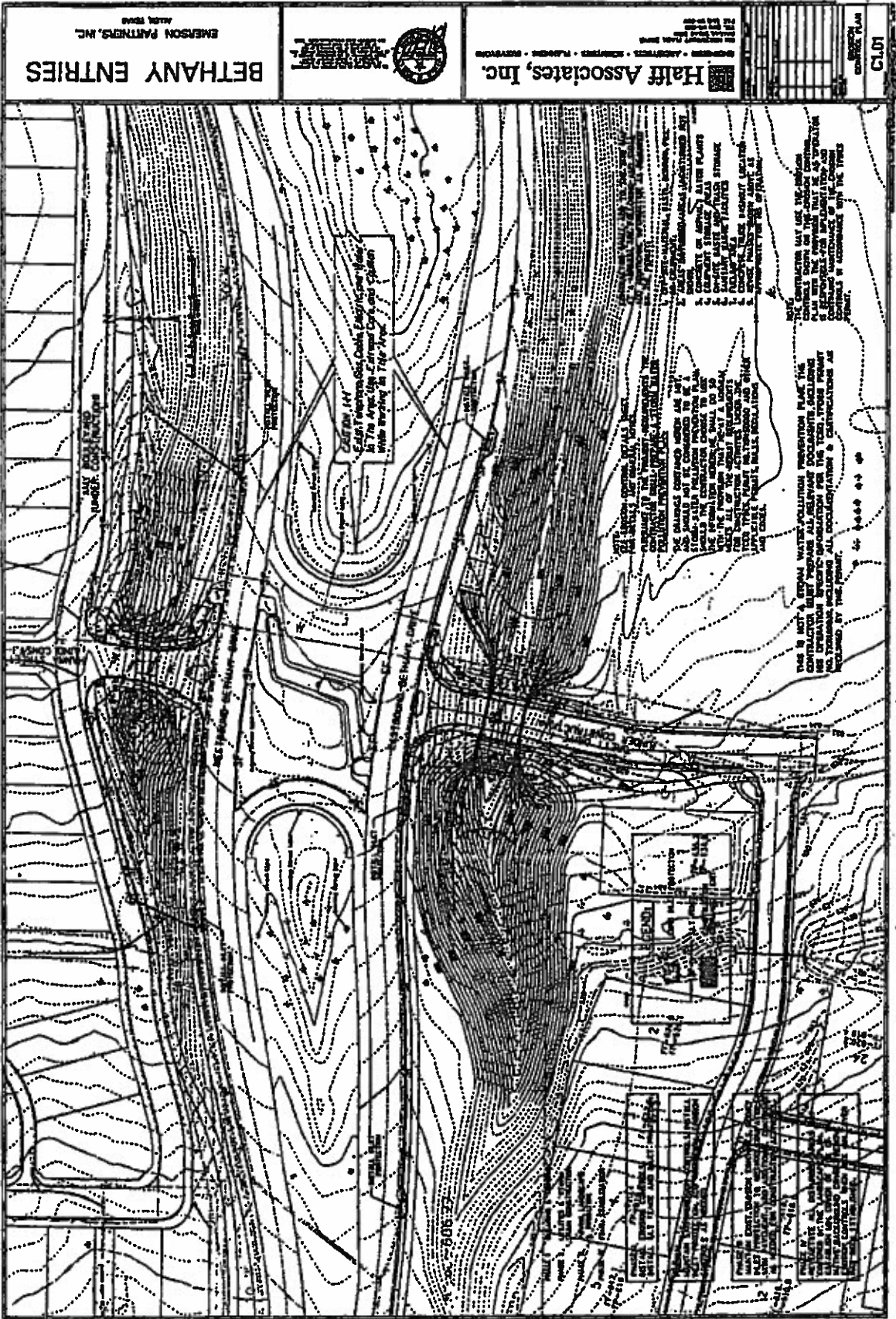


EXHIBIT 1

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Authorize the City Manager to Execute a Contract with David's Auto Body Repair for Automotive Paint and Body Repair Services for One Year with the Option to Renew Annually for Four Additional Terms for an Annual Amount of \$75,000.

STAFF RESOURCE:

Eric Cannon, Chief Financial Officer
Debra Morris, Purchasing Manager

ACTION PROPOSED:

Authorize the City Manager to Execute a Contract with David's Auto Body Repair for Automotive Paint and Body Repair Services for One Year with the Option to Renew Annually for Four Additional Terms for an Annual Amount of \$75,000.

BACKGROUND

Due to unforeseen vehicle damages throughout the years, it is important for the City to have a contracted vendor to provide fixed pricing and offer superior collision repairs, excellent customer service and provide safety to the City's vehicle fleet on an as needed basis.

Chapter 271.102 authorizes a local government to participate in an cooperative purchasing program with another local cooperative organization. The Texas Local Government Code permits cooperative agreements between local governments for the purchase of goods and services and satisfies the requirement of local governments to seek competitive bids for purchase of such goods and services through Supplier Contracts.

The City of Allen will utilize the City of McKinney's contract for automotive paint and body repair services through an interlocal agreement. The City of McKinney awarded a contract through a formal bid process to David's Paint and Body on October 18, 2016.

BUDGETARY IMPACT

Funding for this service has been budgeted in the General Fund - Vehicle Maintenance.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with David's Auto Body Repair for automotive paint and body repair services for one year with the option to renew annually for four additional terms for an annual amount of \$75,000.

MOTION

I make a motion to authorize the City Manager to execute a contract with David's Auto Body Repair for automotive paint and body repair services for one year with the option to renew annually for four additional terms for an annual amount of \$75,000.

ATTACHMENTS:

City of McKinney Supplier Bid Response

City of McKinney Award

Contract

City of McKinney Purchasing (City of McKinney, Texas) Supplier Response

Bid Information

Bid Creator Abri Sterlacci Contract Administrator
 Email asterlac@mckinneytexas.org
 Phone 1 (972) 547-7582
 Fax 1 (972) 547-7585

 Bid Number 17-02SC
 Title Automotive Paint and Body Services
 Bid Type ITB
 Issue Date 9/21/2016 12:00 PM (CT)
 Close Date 10/6/2016 02:00:00 PM (CT)
 Need by Date

Contact Information

Address 1550 S. College St. Bldg. D
 McKinney, TX 75069
 Contact Abbi Sterlacci
 Purchasing
 Department
 Building Bldg. D
 Floor/Room
 Telephone USA (972) 547-7580
 Fax USA (972) 547-7585
 Email asterlac@mckinneytexas.org

Ship to Information

Address 1550 S. College St. Bldg. D
 McKinney, TX 75069
 Contact Abbi Sterlacci
 Purchasing
 Department
 Building Bldg. D
 Floor/Room
 Telephone USA (972) 547-7585
 Fax
 Email asterlac@mckinneytexas.org

Supplier Information

Company David's Paint & Body
 Address 211 East Erwin
 McKinney, TX 75069
 Contact
 Department
 Building
 Floor/Room
 Telephone 1 (972) 5425227
 Fax 1 (972) 5423036
 Email
 Submitted 9/21/2016 12:26:50 PM (CT)
 Total \$171.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature DAVID HUNT

Email davidhunt1000@aol.com

Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	General Terms and Conditions	<p>I. BIDDING</p> <p>A. BIDS – The City encourages all responses to be submitted electronically on the City's eBid system. However, the City will also accept paper bids, if received by the due date and time at the location specified in the legal notice. Paper bids submitted to the office of the Purchasing Manager shall be a minimum of one (1) original and three (3) copies of the executed Bid Form submitted in a sealed envelope; as well as one (1) electronic copy in PDF format on CD, DVD or USB. Copies are to be marked as such.</p> <p>B. AUTHORIZED SIGNATURES – The bid, whether paper or electronic must be executed personally by the vendor or duly authorized partner of the partnership or duly authorized officer of the corporation. If executed by an agent, a power of attorney or other evidence of authority to act on behalf of the vendor shall accompany the bid to become a valid bid.</p> <p>C. LATE BIDS – Bids must be submitted electronically or in the office of the City Purchasing Manager before or at the specified time and date bids are due. Bids received in the office of the Purchasing Manager after the submission deadline shall be rejected as non-responsive bids.</p> <p>D. WITHDRAWAL OF BIDS PRIOR TO BID OPENING – A bid may be withdrawn before the opening date by submitting a written request to the Purchasing Manager. If time allows and the bidder desires, a new bid may be submitted. Bidder assumes full responsibility for submitting a new bid before or at the specified time and date bids are due. The City of McKinney reserves the right to withdraw a request for bids before the opening date.</p> <p>E. WITHDRAWAL OF BIDS AFTER BID OPENING – Bidder agrees that offer may not be withdrawn or cancelled by the vendor for a period of ninety (90) days following the date and time designated for the receipt of bids unless otherwise stated in the bid and/or specifications.</p> <p>F. BID AMOUNTS – Bids should show net prices, extensions where applicable and net total. In case of conflict between unit price and extension, the unit price will govern. Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.</p> <p>G. EXCEPTIONS AND/OR SUBSTITUTIONS – As a matter of practice, the City of McKinney rejects exception(s) and /or substitutions as non-responsive but reserves the right to accept any and/or all of the exception(s) and/or substitution(s) deemed to be in the best interest of the City. Vendors taking exception to the specifications and plans, or offering substitutions, shall state these exceptions in the section provided. If bid is made on an article other than the one specified, which bidder considers comparable, the name and grade of said article must be specified in the bid and sufficient specifications and descriptive data must accompany same to permit thorough evaluation. The absence of stated exceptions and/or substitutions shall indicate that the vendor has not taken any exceptions to the specifications</p>	Agree

and shall hold the vendor responsible to perform in strict accordance with the specifications.

H. ALTERNATES – Bid request and/or specifications may expressly allow bidder to submit an alternate bid. Presence of such an offer shall not be considered an indication of non-responsiveness.

I. DESCRIPTIONS – Unless otherwise specified, any reference to make, manufacturer and/or model used in the bid specifications is merely descriptive and not restrictive, and is used only to indicate type, style or quality of material desired.

J. BID ALTERATIONS – Bids cannot be altered or amended after submission deadline. Any interlineation, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

K. TAX EXEMPT STATUS – The City is exempt from federal excise tax and state sales tax. Unless the bid form or specifications specifically indicate otherwise, the price bid must be net exclusive of above-mentioned taxes and will be so construed. Therefore, the bid price shall not include taxes.

L. QUANTITIES – Quantities indicated are estimated quantities only and are not a commitment to buy. Approximate usage does not constitute an order, but only implies the probable quantity that will be used. Commodities will be ordered on an as needed basis. Bidder is responsible for accurate final counts.

M. BID AWARD – Award of contract shall be made to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality. The City reserves the right to be the sole judge as to whether items bid will serve the purpose intended. The City reserves the right to accept or reject in part or in whole any bid submitted, and to waive any technicalities or informalities for the best interest of the City. The City reserves the right to award based upon individual line items, sections or total bid.

N. BEST VALUE – In determining best value, the City of McKinney may consider: 1) purchase price; 2) reputation of the bidder and of the bidder's goods or services; 3) quality of the bidder's goods or services; 4) extent to which the goods or services meet the City's needs; 5) bidder's past relationship with the City of McKinney; 6) impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities; 7) total long-term cost to the City to acquire the bidder's goods or services; and 8) any relevant criteria specifically listed in this document.

O. SILENCE OF SPECIFICATIONS FOR COMPLETE UNITS – All materials, equipment and/or parts that will become a portion of the completed work including items not specifically stated herein but necessary to render the service(s) complete and operational per the specifications are to be included in the bid price. Vendor may be required to furnish evidence that the service, as bid, will meet or exceed these requirements.

P. ADDENDA – Any interpretations, corrections or

changes to the specifications and plans will be made by addenda no later than forty-eight hours prior to the bid opening. Addenda will be distributed to all known recipients of bid documents. Vendors shall acknowledge receipt of all addenda with submission of bid.

Q. GENERAL BID BOND/SURETY REQUIREMENTS – Failure to furnish bid bond/surety, if requested, will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

R. GENERAL INSURANCE REQUIREMENTS – Failure to furnish Affidavit of Insurance, if insurance coverage is required in these specifications, will result in bid being declared non-responsive. Non-responsive bids will not be considered for award.

S. RESPONSIVENESS – A responsive bid shall substantially conform to the requirements of this Invitation to Bid and/or specifications contained herein. Bidders who substitute any other terms, conditions, specifications and/or requirements or who qualify their bids in such a manner as to nullify or limit their liability to the contracting entity shall be deemed non-responsive and the bid will not be considered for award. Also, bids containing any clause that would limit contracting authority shall be considered non-responsive. Examples of non-responsive bids include but shall not be limited to a) bids that fail to conform to required delivery schedules as set forth in the bid request; b) bids with prices qualified in such a manner that the bid price cannot be determined such as with vague wording that may include “price in effect at the time of delivery”; and c) bids made contingent upon award of other bids currently under consideration.

T. RESPONSIBLE STANDING OF BIDDER – To be considered for award, bidder must at least: have the ability to obtain adequate financial resources without limitation; be able to comply with required or proposed delivery/completion schedule; have a satisfactory record of performance; have a satisfactory record of integrity and ethics; be otherwise qualified and eligible to receive award. In order to determine financial standing of bidder, the City of McKinney may request recent financial statements or a statement of net worth.

U. PROPRIETARY DATA – Bidder may, by written request, indicate as confidential any portion(s) of a bid that contain proprietary information, including manufacturing and/or design processes exclusive to the vendor. The City of McKinney will protect from public disclosure such portions of a bid unless directed otherwise by legal authority including existing the Texas Public Information Act.

V. PUBLIC BID OPENING – Bidders are invited to be present at the opening of bids. After the official opening of bids, a period of not less than one week may be required to evaluate bids. The amount of time necessary for bid evaluation may vary and is determined solely by the City. Following City Council action to award or reject, all bids submitted are available for public review, unless otherwise specified herein.

II. PERFORMANCE

A. DESIGN, STRENGTH, AND QUALITY – Design, strength, and quality of materials and workmanship must

conform to the highest standards of manufacturing and engineering practices. The apparent silence of specifications and/or plans as to any detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications and/or plans shall be made on the basis of this statement.

B. AGE AND MANUFACTURE – All tangible goods being bid must be new and unused, unless otherwise specified, in first-class condition, of current manufacture, and furnished ready to use. All items not specifically mentioned that are required for a complete unit shall be furnished.

C. DELIVERY LOCATION – All deliveries will be made to the address(es) specified on the purchase order during normal working hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, unless otherwise authorized by the Purchasing Manager or designee.

D. DELIVERY/COMPLETION SCHEDULE – Delivery may be an important consideration in the evaluation of best value. The maximum number of days necessary for delivery ARO shall be stated in the space, if provided, on the bid form.

E. DELIVERY CHARGES – All delivery and freight charges, F.O.B. destination shown on City of McKinney purchase order, as necessary to perform contract are to be included in the bid price.

F. INSTALLATION CHARGES – All charges for assembly, installation and set-up shall be included in the bid price. Unless otherwise stated, assembly, installation and set-up will be required.

G. OPERATING INSTRUCTIONS AND TRAINING – Clear and concise operating instructions and descriptive literature will be provided in English, if requested. On-site detailed training in the safe and efficient use and general maintenance of item(s) purchased shall be provided as needed at the request of the City. Instructions and training shall be provided at no additional cost to the City.

H. LABOR/MATERIALS/EQUIPMENT - Successful bidder shall provide all labor, materials, and equipment necessary for completion of each job(s)

I. STORAGE – Bidder agrees to provide storage of custom ordered materials, if requested, not to exceed 30 calendar days.

J. COMPLIANCE WITH FEDERAL, STATE, COUNTY, AND LOCAL LAWS – Bids must comply with all federal, state, county and local laws, to include but not be limited to, all applicable standard safety, emission, and noise control requirements. Any vehicles or equipment shall contain all standard safety, emission, and noise control requirements required for the types and sizes of equipment at the time of their manufacture. The contractor agrees, during the performance of work or service, to comply with all applicable codes and ordinance of the City of McKinney, Collin County, or State of Texas as they may apply, as these laws may now read or as they may hereafter be changed or amended.

K. PATENTS AND COPYRIGHTS – The successful

vendor agrees to protect the City from claims involving infringements of patents and/or copyrights.

L. SAMPLES, DEMONSTRATIONS AND TESTING – At the City's request and direction, bidder shall provide product samples and/or testing of items bid to ensure compliance with specifications. Samples, demonstrations and/or testing may be requested at any point prior to or following bid award. Samples, demonstrations and/or testing may be requested upon delivery and/or any point during the term of resulting contract. All samples (including return thereof), demonstrations and/or testing shall be at the expense of the bidder/vendor.

M. ACCEPTABILITY – All articles enumerated in the bid shall be subject to inspection by an officer designated for the purpose by the City of McKinney. If found inferior to the quality called for, or not equal in value to the specifications, deficient in workmanship or otherwise, this fact shall be certified to the Purchasing Manager who shall have the right to reject the whole or any part of the same. Items and/or work determined to be contrary to specifications must be replaced at the vendor's expense. Inferior items not retrieved by the vendor within thirty (30) calendar days, or an otherwise agreed upon time, may become the property of the City at the City's option, without cost. If disposal of such items warrants an expense, an amount equal to the disposal expense will be deducted from amounts payable to the vendor. Vendor's failure to retrieve property resulting in ownership by City shall not be imputed as acceptance of replacement good under this contract.

III. PURCHASE ORDERS AND PAYMENT

A. PURCHASE ORDERS – A Purchase Order(s) shall be generated by the City Purchasing Manager to the successful vendor. The purchase order number must appear on all itemized invoices and packing slips. The City will not be held responsible for any work orders placed and/or performed without a valid current purchase order number. Payment will be made for all services rendered and accepted by the contract administrator for which a valid invoice has been received.

B. INVOICES – All invoices shall reference the Purchase Order number. Invoices shall reference the bid item number or a detailed description for each item invoiced. If an item purchased and itemized on the invoice does not correspond to an item in any of the categories awarded to the vendor, invoice shall reference the item as "N/C" to indicate that it is a non-contract item. This requirement is to assist the City in verifying contract pricing on all invoices. Payment will be made under terms of net thirty (30) days unless otherwise agreed upon by seller and the purchasing department.

C. FUNDING – The City of McKinney is operated and funded on an October 1 to September 30 basis. In the event sufficient funds are not appropriated in the City budget for the payment of amounts due under this contract, the City shall not be obligated to make further purchases or payments and City reserves the right to terminate this contract without liability.

IV. CONTRACT

A. CONTRACT DEFINITION – The General Conditions

of Bidding and Terms of Contract, Specifications, Plans, Bidding Forms, Addenda, and any other documents made a part of this bid shall constitute the complete bid. This bid, when duly accepted by the City, shall constitute a contract equally binding between the successful bidder and the City of McKinney.

B. CONTRACT TERMINATION – The City reserves the right to cancel and terminate this contract, without cause, upon thirty (30) days written notice to the other party.

C. CHANGE ORDER – No different or additional terms will become part of this contract with the exception of a change order. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and at the discretion and approval of the City. No change order will be binding unless signed by an authorized representative of the City and the vendor.

D. PRICE REDETERMINATION: A price redetermination may be considered by City of McKinney only at the twelve (12) month and twenty-four (24) month anniversary date of the contract. All requests for price redetermination shall be in written form. Cause for such request, i.e. manufacturer's direct cost, postage rates, Railroad Commission rates, Federal/State minimum wage law, Federal/State unemployment taxes, F.I.C.A, Insurance Coverage Rates, etc., shall be substantiated in writing by the source of the cost increase. The bidder's past experience of honoring contracts at the bid price will be an important consideration in the evaluation of future bids for the lowest and best bid. City of McKinney reserves the right to accept or reject any/all requests for price redetermination as it deems to be in the best interest of the City.

E. TERMINATION FOR DEFAULT – The City of McKinney reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the vendor fails to perform to the terms of specifications or fails to comply with the terms of this contract. Breach of contract or default authorizes the City to award to another vendor, purchase elsewhere and charge the full increase in cost and handling to the defaulting party.

F. TRANSITIONAL PERIOD – Upon normal completion of this contract, not to include termination for default, and in the event that no new contract has been awarded by the original expiration date of the existing contract including any extension thereof, it shall be incumbent upon the Vendor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the original expiration date of the existing contract and any extension thereof.

G. INVALID, ILLEGAL, OR UNENFORCEABLE PROVISIONS – In case any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision thereof and this contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained herein.

H. INJURIES OR DAMAGES RESULTING FROM NEGLIGENCE – Successful vendor shall defend, indemnify and save harmless the City of McKinney and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful vendor, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful vendor shall pay any judgment, with costs, which may be obtained against the City of McKinney growing out of such injury or damages.

I. INTEREST BY PUBLIC OFFICIALS – No public official shall have interest in this contract, in accordance with Texas Local Government Code.

J. DISCLOSURE OF CERTAIN RELATIONSHIPS – Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with the City of McKinney disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that may cause a conflict of interest with the City of McKinney. By law, this questionnaire must be filed with the City Secretary, City of McKinney, PO Box 517, McKinney, Texas 75070, not later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. Go to www.mckinneytexas.org to view Section 176, Local Government Code and for Questionnaire CIQ. A person commits a Class C misdemeanor offense if the person violates Section 176.006, Local Government Code. By submitting a response to this request, bidder represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

K. WARRANTY – The successful vendor shall warrant that all materials utilized in the performance of this contract shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

L. UNIFORM COMMERCIAL CODE – The successful vendor and the City of McKinney agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

M. VENUE – This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in the County of Collin, Texas.

N. SALE, ASSIGNMENT, OR TRANSFER OF CONTRACT – The successful vendor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of the City of McKinney.

O. SILENCE OF SPECIFICATIONS – The apparent silence of these specifications as to any detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

2	Contract Term	Once a contract is awarded, the unit prices offered by the successful bidder shall remain firm for the term of the contract. Contract shall commence on date of award and continue for two (2) year period with three (3) one (1) year renewal options.	Acknowledge
3	Interlocal Clause	As permitted under Chapter 791 of the Texas Government Code, other governmental entities may wish to participate under the same terms and conditions contained in this contract (i.e. piggyback). In the event any other entity participates, all purchase orders will be issued directly from and shipped directly to the entity requiring supplies/services. The City of McKinney shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by another entity. Each entity reserves the right to determine their participation in this contract. Would bidder be willing to allow other governmental entities to piggyback off this contract, if awarded, under the same terms and conditions?	Yes
4	Minimum Specifications	<p>It is the intent of the following minimum specifications to describe Automotive Paint & Body Services and to establish an annual fixed price contract for this service on an "as needed basis". Brand names, where used, are for descriptive purposes.</p> <p>BEST VALUE EVALUATION CRITERIA AND FACTORS –</p> <p>Award of contract shall be made to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality taking into consideration the relative importance of price and other factors set forth below. Best value evaluation criteria will be grouped into percentage factors as follows:</p> <p>50% PURCHASE PRICE 35% THE EXTENT TO WHICH GOODS OR SERVICES MEETS THE CITY OF MCKINNEY'S NEEDS 15% REPUTATION OF THE BIDDER AND OF THE BIDDER'S GOODS OR SERVICES</p>	
5	References	List at least three (3) companies or governmental agencies (preferably a municipality) where the same or similar products and/or services as contained in this specification package were recently provided. Include the following information. Company Name, Contact Person, Title, Address, e-mail, Phone Number, Fax Number.	<p>City of Melissa Duane Smith Chief 3411 Barker Ave Melissa,Tx.75454 P972-838-2033/2338 F972-837-4524 dsmith@cityofmelissa.com</p> <p>City of Anna Kenneth Jenks PO Box 776 Anna,Tx.75409 P972-924-2848 F972-924-3162 kjenks@annatexas.gov</p> <p>City of McKinney Fleet Services Johnny Briggs 1550 S.College St. Mckinney,Tx.75069 P972-547-7345 F972-547-2601 jbriggs@mckinneytexas.org</p>
6	Delivery	Please specify if your company is willing to pick up/deliver vehicles and any cost associated with the pick up and delivery of vehicles	yes

7	Delivery	Please specify the number of hours/days for picking up units once notified	same day
8	Delivery	Please specify the number of hours/days for delivery once the job is complete	same day
9	EPA Standard (please initial to show compliance)	The successful vendor shall comply with all E.P.A. Standards specifically required by Federal, State, and Local jurisdictions as prescribed for Paint & Body Repair Operations.	dh
10	Written Estimates (please initial to show compliance)	The successful vendor must provide free written estimates of all work to be performed.	dh
11	On Site Inspection (please initial to show compliance)	Vendor must provide on-site inspections at the City's Service Center, Inspections for the purpose of generating estimates shall be conducted between the hours of: 7:00 AM to 4:00 PM,(Monday through Friday), or at any designated location requested by City.	dh
12	Texas Administrative Code (please initial to show compliance)	Prospective Vendors are required to be legally capable of repairing and painting vehicles and equipment in a protected and totally enclosed, filtered spray booth designed to handle these types of procedures as specified by the Texas Administrative Code, Title 30, Part 1, Chapter 106, Subchapter S, Rule §106.436. The City will inspect all facilities prior to award of the contract for compliance of these requirements. This pertains to all classifications being bid.	dh
13	Rejection of Bid (please initial to show compliance)	Bids will be rejected from Vendors who cannot perform paint & body repairs on a classification of vehicles/equipment; their facility is not capable of handling city vehicles; lack the experience in making the repairs; failure to produce the required references, certifications of staff performing repairs, or other required documents.	dh
14	Fire Suppression (please initial to show compliance)	Paint booths must have an approved integrated fire suppression system with current inspections performed by a licensed vendor	dh
15	Vehicles	Some vehicles may be equipped with a body other than a pickup cargo bed, such as; Animal Control module, platform body, and/or any other body, which could be supported within the vehicle's GVWR.	(No Response Required)
16	Guarantee (please initial to show compliance)	All work shall be covered by a two (2) year workmanship guarantee from date of completed invoice.	dh
17	Sublet (please initial to show compliance)	Prospective vendor shall not sublet or assign this contract for any body repairs and/or painting to any other vendor.	dh
18	Mechanical Repairs (please initial to show compliance)	Mechanical repairs performed during the process of repairing the damaged vehicle must comply with industry standards. Vendor must acquire authorization from the McKinney Fleet Manager prior to performing any type of mechanical repairs.	dh
19	Reassembly (please initial to show compliance)	Vehicles must be reassembled to factory specifications, and use Certified Original Equipment Manufacturer (O.E.M) parts. If needed, welding must meet manufacturer's approved methods.	dh

20	Alignment (please initial to show compliance)	Align suspension front, rear, or both, if required to restore vehicle to manufacturer's specifications.	dh
21	Painting (please initial to show compliance)	Prospective Vendors painting vehicles & equipment must be capable of Single stage, base coat/clear coat, and tri-stage painting.	dh
22	Capabilities (please initial to show compliance)	Vendor must be experienced and capable of making repairs to fiberglass, sheet molding compound (SMC) or carbon fiber material, plastic, aluminum, structural steel and sheet metal.	dh
23	Corrosion Protection (please initial to show compliance)	Vendor must restore factory corrosion protection.	dh
24	Color Match (please initial to show compliance)	Vendor must use a precision color match system to finish the repaired areas to the closest possible color match.	dh
25	Vehicle Painting (please initial to show compliance)	Vendor must be capable of partial or full repaints.	dh
26	Residue (please initial to show compliance)	Any paint residue or damage caused from painting will be charged back to the vendor	dh
27	Authorization (please initial to show compliance)	All work performed on City vehicles/equipment must be authorized by Fleet Services. Authorization on any work to be performed will be processed within twenty-four (24) hours of receiving the estimate. Authorization to proceed will be sent via fax, and/or e-mail from the Fleet Services Department. No repairs or painting should be performed without the proper written authorization.	dh
28	Additional Work (please initial to show compliance)	After authorization has been given to proceed, any additional work will require a revised estimate from the vendor. The revised estimate must state the reason for the increase, and a request to proceed. All estimates shall require the Fleet Manager's authorization	dh
29	Scope of Work (please initial to show compliance)	Any work performed outside of the scope of what is authorized, should not be billed to the City, and will not be reimbursed.	dh
30	Invoices (please initial to show compliance)	Unit number and mileage and/or hour meter reading must be on all estimates and invoices.	dh
31	Communications (please initial to show compliance)	The City's Fleet Department will provide the vendor, at the time the contract is awarded, a list of primary and secondary contacts, which will include phone, secondary phone, e-mail, and fax numbers for communication purposes.	dh
32	Operating Equipment (please initial to show compliance)	Unauthorized personnel shall not operate City radios or other equipment.	dh
33	Purchase Order Number (please initial to show compliance)	Once the contract is awarded, the Purchasing Manager will issue a Purchase Order for the contract. The purchase order number is required on all invoices for work performed. Any questions regarding this contract should be directed to the City's Fleet Manager during normal business hours.	dh
34	Exceptions	Do you take exceptions to the specifications? If so, by separate attachment, please state your exceptions.	Acknowledge
35	Federal IRS Form W-9	Bidder has attached IRS Form W-9.	Acknowledge

36 Consideration of Location of Bidders Principal Place of Business	<p>Section 271.9051 of the Texas Local Government Code authorizes a municipality with a population of less than 250,000, when considering competitive sealed bids, to enter into a contract for certain purchases with a bidder whose principal place of business is in the municipality and whose bid is within 5 percent of the lowest bid if the lowest bid is from a business outside the municipality and contracting with the local bidder would provide the best combination price and other economic benefits to the municipality. Request must be submitted with bid package to be considered by the City of McKinney. Questions should be addressed to the Purchasing Department at 972-547-7580.</p> <p>The statutory language is as follows:</p> <p>§ 271.9051. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES.</p> <p>(a) This section applies only to a municipality with a population of less than 250,000 that is authorized under this title to purchase real property or personal property that is not affixed to real property.</p> <p>(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract with:</p> <p>(1) the lowest bidder; or</p> <p>(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.</p> <p>(c) This section does not prohibit a municipality from rejecting all bids.</p> <p>(d) This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.</p> <p>Added by Acts 2005, 79th Leg., ch. 1205, § 1, eff. Sept. 1, 2005</p>	Acknowledge
37 Number of Years in Business	Enter the number of years your company has been in business.	22
38 Bidder Acknowledgement	<p>Bidder acknowledges, understands the specifications, any and all addenda, and agrees to the bid terms and conditions and can provide the minimum requirements stated herein. Bidder acknowledges they have read the document in its entirety, visited the site, performed investigations and verifications as deemed necessary, is familiar with local conditions under which work is to be performed and will be responsible for any and all errors in Bid submittal resulting from Bidder's failure to do so. Bidder acknowledges the prices submitted in this Bid have been carefully reviewed and are submitted as correct and final. If Bid is accepted, vendor further certifies and agrees to furnish any and all products upon which prices are</p>	Acknowledge

extended at the price submitted, and upon conditions in the specifications of the Invitation for Bid.

- | | | |
|-----------------------------------|--|-------------|
| 39 Insurance | I understand that the insurance requirements of this solicitation are required (please see the attached insurance requirements) and a certificate of insurance shall be submitted to the Purchasing department if I am awarded all or a portion of the resulting contract. | Acknowledge |
| 40 STATE OF TEXAS HOUSE BILL 1295 | <p>Effective January 1, 2016, the State of Texas enacted House Bill 1295, an ethics law which applies to contracts of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. This law states that a governmental entity or state agency may enter into a contract with a business entity upon completion of Form 1295. To obtain this form, please refer to:</p> <p>https://www.ethics.state.tx.us/whatsnew/elfinfoform1295.htm</p> | Acknowledge |
| 41 Digital Signature | <p>The undersigned agrees, if this bid is accepted, to furnish any and all items upon which prices are offered, at the price and upon the terms and conditions contained in the Bid, Conditions of Bidding, Terms of Contract, and Specifications and all other items made a part of the accepted contract.</p> <p>The undersigned affirms that they are duly authorized to execute the contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other bidder or to any other person(s) engaged in this type of business prior to the official opening of this bid. And further, that neither the bidder nor their employees nor agents have been for the past six (6) months directly nor indirectly concerned in any pool or agreement or combination to control the price of goods or services on, nor to influence any person to bid or not to bid thereon.</p> <p>By entering your name in the field provided you are accepting the terms of this bid. You agree that your typed name will serve as your electronic digital signature.</p> | David Hunt |

Line Items

#	Qty	UOM	Description	Response
1	1	EA	Please specify the cost of towing	Price
Item Notes: Specify if the your cost is all inclusive or per mile				
Supplier Notes:				
2	1	EA	Please specify any hazardous waste fee, if any	\$0.00
Item Notes:				
Supplier Notes:				
3	1	EA	Please specify what the hourly rate will be for Bodywork Labor	\$38.00
Item Notes:				
Supplier Notes:				
4	1	EA	Please specify what the hourly rate will be for Paint Labor	\$38.00
Item Notes:				
Supplier Notes:				
5	1	EA	Please specify what the hourly rate will be for Mechanical Labor	\$95.00
Item Notes:				
Supplier Notes:				
6	1	EA	State discount from retail prices for OEM parts and supplies for Automobiles & Light-Duty Trucks, Class 1 & 2 to 10000 GVWR	5.00%
Item Notes:				
Supplier Notes:				
7	1	EA	State discount from retail prices for OEM parts and supplies for Medium-Duty Trucks, Class 3, 4, & 5 10,001 - 19,500 GVWR	5.00%
Item Notes:				
Supplier Notes:				
8	1	EA	State discount from retail prices for OEM parts and supplies for Trucks, Class 6, 19,501 - 26,000 GVWR	5.00%
Item Notes:				

Supplier Notes:

9	1	EA	Please specify any other charges not specified in the line items relative to this solicitation.	Price
---	---	----	---	-------

Item Notes:

Supplier Notes:

Response Total:				\$171.00
-----------------	--	--	--	----------

RESOLUTION NO. 2016-10-155 (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE AWARD OF A CONTRACT TO DAVID'S PAINT AND BODY OF MCKINNEY, TEXAS, FOR AUTOMOTIVE PAINT AND BODY SERVICES

WHEREAS, the City Council of the City of McKinney, Texas, has determined the need for Automotive Paint and Body Services; and

WHEREAS, the City has received a best value bid from David's Paint and Body for Automotive Paint and Body Services on an as needed basis.

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

Section 1. The City Council of the City of McKinney, Texas, hereby accepts the bid from David's Paint and Body to be used on an as needed basis. This best value bid, when duly accepted by the City Council of the City of McKinney, shall constitute a contract equally binding between the successful bidder and the City of McKinney.


Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 18th DAY OF OCTOBER, 2016.

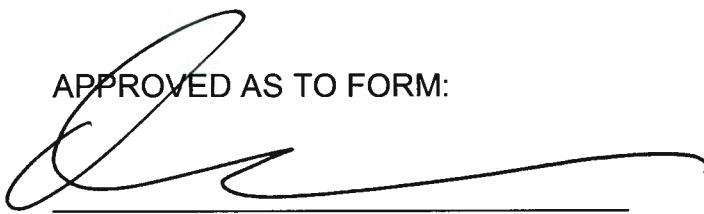
CITY OF MCKINNEY, TEXAS


BRIAN LOUGHMILLER
Mayor

ATTEST:


SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:


MARK S. HOUSER
City Attorney

STATE OF TEXAS §
 § **AGREEMENT FOR AUTOMOTIVE AND BODY
 REPAIR SERVICES**
COUNTY OF COLLIN §

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and David's Auto Body Repair ("Company") acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to obtain Automotive Paint and Body Repair Services from Company in accordance with the bid specifications attached hereto as Exhibit "A" ("Specifications"); and

WHEREAS, Company desires to provide services to City in accordance with its response to City of McKinney's Bid Specifications #17-02SC attached hereto as Exhibit "A";

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:

Article I
Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and continue until the last day of April 10, 2018, unless earlier terminated as provided herein (the "Initial Term").

City maintains the right to renew this Agreement for up to four (4) additional renewal terms of one (1) year at the City's sole discretion, the first renewal term beginning on April 11, 2018. The City may exercise its right to renew this Agreement by providing Company written notice thereof thirty (30) days prior to the expiration of the Initial Term or renewal term, as the case may be.

Article II
Contract Documents

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement;
- B. City of McKinney's Invitation for Bid #17-02SC ("Specifications"); and

- C. David's Paint and Body's Response to City of McKinney's Invitation for Bid #17-02SC ("Response").

Article III Scope of Services

Company shall provide the Services specifically set forth in the Specifications, including those requirements in the sample contract to the extent they do not conflict with this Agreement, as contained in Exhibit "A," which is attached hereto and made a part of this Agreement for all purposes.

Article IV Schedule of Work

Company agrees to commence Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in Exhibit "A," to the extent they do not conflict with this Agreement.

Article V Compensation and Method of Payment

City shall compensate Company for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total compensation to Company shall not exceed \$140,000 during the Initial Term or any renewal term under this Agreement. Company shall provide the City with written invoices on a monthly basis describing the work and Services performed as provided in Exhibit "A." Upon approval, City shall compensate Company as provided herein and in Exhibit "A" with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed.

Article VI Notice to Proceed

Company shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Company prior to Company's receipt of a written Notice to Proceed from City shall be entirely at Company's own risk. Work performed and expenses incurred after Company has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VII Suspension of Work

City shall have the right to immediately suspend work by Company if City determines in its sole discretion that Company has, or will fail to perform, in accordance with this Agreement.

In such event, any payments due Company shall be suspended until Company has taken satisfactory corrective action.

Article VIII

Devotion of Time; Personnel; and Equipment

8.1 The Company shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Company shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Company to perform the services under this Agreement, the Company shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Company may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Company.

8.3 The Company shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

8.4 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX

Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Company may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X

Termination

This Agreement may be terminated by:

- (a) by mutual written agreement of the parties;
- (b) immediately by City, if Company defaults or breaches any of the terms or conditions of this Agreement;

- (c) by either party, upon thirty (30) days prior to written notice. Should Company terminate this Agreement under this provision, Company shall further state the reason(s) for termination in its written notice;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or “Event of Bankruptcy” shall mean the dissolution or termination (other than a dissolution or termination by reason of Company merging with an affiliate of Company) of Company’s existence as a going business, insolvency, appointment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by the Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof;
- (e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year; or

Article XI

Insurance

11.1 Company shall during the term hereof maintain in full force and effect insurance with complies with the Specifications and contains, at a minimum: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Company’s performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Company, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker’s Compensation Insurance covering all of Company’s employees involved in the provision of services under this Agreement.

11.2 All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

11.3 All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service, or approved by the City Risk Manager. (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

Article XII

Miscellaneous

12.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

12.2 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Company to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.3 Successors and Assigns. Subject to the provisions regarding assignment, 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 assigns.

12.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

12.6 Severability. 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.

12.7 Independent Company. It is understood and agreed by and between the parties that Company, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

12.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

with copy to:

City of Allen, Texas
Attn: Peter H. Vargas, City Manager
Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013
Facsimile: 214-509-4118

Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
500 N. Akard, 1800 Lincoln Plaza
Dallas, Texas 75201
Facsimile: 214-965-0010

If intended for Company:

David's Paint and Body
211 East Erwin
McKinney, TX 75069
Facsimile: 972-542-3036

12.9 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

12.10 Exhibits and Recitals. The exhibits attached hereto and the Recitals are incorporated herein and made a part hereof for all purposes.

12.11 Indemnification. Company shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Company to the extent caused by the negligent act or omission or intentional wrongful act omission of Company, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Company is legally responsible (hereinafter "Claims"). Company is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Company in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Company's obligation to indemnify City pursuant to this Contract. Company shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all costs incurred by City.

12.12 Audits and Records. Company agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect,

audit, examine and reproduce any and all of the Company's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

12.13 Conflicts of Interests. The Company represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.14 Warranty. The Company warrants to the City that all labor furnished to perform 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 the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, 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.

(Signature page to follow)

EXECUTED this _____ day of _____, 2017.

CITY OF ALLEN

By: _____
PETER H. VARGAS, CITY MANAGER


Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

ATTEST

SHELLEY B. GEORGE, CITY SECRETARY

EXECUTED this _____ day of _____, 2017.

DAVID'S PAINT AND BODY
COMPANY

By:  _____
Signature of Authorized Officer

Name: David Hunt _____
Print Name

Title: owner _____

211 East Erwin
McKinney, TX 75069

EXHIBIT "A"
SPECIFICATIONS AND RESPONSE

1. City of McKinney's Invitation for Bid #17-02SC Automotive Paint and Body Services
2. David's Paint and Body's Response to City of McKinney's Information for Bid #17-02SC.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Authorize the City Manager to Execute a Contract with Griffith Roofing Company and RL Murphey Commercial Roof Systems, LP, for Various Roof Repairs as Needed for One Year with the Option to Renew Annually for Two Additional Terms for an Annual Amount of \$75,000.

STAFF RESOURCE:

Eric Cannon, Chief Financial Officer
Debra Morris, Purchasing Manager

ACTION PROPOSED:

Authorize the City Manager to Execute a Contract with Griffith Roofing Company and RL Murphey Commercial Roof Systems, LP, for Various Roof Repairs as Needed for One Year with the Option to Renew Annually for Two Additional Terms for an Annual Amount of \$75,000.

BACKGROUND

Expenditures for 2017 fiscal year roof repairs for various City facilities total a current amount of \$35,511. Griffith Roofing recently provided a roof replacement for the Allen Heritage Village for an amount of \$29,320. The total amount spent for the commodity of Roofing Services for this fiscal year is \$64,832,00.

The City of Allen will utilize roofing services with RL Murphey Commercial Roof Systems, LP through an Interlocal Agreement with the City of Plano, Bid 2015--391-C. The City of Allen will utilize Griffith Roofing Company through an Interlocal agreement with TIPS Cooperative, Contract 2092415.

BUDGETARY IMPACT

Funding for roof repairs are budgeted in the General Fund - Facility Maintenance.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Griffith Roofing Company and RL Murphey Commercial Roof Systems, LP, for various roof repairs as needed for one year with the option to renew annually for two additional terms for an annual amount of \$75,000.

MOTION

I make a motion to authorize the City Manager to execute a contract with Griffith Roofing Company and

RL Murphey Commercial Roof Systems, LP, for various roof repairs as needed for one year with the option to renew annually for two additional terms for an annual amount of \$75,000.

ATTACHMENTS:

RL Murphey Award

RL Murphey Contract Renewal

Griffith Roofing Co Contract Award

September 25, 2015

RL Murphey Commercial Roof Systems, L.P.
845 N. Mill St., Suite 200
Lewisville, Texas 75057

RE: Bid No. 2015-391-C Roofing Repairs – Price Agreement
Contract Dates 9/25/15 to 9/24/16
Renewals 3 Remaining

To Whom It May Concern:

The City of Plano has awarded the contract for the above referenced subject to your firm. It is understood all terms, conditions and prices will be held firm during the contract period. Using departments will order on an “as needed” basis utilizing “Contract Release Orders” (CRO’s). Please note the invoice must reference the City of Plano CRO number.

Emergency Repairs / Payment:

Emergency Definition – An emergency is defined as a situation which may be hazardous to life or property. Examples are: exposed electrical wires, broken water or gas pipes, roof leaks, HVAC problems, and noxious fumes.

If any emergencies arise during or after regular business hours, nights, weekends and holidays, the Technician or Mechanic on duty from the Facilities Maintenance Department will contact the vendor for repair parts and/or services. The vendor will provide an accurate invoice to the Technician or Mechanic within 5 calendar days of the product delivery of the service completion. Upon receipt of an accurate invoice, a Purchasing representative will contact the vendor with the purchasing a CRO for payment.

Payment Terms: The payment terms for this contract are net 30. Invoices must be submitted in duplicate to the following address:

Remit To: City of Plano - Accounting Department
P.O. Box 860279
Plano, Texas 75086-0279

Department Contact:
Name: Richard Medlen
Department: Facilities Services
Telephone: (972) 941-5511

Delivery Location:
Deliver To:
Various City of Plano Facilities
Plano, Texas

Thank you for your interest in serving our needs. If you have any further questions, please contact me at the information below.

Sincerely,

Michael Parrish
Senior Buyer

September 1, 2016

RL Murphey Commercial Roof Systems, L.P.
845 N. Mill St., Suite 200
Lewisville, TX 750575

RE: Contract # / Title: 2015-391-C / Roofing Repairs - Price Agreement
(Annual Contract with Renewals)

Contract Date: 09/25/16 – 09/24/17

To Whom It May Concern:

The City of Plano has decided to renew the above referenced contract. It is understood all terms and conditions will be held firm during the contract period. Using departments will order on an “as needed” basis utilizing “Contract Release Orders” (CRO’s). Please note the invoice must reference the City of Plano CRO number.

Thank you for your interest in serving our needs. We look forward to a successful business relationship. If you have any further questions, please contact me at (972) 941-7554.

Sincerely,

Michael Parrish

Michael Parrish
Senior Buyer
Purchasing Division



4845 US Highway 271 North, Pittsburg, Texas 75686

September 24, 2015

Griffith Roofing Co. Inc
Don Tarrant
207 Ranch Trail
Rockwall, TX 75032

RE: TIPS Awarded Contract – Griffith Roofing Co. Inc
TIPS Contract Number - 2092415

CONTRACT AWARD

Congratulations! The Interlocal Purchasing System (TIPS) Board of Directors of Region VIII Education Service Center has awarded a contract for Roofing Contract Number 2092415 to Griffith Roofing Co. Inc. This contract will be in effect from 09/24/2015 through 09/24/2018. With the option for automatic annual renewal at each 12 month review for the next two consecutive years if both parties agree and vendor has reported TIPS sales. Total term of contract may be up to 36 months.

CONTRACT ADDENDUMS

Only items submitted on the original proposal can be sold through this contract. If you need to change pricing or add products this can be done through an Addendum to your Awarded Contract. You can only add items that are in the same category. Email the request to add products or change pricing to kim.thompson@tips-usa.com.

REPORTING OF SALES TO TIPS

Reporting Options are enclosed in this New Vendor Packet for reporting Sales to TIPS and paying the up to 2% Administration Fee (see Contract for approved administrative percentage). If no sales were processed to you by TIPS Members during the month, then no report is due. **IT IS A REQUIREMENT THAT TIPS BE PROVIDED THE SALES INFORMATION WITH THE SUBMISSION CHECK THAT IDENTIFIES THE MEMBER NAME, STATE, SALE AMOUNT, AND the 2% AMOUNT.**

PROCESSING PURCHASE ORDERS

Awarded Vendor MUST direct TIPS members to email all PO's to TIPSPO@tips-usa.com. TIPS office will validate purchase orders and forward to you as the Awarded Vendor for processing. Member will receive an email confirmation of the PO approval and a link to print a letter of authorization for their files.

DOING BUSINESS IN WEST VIRGINIA

If your company can serve members in West Virginia, you must review, agree, sign and forward by US Mail the enclosed **RESA-8 TERMS AND CONDITIONS** document in the addressed envelope. If you do not sign and mail this document, then your company will not be afforded the opportunity to sell products or services to any of the West Virginia Members through the TIPS Vendor Awarded Contracts. Do not return this form to the TIPS, **Form must be mailed** to

RESA-8 Office in West Virginia at 109 South College Street, Martinsburg, West Virginia 25401.

You must have this document signed by RESA 8 prior to selling products through TIPS to WV members. If your company will not be doing business in West Virginia, disregard this section.

VENDOR WEB PAGE REVIEW

Go to www.tips-usa.com Hover over “Contracts” and click on “All Contracts”. Find your company in the list and click on your company name. Take a moment to review the information posted for your company. Notify the TIPS office at 866-839-8477 of changes. If you would like to have your company logo displayed on your vendor page, you may email it to TIPS at tips@tips-usa.com and we will be glad to add it to your vendor page. Format: (JPG – 350 x 350 Pixels – White or Transparent Background Color – Your logo does not have to be square; it has to fit on a 350 x 350 square space)

SETTING UP VENDOR LOGIN AND PASSWORD FOR TIPS

Individual Awarded Vendors must set up their own TIPS Login and Password. (Primary Contact Only) Here are the instructions:

1. Go to www.tips-usa.com
2. Hover over “Vendors” and click on “Vendor Login”.
3. Click on “Reset Password” link.
4. Enter your email address, verify email address and click on “Send”.
5. An automated email will be sent to the user. Click on the link in the email to complete the login setup.

Not all information can be changed by the vendor. If you are not able to update some information, notify the TIPS Office at tips@tips-usa.com and request a vendor contract change. Some changes may require Board Action through an Addendum to the Vendors Contract. (i.e. name change, product changes, pricing, etc...)

You can also set up additional account users for your company. These users will not have the ability to make changes to the vendor profile. But they will be able to access TIPS Membership Information which will assist them in identifying new members for sales transactions.

To SET-UP ADDITIONAL USERS:

Hover over “My Account” and click on “Authorized Users – Click on Add Users. Fill in the required fields of information then click ADD. Users can be given FULL or VIEWER permissions. Full permission gives the user the same access as the Primary Contact. The person responsible for paying the TIPS 2% Admin Fee needs FULL permissions. *NOTE: the only person who can set up additional users is the Primary Contact for the Vendor Contract.*

SIGNING UP NEW TIPS MEMBERS

Awarded Vendors assist TIPS by signing up new TIPS members. New members bring additional sales for all TIPS Awarded Vendors. Click on Members. For all states (except- Texas and Arizona) entities may sign up for membership ONLINE. Texas and Arizona entities are required by their respective state’s to complete the Interlocal Agreement document by clicking on the state within the US Map provided. Membership Forms (Interlocal Agreement and Board Resolution) are provided. Fill out the document and send to TIPS for processing.

CERTIFICATE OF AWARDED CONTRACT



Awards
Griffith Roofing Co. Inc
an Awarded Vendor Contract
For
Roofing
Contract #2092415

Contract Effective Dates

Year One – 09/24/2015 – 09/24/2016

Year Two -09/24/2016 – 09/24/2017

Year Three -09/24/2017 – 09/24/2018

***Contract will automatically renew on the contract date if both parties agree and vendor has reported TIPS Sales during the previous 12 months.**

Dr. David Fitts
Executive Director
Region VIII ESC



Visit www.tips-usa.com for details on this Awarded Vendor

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Authorize the City Manager to Execute a Contract with Intermountain Slurry Seal, Inc., for Micro-Surfacing Seal Treatment in the Fountain Park Phase 2 and Walden Park Estates Subdivisions in the Amount of \$123,637.02.

STAFF RESOURCE:

Chris Flanigan, Director of Engineering

ACTION PROPOSED:

Authorize the City Manager to Execute a Contract with Intermountain Slurry Seal, Inc., for Micro-Surfacing Seal Treatment in the Fountain Park Phase 2 and Walden Park Estates Subdivisions in the Amount of \$123,637.02.

BACKGROUND

Chapter 271.102 authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization. The Texas Local Government Code permits cooperative agreement between local governments for the purchase of goods and services and satisfies the requirement of local governments to seek competitive bids for purchase of such goods and services through Supplier Contracts. The City of North Richland Hills has an annual contract for Micro Surfacing (Bid # 15-020). The North Richland Hills contract amount for the treatment is \$3.38 to \$3.64 per square yard depending on the thickness of the micro-surface.

This treatment is an asphalt mixture with sand and small aggregate that is applied in a thin layer to cover minor defects and improve the riding surface of the streets. City crews will repair some existing base failures, replace damaged curb and gutters, and repave failed roadway sections. This treatment would not only make the patched streets look better, it will also add seven to eight years of life to the streets by sealing the surface.

The treatment in the Walden Park Estates Subdivision is part of the yearly streets maintenance program and includes approximately 20,469 square yards. This includes portions of W. Concord Lane, Concord Lane, E. Concord Lane, Walden Court, Roaring Springs Drive, Emerson Drive, New Bedford Lane, and High Meadow Drive.

The treatment in the Fountain Park Phase 2 Subdivision is for the streets with trench repairs done from the water and sewer rehabilitation project and includes approximately 16,664 square yards. This includes portions of Sycamore Creek Road, Autumn Lake Drive, Pebblebrook Drive, and Roaring Springs.

BUDGETARY IMPACT

Funding Sources	Proposed
WA1603 - Fountain Park Water & SS Rehab, Ph 2	\$ 54,184.78
General Fund (1625110-6700)	\$ 69,452.24
TOTAL	\$ 123,637.02

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Intermountain Slurry Seal, Inc., for Micro-Surfacing Seal Treatment in the Fountain Park Phase 2 and Walden Park Estates Subdivisions in the amount of \$123,637.02.

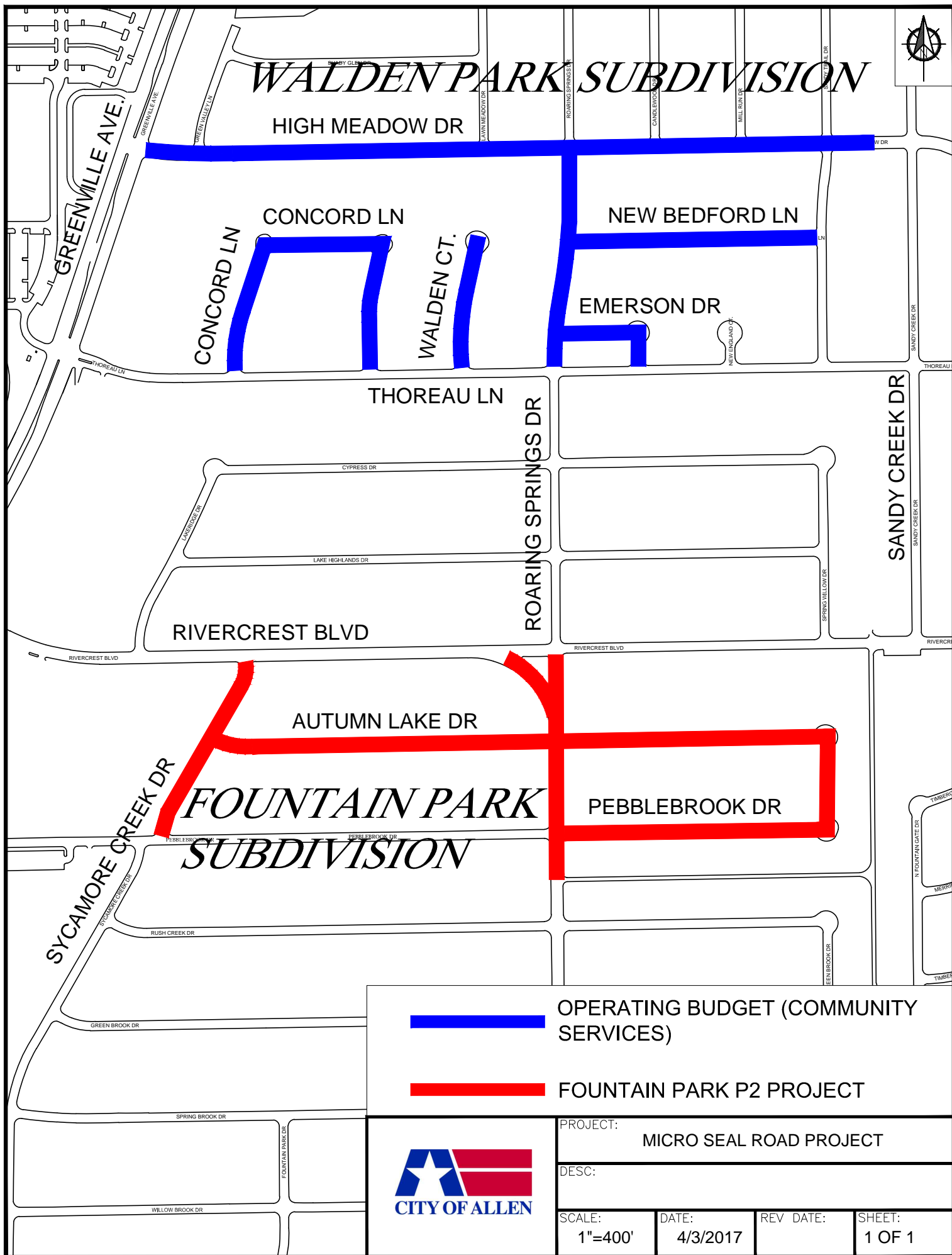
MOTION

I make a motion to authorize the City Manager to execute a contract with Intermountain Slurry Seal, Inc., for Micro-Surfacing Seal Treatment in the Fountain Park Phase 2 and Walden Park Estates Subdivisions in the amount of \$123,637.02.

ATTACHMENTS:

Location Map

Quote





520 North 400 West, North Salt Lake, UT 84054

Phone (801) 532-8200 | Fax (801) 526-6198

ESTIMATE

Agency: City of Allen
Project Number: Street Division and Fountain Park Phase 2 streets
Project Name: Micro-surfacing
Date: 3.6.17
Letting Time: N/A

Contractor: Intermountain Slurry Seal
Contact: Kevin Harris
Phone: 682.229.0843
Fax:
Email: kevin.harris@gcinc.com

Item #	Description	Quantity	Unit	Unit Price	Total
1	* Furnish & Install Micro-surfacing (Streets Division list)	20,548	SY	\$ 3.38	\$ 69,452.24
3	* Furnish & Install Micro-surfacing (Fountain Parks Phase 2)	16,031	SY	\$ 3.38	\$ 54,184.78
Work is being structured through an Interlocal Agreement with City of North Richland Hills and in accordance with NRH Contract 15-020					\$ -
					\$ 123,637.02
* (Price reduced by \$0.12/SY from 15-020 unit cost of \$3.50/SY)					

Quote is for Labor, Equipment, and Materials for Micro-surfacing Only

NOTES:

- Micro-surfacing to be place in one lift at a rate of 24#/SY (Composite)
- Work to performed using Truck Mount or Continuous paver.
- Estimated to complete micro-surfacing in 2 shifts.
- This project to be billed per square yard of actual area covered.
- Price is for work to be performed through 2017 micro-surfacing season.
- Traffic control for Micro-Surfacing only.
- ISS to provide 1 week notice prior to starting work, and must have a mutually agreed upon schedule.

EXCLUSIONS:

- Pavement Markings, Temporary Pavement Markings, Striping Layout, Pavement Marking Removal, Crack Sealing, Patching, Heavy Debris Removal, Noise Permits,

Estimate valid for 30 days.

Please review, sign and return VIA fax to (972)353.6275 or e-mail to kevin.harris@gcinc.com

Authorized Signature

Date

Mico Seal Road Project

ID#	Street Name	From	To	Length	Width	S.Y.	Unit Price	Cost						
Streets Division														
	W. Concord Lane	Thoreau Lane	Concord Lane	0.00	0.00	0.00	3.5	\$0.00						
	Concord Lane	W. Concord Lane	E. Concord Lane	450.00	27.00	1350.00	3.5	\$4,725.00						
	E. Concord Lane	Concord Lane	Thoreau Lane	405.00	28.00	1260.00	3.5	\$4,410.00						
	Walden Ct	Thoreau Lane	End	390.00	27.00	1170.00	3.5	\$4,095.00						
	Roaring Springs Dr	Thoreau Lane	High Meadow	340.00	27.00	1020.00	3.5	\$3,570.00						
	Ernestson Dr.	Roaring Springs Dr.	Thoreau Lane	705.00	28.00	2193.33	3.5	\$7,676.67						
	New Bedford Lane	Roaring Springs Dr.	Sandy Trail Dr.	785.00	27.00	2355.00	3.5	\$8,242.50						
	High Meadow	Roaring Springs Dr.	Alley East of Sandy Trail	365.00	28.00	1135.56	3.5	\$3,974.44						
		Greenville		2365.00	38.00	9985.56	3.5	\$34,949.44						
						20469.44		\$71,643.06						
Fountain Park Ph2														
	Sycamore	Pebblebrook	Rivercrest											
	Autumn Lake	Sycamore	Roaring Springs	625.00	28.00	1944.44	3.5	\$6,805.56						
	Autumn Lake	Roaring Springs	Pebblebrook	1110.00	28.00	3453.33	3.5	\$12,086.67						
	Pebblebrook (900)	Roaring Springs	Pebblebrook	880.00	28.00	2737.78	3.5	\$9,582.22						
	Pebblebrook (400)	Pebblebrook	Autumn Lake	880.00	28.00	2737.78	3.5	\$9,582.22						
	Roaring Springs Dr	Rivercrest	Alley Rush Creek	312.00	28.00	1597.67	3.5	\$5,591.83						
	Port chop	Rivercrest	Roaring Springs	750.00	37.00	3083.33	3.5	\$10,791.67						
				270.00	37.00	1110.00	3.5	\$3,885.00						
								\$54,440.17						

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

April 11, 2017

SUBJECT:

Authorize the City Manager to Execute a Contract with Identity Management Consultants, LLC, for the Conception, Procurement and Installation of LED Scrolling Message Monument Signs at Various Locations Through an Interlocal Agreement with Buy Board in the Amount of \$149,298.98.

STAFF RESOURCE:

Brian Bristow, Assistant Director of Parks and Recreation
Donna Dickinson, Construction Manager

BOARD COMMISSION ACTION:

The Allen Community Development Corporation approved \$102,000 in their recommended budget for FY2014, and an additional \$102,000 for LED Signs in their recommended budget for FY2015.

ACTION PROPOSED:

Authorize the City Manager to Execute a Contract with Identity Management Consultants, LLC, for the Conception, Procurement and Installation of LED Scrolling Message Monument Signs at Various Locations Through an Interlocal Agreement with Buy Board in the Amount of \$149,298.98.

BACKGROUND

This project will install three (3) electronic LED signs where temporary banners announcing Recreation events have been installed since the 1990's, and one (1) electronic LED sign at the recently remodeled Animal Shelter.

Each LED sign is approximately 30" High x 60" Long, set in a stone masonry base and the copy on the signs will be controlled remotely from a desktop computer. Each sign includes a 5-year warranty.

This project qualifies for procurement through the BuyBoard cooperative purchasing program and therefore the City staff elected to work directly with a design-build vendor for all services except for electrical power supply to each sign which will be handled under separate contract.

BUDGETARY IMPACT

The budget for this project combines two funding sources:

For the Park and Recreation Signs, the project cost is funded by Community Development Corporation funds.

For the Animal Shelter Sign, the project cost is funded from the General Fund - Facilities Upgrade.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Identity Management Consultants, LLC, for the conception, procurement and installation of LED Scrolling Message Monument Signs at various locations through an Interlocal Agreement with Buy Board in the amount of \$149,298.98.

MOTION

I make a motion to authorize the City Manager to execute a contract with Identity Management Consultants, LLC, for the conception, procurement and installation of LED Scrolling Message Monument Signs at various locations through an Interlocal Agreement with Buy Board in the amount of \$149,298.98.

ATTACHMENTS:

Buyboard Contract

[Administration](#)[RFQ](#)[Purchase Order](#)[Reports](#)[S](#)

Search:

☒ All☐ Vendor Discounts Only☐ Catalog Pricing Only**Refine Your Search:**[Vendors](#)

Identity Management[X]

[Price Range](#)

Show all prices

[Category](#)

None Selected

[Contract](#)

None selected

Additional Searches:[Search by Vendor](#)[Browse Contracts](#)[Additional Resources](#)**Vendor Contract Information**[Back](#)**Vendor Name:** Identity Management**Address:** 1702 Minters Chapel Rd., Suite 114
Grapevine, TX 76051**Phone Number:** (817) 912-0039**Extension:** 109**Email:** jurick@identitybusiness.com**Website:** <http://www.identitybusiness.com>**Federal ID:** 20-2053945**Contact:** Jonathan Urlick**Accepts RFQs:** Yes**Minority Owned:** No**Women Owned:** No**Service-Disabled Veteran Owned:** No**EDGAR:** Yes**Contract Name:** Parks and Recreation Equipment and Field Lighting Products and Installation**Contract Description:** Playground, skate park, aquatic/waterpark equipment; safety surface products; park furnishing/fountains; shade canopies; lake/river/waterway docks; outdoor bleachers; scoreboards/marquees/signs; portable restrooms/shelters; service/repair & installation**Contract#:** 512-16**Effective Date:** 10/01/2016**Expiration Date:** 09/30/2019**Payment Terms:** Net 30 days**Delivery Days:** 60**Shipping Terms:** Pre-paid and added to invoice**Freight Terms:** FOB Destination**Ship Via:** Common Carrier**Region Served:** All Texas Regions**States Served:** All States**Additional Info:** EDGAR Compliance documents (2 CFR Part 200 & Appendix II) are included in the Vendor response document, and can be found in the Vendor Proposal File link near the bottom of the page.**Quote Reference Number:** 512-16**Return Policy:** No returns, one year warranty

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Authorize the City Manager to Award the Annual Contract for Park Equipment and Furnishings with The Playwell Group through an Interlocal Agreement with Buy Board for an Annual Amount of \$150,000.

STAFF RESOURCE:

Tim Dentler, Director of Parks and Recreation
Debra Morris, Purchasing Manager

PREVIOUS COUNCIL ACTION:

On January 12, 2016, Allen City Council approved Resolution 3344-1-16(R) authorizing application for funding assistance through the NCTCOG's Materials Management call for projects.

ACTION PROPOSED:

Authorize the City Manager to Award the Annual Contract for Park Equipment and Furnishings with The Playwell Group through an Interlocal Agreement with Buy Board for an Annual Amount of \$150,000.

BACKGROUND

The North Central Texas Council of Governments (NCTCOG) awarded funding assistance toward the implementation of recycling with the construction of Watters Branch Community Park. This award has since been amended to implement recycling in both Watters Branch Community Park and the Ford Pool Renovation projects.

To date this fiscal year, the City has spent \$40,000 with The Playwell Group for park furnishings, with additional expenditures anticipated. Because the recycling receptacles needed (quoted at \$23,119) to implement recycling will cause the annual amount spent with The Playwell Group to exceed the \$50,000 threshold, we request Council's approval to purchase recycling receptacles for Watters Branch Community Park and Ford Pool, and to establish a \$150,000 annual contract amount for future park equipment and furnishings. Other divisions are also anticipating purchases from The Playwell Group this fiscal year.

Effective in October, 2016, The Texas Local Government Purchasing Cooperative / Buy Board entered into a contract (512-16) with The Playwell Group, Inc. Contracts awarded through Buy Board have been competitively procured and are compliant with Texas local and state procurement requirements.

BUDGETARY IMPACT

Funding of recycling receptacles through NCTCOG's Materials Management program is reimbursable,

requiring the City to spend the funds and request reimbursement within the grant period.

Funding for park furnishings beyond the granted amount is budgeted in the Parks and Recreation Department's Fiscal Year 2017 operating and capital project budgets.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to award the annual contract for park equipment and furnishings with the Playwell Group through an interlocal agreement with Buy Board for an annual amount of \$150,000.

MOTION

I make a motion to authorize the City Manager to award the annual contract for park equipment and furnishings with the Playwell Group through an interlocal agreement with Buy Board for an annual amount of \$150,000.

ATTACHMENTS:

BuyBoard Vendor Contract Information



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

Welcome **MINDY** [Log Off]

[Administration](#)
[RFQ](#)
[Reports](#)
[Shopping Cart](#)
[Help](#)

Vendor Contract Information

[Back](#)

Search:

- ☒ All
☐ Vendor Discounts Only
☐ Catalog Pricing Only

Refine Your Search:

Vendors

The Playwell Group, Inc.[X]

Price Range

Show all prices

Category

None Selected

Contract

None selected

Additional Searches:

[Search by Vendor](#)

[Browse Contracts](#)

Additional Resources

Vendor Name: The Playwell Group, Inc.

Address: 4743 Iberia Avenue, Ste C

Dallas, TX 75207

Phone Number: (800) 726-1816

Email: claudia@playwellgroup.com

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

Federal ID: 75-2658108

Contact: Claudia Wolosz

Accepts RFQs: Yes

Minority Owned: No

Women Owned: Yes

Service-Disabled Veteran Owned: No

Certificate Number: 1752658108100

Certifying Agency: Texas Comptroller of Public Accounts

EDGAR: Yes

Contract Name: Parks and Recreation Equipment and Field Lighting Products and Installation

Contract Description: Playground, skate park, aquatic/waterpark equipment; safety surface products; park furnishing/fountains; shade canopies; lake/river/waterway docks; outdoor bleachers; scoreboards/marquees/signs; portable restrooms/shelters; service/repair & installation

Contract#: 512-16

Effective Date: 10/01/2016

Expiration Date: 09/30/2019

Payment Terms: Net 30 days

Delivery Days: 75

Shipping Terms: Pre-paid and added to invoice

Freight Terms: FOB Destination

Ship Via: Common Carrier

Region Served: All Texas Regions

States Served: Arkansas, New Mexico, Oklahoma, Texas

Additional Info: EDGAR Compliance documents (2 CFR Part 200 & Appendix II) are included in the Vendor response document, and can be found in the Vendor Proposal File link near the bottom of the page.

Quote Reference Number: 512-16

Return Policy: 30 day return policy on items not installed, restocking fee may apply

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](#)

Construction Services Advisory: [Click to view the Construction Related Goods and Services Advisory](#)

Proposal Files: [Click to view Vendor Proposal Files Documents](#)

Contact us 800-695-2919



P.O. Box 400
Austin, TX 78767-0400
800.695.2919 | 512.467.0222 | Fax: 800.211.5454
buyboard.com

July 28, 2016

Sent Via E-mail: claudia@playwellgroup.com

Claudia Wolosz
The Playwell Group, Inc.
4743 Iberia Avenue, Ste C
Dallas, TX 75207

Re: Notice of The Local Government Purchasing Cooperative Award

Proposal Name and Number: Parks and Recreation Equipment and Field Lighting Products and Installation,
Proposal No. 512-16

Congratulations, The Local Government Purchasing Cooperative (Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal. The contract is effective 10/1/2016 through 9/30/2017, with two possible one-year renewals. The contract documents are those identified in Section 3 of the General Terms and Conditions of the specifications.

To view the items your company has been awarded, please review the proposal tabulation No. 512-16 on the following web-site: www.buyboard.com/vendor. Only items marked as awarded to your company can be sold through the BuyBoard contract. In addition, on this website you will find the membership list which will provide you with the names of all entities with membership in our purchasing cooperative.

Enclosed with this letter you will find the following documents:

- Vendor Quick Reference Sheet
- Electronic Catalog Format Instructions
- Vendor Billing Procedures

You are advised that receipt of a purchase order directly from a Cooperative member is not within the guidelines of the Cooperative. Accepting purchase orders directly from Cooperative members may result in a violation of the State of Texas competitive bid statute and termination of this Cooperative BuyBoard contract. **Therefore, all purchase orders must be processed through the BuyBoard in order to comply.** Please forward by fax (1-800-211-5454) any order received directly from a Cooperative member. If you inadvertently process a purchase order sent directly to you by a Cooperative member, please fax the order to the above number and note it as **RECORD ONLY** to prevent duplication.

Per proposal specifications, awarded vendors will have 30 days or sooner to submit their electronic catalog including pricing. If the electronic data is not provided within 30 days or sooner of notice of award, we reserve the right to inactivate any company's award information from the BuyBoard until such time the electronic data is received.

On behalf of the Texas Association of School Boards, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, please contact **BuyBoard Procurement Staff** at 800-695-2919.

Sincerely,

Arturo Salinas
BuyBoard

Procurement

Director

v.12.15



The Local Government Purchasing Cooperative is endorsed by the Texas Association of School Boards, Texas Municipal League, Texas Association of Counties, and the Texas Association of School Administrators.



2902

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

PROPOSER'S AGREEMENT AND SIGNATURE

Proposal Name: Parks and Recreation Equipment
and Field Lighting Products and Installation

Proposal Opening Date and Time:
March 15, 2016 at 2:00 PM

Proposal Number: 512-16

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

Contract Time Period: October 1, 2016 through
September 30, 2017 with two (2) possible one-year
renewals.

Anticipated Cooperative Board Meeting Date:
July 2016

The PlayWell Group, Inc.

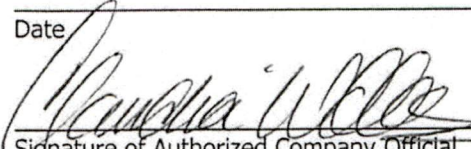
Name of Proposing Company

3/14/2016

Date

4743 Iberia Ave. Ste. C

Street Address


Signature of Authorized Company Official

Dallas, TX 75207

City, State, Zip

Claudia Wolosz

Printed Name of Authorized Company Official

1-800-726-1816

Telephone Number of Authorized Company Official

Sales Support Manager

Position or Title of Authorized Company Official

1-800-560-9150

Fax Number of Authorized Company Official

75-2658108

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;

H-y N-y

CD

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 11, 2017

SUBJECT: Authorize the City Manager to Execute a Purchase and Sales Agreement with Mildred Ottaway, for the Purchase of Property at 714 N. Federal Drive, Allen, Texas 75013 in the Amount of \$510,000.

STAFF RESOURCE: Tim Dentler, Director of Parks and Recreation
Brian Bristow, Assistant Director of Parks and Recreation

BOARD COMMISSION ACTION: Community Meeting was held at the January 9, 2017 Parks and Recreation Board Meeting.

ACTION PROPOSED: Authorize the City Manager to Execute a Purchase and Sales Agreement with Mildred Ottaway, for the Purchase of Property at 714 N. Federal Drive, Allen, Texas 75013 in the Amount of \$510,000.

BACKGROUND

The Rolling Hill neighborhood is one of several neighborhoods that are considered underserved due to the lack of access to significant parks and recreation amenities. Over 160 homes are currently served only by Rolling Hills Park, which is a 1/3 acre pocket park.

Recently, staff has negotiated the purchase of 2.5 acres in the Rolling Hill Neighborhood for the development of a neighborhood park, south of the current pocket park. This offer is contingent upon funding approval and upon approval by the Allen City Council. The voter-approved 2007 G.O. Bond Election ballot included funds for the acquisition of park land.

On January 9, the Parks and Recreation Department conducted a Community Meeting for the purpose of presenting the idea of the City purchasing the Ottaway property for a neighborhood park. Approximately 50 citizens from the immediate area attended and registered a unanimously favorable stance toward the purchase.

In consideration of the above actions, staff is requesting the Allen City Council approve the acquisition of the property at 714 Federal Drive for the future development of a neighborhood park and authorize the City Manger to execute a contract for the purchase of the property.

BUDGETARY IMPACT

Funds for this land purchase are identified in Park Land Acquisition General Obligation Bonds approved in the 2007 Election, and issued for this purpose.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a Purchase and Sales Agreement with Mildred Ottaway, for the purchase of property at 714 N. Federal Drive, Allen, Texas 75013 in the amount of \$510,000.

MOTION

I make a motion to authorize the City Manager to execute a Purchase and Sales Agreement with Mildred Ottaway, for the purchase of property at 714 N. Federal Drive, Allen, Texas 75013 in the amount of \$510,000.

ATTACHMENTS:

Land Purchase Agreement

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** ("Agreement") to buy and sell real property is entered between Seller and Purchaser as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Purchaser as parties to this Agreement and acknowledgement by Title Company of receipt of the Agreement.

Seller: Mildred Ottaway by and through her attorney in fact,
Corinne Louise Bouas
714 N. Federal Drive
Allen, Texas 75013

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

Seller's Attorney: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

Seller's Broker: Nick Hayden
Jones Lang Lasalle Americas, Inc.
8343 Douglas Avenue, Suite 100
Dallas, Texas 75225

Telephone: (214) 438-6488

Facsimile: (312) 938-1357

E-Mail: nick.a.hayden@am.jll.com

Purchaser: City of Allen, a Texas home rule municipality
305 Century Parkway
Allen, Texas 75013
Attn: Peter H. Vargas, City Manager

Telephone: (214) 509-4110

Facsimile: (214) 509-4118

E-mail: pvgargas@cityofallen.org

Purchaser's Broker: None

**Purchaser's
Attorney**

Kevin B. Laughlin
Peter G. Smith
Nichols, Jackson, Dillard, Hagar & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

Telephone: (214) 965-9900
Facsimile: (214) 965-0010
E-mail: klaughlin@njdhs.com
psmith@njdhs.com

Title Company:

Chicago Title Company
700 Central Expressway South, Suite 100
Allen, Texas 75013
Attn: Jeri Phillips, Escrow Officer

Telephone: (214) 644-1930
Facsimile: (214) 644-1940
E-mail: jeri@chicagotitletx.com

Property:

A 2.4064± acre tract of land out of the James L. Read Survey, Abstract N. 758, City of Allen, Collin County, Texas, the boundaries of which are generally depicted on Exhibit "A", being the remainder of that certain 3.157± acre tract of land conveyed to Charles E. Ottaway and wife, Mildred Ottaway by Warranty Deed dated May 8, 1959, recorded in Volume 553, Page 7, Deed Records, Collin County, Texas, the boundaries of which tract, along with the final determination of area, shall be determined by the Survey; together with all right, title and interest of Seller, if any, in and to any (i) strips and gores between said tract and abutting properties, (ii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iii) easements or rights of way appurtenant to or otherwise benefitting said tract, (iv) all permits and approvals relating to said tract, (v) all development rights relating to said tract, (vi) all reversionary rights related to said tract, and (vii) all other rights and appurtenances of any kind owned by Seller and related to said tract.

Inspection Period:

The period commencing on the Effective Date and ending no later than 30 days after the Effective Date.

Closing Date:

On or before the later of (i) thirty (30) days after the end of the Inspection Period or (ii) fifteen (15) days after satisfaction of the condition precedent to Closing described in Section 12, or other date mutually agreed to by the parties in writing.

Purchase Price:

Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00) Cash

Earnest Money: **\$5,000.00**, to be delivered to the Title Company not later than the third (3rd) business day after the Effective Date, which amount shall be applied to the Purchase Price at and contingent upon Closing, and which amount shall become non-refundable upon the expiration of the Inspection Period, except as otherwise expressly provided in this Agreement. If Purchaser fails to timely deposit the Earnest Money, Seller may, at Seller's option, terminate this Agreement by delivering a written termination notice to Purchaser before Purchaser deposits the Earnest Money, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement.

Option Fee: **\$500.00**, being the non-refundable portion of the Earnest Money (which amount shall be non-refundable, except as otherwise expressly provided in this Agreement), but which shall be applied to the Purchase Price at and contingent upon Closing.

NOW, THEREFORE, in consideration of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase; Reservations; Restrictions.** Seller agrees to sell, and Purchaser agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.

2. **Title and Survey.**

(a) Not later than the fifteen (15) days after the Effective Date, Purchaser will, at Seller's expense, cause the Title Company to issue, with respect to the Property, the following:

(i) a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) best available copies of all documents referenced in the Title Commitment;
and

(iii) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Not later than fifteen (15) calendar days after the Effective Date, Purchaser may, at Purchaser's expense and option, obtain a survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Property. If different than the platted description of the Property because of save and except portions of the platted lot, then, the legal description contained in said Survey shall be used by the parties as the legal description contained in the Special Warranty Deed. Otherwise, if there are no save and exception portions of the platted lot, then the platted lot legal description will be used in the Special Warranty Deed.

(c) Purchaser shall, not later than five (5) days after Purchaser's receipt of the last of the Survey (or after the expiration of the period for obtaining the Survey, whether or not a Survey is obtained, whichever is earlier), and the Title Commitment notify Seller and Title Company in writing of any objections to the Survey or Title Commitment related to the Property. If there are any timely written objections made by Purchaser in accordance with this Section 2(c), Seller may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Seller shall not be required to incur any cost to cure any of Purchaser's objections. If Seller delivers written notice to Purchaser not later than the fifth (5th) business day after Seller's receipt of Purchaser's objections that Seller is unwilling or unable to satisfy such objections, Purchaser may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Seller is able to convey prior to the expiration of the Inspection Period, or (ii) terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period, whereupon the Earnest Money (save and except the Option Fee) shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. Any exceptions to title to which Purchaser does not timely object in accordance with this Section 2(c) or to which Purchaser objects but are subsequently waived by Purchaser shall be deemed to be Permitted Exceptions.

3. **Inspection Period.**

(a) During the Inspection Period, Purchaser and its agents, employees, or contractors shall have the right to enter upon the Property during regular business hours upon reasonable notice to Seller and conduct such inspections, tests and studies as Purchaser may deem necessary; provided, any intrusive testing shall require the prior written consent of Seller, not to be unreasonably withheld. If for any reason Purchaser determines not to purchase the Property, Purchaser may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, the Earnest Money shall be returned to Purchaser and neither party shall have any further claim against the other under this Agreement, except for obligations of Purchaser which survive termination of this Agreement. If Purchaser does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 4; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Purchaser may enter the Property to conduct its inspection, but shall be solely responsible for any damages caused thereby, and any claims arising therefrom. Purchaser shall restore any such damages within ten (10) days after any entry on to the Property by Purchaser or any of its employees, agents, contractors or consultants. Purchaser shall be responsible for and shall pay all costs, liabilities, damages and expenses arising in connection with any entry on to or inspections of the Property by Purchaser or any of its employees, agents, contractors or consultants. Purchaser's obligations under this paragraph shall survive any termination of this Agreement.

(c) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing.

4. **Closing.** The closing of the sale of the Property in accordance with the terms of this Agreement (the "Closing") shall occur on or before the Closing Date at the Title Company or by mail or overnight delivery service, or at such other time as may be agreeable to the parties.

5. **Closing Deliverables.**

(a) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, in form and substance reasonably acceptable to Purchaser, conveying good and indefeasible title to the Property to Purchaser, free and clear of any and all encumbrances except the Permitted Exceptions (as defined in Section 8 hereof);

(ii) such other documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner's policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the Property, free of parties in possession except as set out in Schedule B of the Title Commitment, as depicted in the Survey, and as provided by law in the lien in favor of taxing authorities for real property taxes not yet due and payable.

(b) At the Closing, Purchaser shall deliver to Seller through the Title Company:

(i) the Purchase Price; and

(ii) such other documents as may be reasonably required by the Title Company.

6. **Taxes.** Seller shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs, except as hereinafter provided. In addition, Seller will pay at Closing the pro-rated amount of ad valorem taxes for the Property for the calendar year of Closing in accordance with Texas Tax Code §26.11. PURCHASER IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND EXEMPT FROM PAYMENT OF AD VALOREM TAXES ON PROPERTY OWNED BY IT FROM AND AFTER THE DATE OF ITS CONVEYANCE TO PURCHASER. If the Property has been the subject of special valuation and

reduced tax assessments pursuant to the provisions of Chapter 23, Subchapter D, of the Texas Tax Code or under any other provision of law with respect to any period before the Closing, and if additional taxes, penalties, or interest are assessed pursuant to Texas Tax Code §23.55 or under the other provision of law, the Purchaser will be responsible for the payment of these additional taxes

7. **Closing Costs.**

(a) Seller hereby agrees to pay and be responsible for the following closing costs:

(i) All costs related to obtaining any release of mortgage and liens on the Property, including the costs of preparation and recording of any related releases of liens; and

(ii) One-half of all fees and premiums for the Basic Owners Title Policy, including fees for obtaining the survey endorsement, (but not fees associated with any costs for any other amendments and endorsements to the Owners Title Policy that might be requested by Purchaser);

(iii) One-half of Title Company's escrow fees;

(iv) One-half of the costs for any tax certificates issued;

(v) Seller's attorneys' fees, if any;

(vi) One-half of the recording fee for the special warranty deed; and

(vii) Such other incidental costs and fees customarily paid by sellers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) Purchaser hereby agrees to pay and be responsible for the following closing costs:

(i) One-half of all fees and/or premiums for the Basic Owners Title Policy including fees for obtaining the survey endorsement, and all of the fees and premiums for any other amendments and endorsements to the Basic Owner's Title Policy which Purchaser requests;

(ii) All costs and fees for the Survey;

(iii) One-half of Title Company's escrow fees;

(iv) One-half of the recording fees for the special warranty deed;

(v) Purchaser's attorneys' fees; and

(vi) Such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

8. **Permitted Exceptions.** The (i) lien for current taxes not yet due and payable, (ii) any matters shown on the Title Commitment which are promulgated by law to appear in any title insurance commitment or policy, (iii) any exceptions to title to which Purchaser does not timely object in accordance with Section 2(c) above or to which Purchaser objects but are subsequently waived by Purchaser, (iv) zoning ordinances, (v) existing oil and gas leases and reservations of the mineral estate, (vi) items shown on the Survey and (vii) any deed of trust lien or other lien against the Property created at Closing, shall not be valid objections to title and shall be deemed to be "Permitted Exceptions". Subject to the foregoing, as a condition of Closing, Seller must resolve, at Seller's sole cost, the items that are listed on Schedule C of the Title Commitment which are by their nature Seller's responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that Seller has agreed in writing to cure pursuant to Section 2(c) above, if any.

9. **Representations and Covenants.** (a) Seller represents and covenants that: (i) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; (ii) to Seller's actual knowledge, without duty of inquiry, no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment or the Survey); (iii) except as may be set forth in the documents delivered by Seller to Purchaser pursuant to Section 2(a), Seller has no actual knowledge, without duty of inquiry, of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to the Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting the Property, nor of any pending or threatened litigation affecting the Property; and (iv) it will not hereafter encumber the Property.

(b) Purchaser represents that it has authority to enter into this Agreement and that this Agreement represents the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

(c) The representations set forth in this Section 9 shall survive Closing.

10. **Seller's Property Sold As Is.**

(a) Purchaser represents that as of the Closing Date that it:

(i) will have fully inspected, or been provided the opportunity to inspect, the Property; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the

structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Except as provided in Section 12, below, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "AS IS" with all faults and defects, whether patent or latent, as of the Closing.

(c) Except with respect to the warranty of the title to the Property being conveyed by Seller pursuant to this Agreement, such warranty to be included in the Special Warranty Deed, Purchaser acknowledges and agrees that Seller has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Agreement.

11. **Remedies.** Except with respect to any indemnities and obligations set forth in Paragraph 3, and Seller's right to reasonable attorney's fees and all costs of court in enforcing any part of this Agreement, if Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and retain the Earnest Money. If Seller defaults, Purchaser's sole and exclusive remedy shall be to terminate this Agreement and obtain a refund of the Earnest Money and the Option Fee. No termination shall occur pursuant to a default until the non-defaulting party has provided written notice of default not less than ten (10) days prior to the proposed date of termination and the defaulting party has failed to cure the default.

12. **Special Conditions.** As a condition precedent to Closing, Seller agrees, at Seller's sole cost, to remove all on-site equipment and contents of each structure and to cause the demolition, removal, and disposal of the existing single family residence, driveway, barns, storage shed and other outbuildings and improvements (collectively, "the Improvements") from the Property. Upon completion of the demolition, all material and debris shall be removed and properly disposed, existing utilities capped below grade, the slab removed, and footers demolished to a point not less than one (1) foot below grade. If Seller has failed to complete the demolition and removal of the Improvements on or before the 180th day after the Effective Date, Purchaser may, at its sole option (i) grant Seller additional time to complete the demolition and removal of the Improvements, or (ii) terminate this Agreement and receive a refund of the Earnest Money. Seller understands and acknowledges that Purchaser's cost for demolishing and removing the Improvements may be greater than Seller's cost because of the statutory requirements with which Purchaser must comply in order to enter a contract for demolition of the Improvements, which process would include a requirement to seek competitive bids for such work.

13. **Notices.** Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, or sent by facsimile transmission with confirmed receipt, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon depositing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed, and notice sent by facsimile transmission shall be effective upon electronic confirmation of receipt. In

addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the purchase and sale of the Property. The parties agree there are no oral agreements, understandings, representations or warranties made by the parties that are not expressly set forth in this Agreement. Any prior written agreements, understandings, representations or warranties between the parties will be deemed merged into and superseded by this Agreement, unless it is clear from the written document that the intent of the parties is for the previous written agreement, understanding, representation or warranty to survive the execution of this Agreement.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

(c) **Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Effective Date.** The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

(i) authorized representatives of the parties have signed this Agreement; and

(ii) a fully signed copy of this Agreement has been delivered to the Title Company.

(f) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(g) **Brokers.** Purchaser and Seller acknowledge and agree that Seller's Broker may be entitled to a brokerage fee or commission payable from Seller's funds upon Closing and funding of the sale of the Property to Purchaser pursuant to a separate agreement between Seller and Seller's Broker. Seller hereby agrees to indemnify, defend, and hold Purchaser harmless against claims by Seller's Broker for damages, court costs, and reasonable attorneys' fee related to any claims made by Seller's Broker for breach of contract, or other equitable claims for payment of any fees related to the sale of the Property or this Agreement. Both parties represent and warrant they have worked with no other broker relative to this transaction and that no brokerage commission is due and payable upon the Closing except as agreed in this Paragraph (e). To the extent allowed by law, each party agrees to indemnify, defend, and hold the other party harmless from and against any costs, expenses or liability for any compensation, commission, fee, or charges

that may be claimed by any agent, finder or other similar party, other than the named Seller's Broker, by reason of any dealings or acts of the indemnifying party.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) 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 other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(j) Law Governing. This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement 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. This provision shall survive the termination or expiration of this Agreement.

(k) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive.

(l) Exhibits. All exhibits attached to this Agreement are incorporated by reference and constitute a part of this Agreement as if fully set forth herein.

(signatures on following page)

SIGNED AND AGREED this the _____ day of _____, 2017.

PURCHASER:

City of Allen, Texas

By: _____
Peter H. Vargas, City Manager

ATTEST:

Shelly George, City Secretary

SIGNED AND AGREED this the _____ day of _____, 2017.

SELLER:

By: _____
Corinne Louise Bouas, Attorney-in-Fact for
Mildred Ruth Ottaway

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both Purchaser and Seller on the ____ day of _____, 2017.

By: _____

Printed Name: _____

Title: _____

EXHIBIT "A"
Depiction of Approximate Property Boundaries



<http://map.collincad.org/>

2/20/2017

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	April 11, 2017
SUBJECT:	Award Bid and Authorize the City Manager to Execute a Contract with Field Turf USA, Inc., for the Construction and Installation of Artificial Turf at Watters Branch Community Park Softball Complex, Fields 1 - 4 in the Amount of \$2,517,596.
STAFF RESOURCE:	Tim Dentler, Director of Parks and Recreation Matt McComb, Landscape Architect Debra Morris, Purchasing Manager
PREVIOUS COUNCIL ACTION:	<p>On January 27, 2015, City Council authorized the City Manager to execute a contract with Dunaway Associates in an amount not to exceed \$475,000 for the design of Watters Branch Community Park Phase 1.</p> <p>On June 24, 2014, City Council adopted a Resolution approving the master plan for Watters Branch Community Park.</p>
BOARD COMMISSION ACTION:	On October 20, 2014, the Allen Community Development Board approved project funding for the Watters Branch Community Park Project to include funding for the addition of artificial turf at an additional amount of \$1,800,000.
ACTION PROPOSED:	Award Bid and Authorize the City Manager to Execute a Contract with Field Turf USA, Inc., for the Construction and Installation of Artificial Turf at Watters Branch Community Park Softball Complex, Fields 1 - 4 in the Amount of \$2,517,596.

BACKGROUND

The Purchasing Division solicited ninety-eight (98) vendors and received four (4) responses to Bid # 2017-12-23 on January 19, 2017. Proposals were received for the construction and installation of artificial turf for Watters Branch Community Park softball complex fields 1 - 4, identifying Field Turf USA, Inc. as the most qualified proposal. The qualifications are based on "best value" to the City of Allen, with numerous factors being used to grade the submittals including qualifications, experience, professional references, price and product. The table below summarizes the four (4) proposals received for this work:

Contractor	Base Bid w/ Alternate #1
Hellas Construction Inc.	\$ 2,057,165.60

Astroturf Corporation	\$ 2,390,064.00
Paragon Sports Constructors	\$ 2,398,593.60
* Field Turf	\$ 2,517,596.00

*While each bid received was competitive in price, qualifications, experience and references, the Field Turf USA, Inc. submittal presented a superior product which includes a durable infill material increasing the life cycle of the product and simulating field play characteristics more closely resembling natural grass. Staff considers the Field Turf USA, Inc. submittal as the "best value" proposal.

BUDGETARY IMPACT

Project funds are available in Parks' CIP Project PR1209, totaling \$2,517,596 as follows:

PR1209 - Artificial Turf Project Cost Estimate	
Description	Costs
Phase 1 Construction	\$2,517,596.00
Total	\$2,517,596.00

PR1209 - Artificial Turf Project Funding	
G.O. Bonds	\$ 717,704.00
Allen Community Development Corporation	\$1,799,892.00
Total	\$2,517,596.00

STAFF RECOMMENDATION

Staff recommends the City Council award bid and authorize the City Manager to execute a contract with Field Turf USA, Inc., for the construction and installation of artificial turf on Watters Branch Community Park softball complex fields 1 - 4 in the amount of \$2,517,596.

MOTION

I make a motion to authorize the City Manager to execute a contract with Field Turf USA, Inc., for the construction and installation of artificial turf on Watters Branch Community Park softball complex fields 1 - 4 in the amount of \$2,517,596.

ATTACHMENTS:

Artificial Turf Construction Contract



STANDARD FIXED PRICE AGREEMENT

CITY OF ALLEN, TEXAS ARTIFICIAL TURF FOR WATTERS BRANCH COMMUNITY PARK BID # 2017-12-23

City of Allen
Allen Civic Plaza
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 **Field Turf USA, Inc.**, (hereinafter referred to as the "Contractor") for the construction of **Artificial Turf for Watters Branch Community Park**, (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):

Addendum No.1: January 12th 2017

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 Installation of four (4) Artificial Turf Fields for Watters Branch Community Park Phase I per plans and specifications complete and in place. The following Bid Alternate Item shall be included with the Base Bid and project Scope of Work as identified below:

Alternate #1: Soil Stabilization for four (4) softball fields complete and in place.

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 **(125) 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 **(\$500) 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 **\$2,517,596.00 (Two million, five hundred seventeen thousand, five hundred ninety-six and .00/100 cents).**

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 (95%)** 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	\$2,000,000 each occurrence; \$4,000,000 general aggregate; \$4,000,000 Umbrella/ Excess Liability
Business Auto Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate or; \$2,000,000 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

Allen Civic Plaza
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)

(Street Address)

(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., 2017.

Notary Public In and For

County, _____

My Commission expires: _____

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: April 11, 2017

SUBJECT: Award Bid and Authorize the City Manager to Execute a Contract with Schmoldt Construction, Inc., for Construction of the Watters Branch Community Park Phase 1 Project in the Amount of \$7,372,895.72.

STAFF RESOURCE: Tim Dentler, Director of Parks and Recreation
Matt McComb, Landscape Architect
Debra Morris, Purchasing Manager

PREVIOUS COUNCIL ACTION: On January 27, 2015, City Council authorized the City Manager to execute a contract with Dunaway Associates in an amount not to exceed \$475,000 for the design of Watters Branch Community Park Phase 1.

On June 24, 2014, City Council adopted a Resolution approving the master plan for Watters Branch Community Park.

BOARD COMMISSION ACTION: The Allen Community Development Corporation approved \$1,500,000 toward construction of Watters Branch Community Park in their recommended FY2015 budget.

ACTION PROPOSED: Award Bid and Authorize the City Manager to Execute a Contract with Schmoldt Construction, Inc., for Construction of the Watters Branch Community Park Phase 1 Project in the Amount of \$7,372,895.72.

BACKGROUND

The Purchasing Division solicited seven hundred seventy (770) vendors and received five (5) responses to Bid # 2017-12-30 on January 26, 2017. Staff believe it is in the best interest to award to the lowest and most qualified bidder, Schmoldt Construction, Inc., who met the specifications for this project for a total of \$7,372,895.72.

BID 2017-12-30

Contractor	Base Bid w/ Selected Alternates	Calendar Days
Schmoldt Construction	\$ 7,372,895.72	315
Roescho Construction Inc	\$ 8,445,333.71	365

Harrison Waker and Harper	\$ 8,536,391.29	310
North Rock Construction	\$ 8,547,102.34	450
Core Construction	\$ 8,659,165.00	365

BUDGETARY IMPACT

Funds are available in Parks' CIP Project PR1209, totaling \$7,588,606.68 as follows:

PR1209 - Watters Branch Community Park	
Project Cost Estimate	
Description	Costs
Phase 1 Construction	\$7,372,895.72
Testing & Contingency	\$ 212,710.96
TDLR Inspection, Plaque, and Signage	\$ 3,000.00
Total	\$7,588,606.68

PR1209 - Watters Branch Community Park	
Project Funding	
G.O. Bonds	\$4,128,174.65
Allen Community Development Corporation	\$1,884,892.00
Collin County Parks & Open Space Grant	\$ 100,000.00
TPWD Outdoor Recreation Grant	\$ 361,661.65
Park Dedication Trust Funds	\$1,113,878.38
Total	\$7,588,606.68

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Schmoldt Construction Inc, for construction of the Watters Branch Community Park Phase I Project in the amount of \$7,372,895.72.

MOTION

I make a motion to authorize the City Manager to execute a contract with Schmoldt Construction Inc, for construction of the Watters Branch Community Park Phase I Project in the amount of \$7,372,895.72.

ATTACHMENTS:

Watters Branch Community Park Construction Contract



STANDARD FIXED PRICE AGREEMENT

CITY OF ALLEN, TEXAS WATERS BRANCH COMMUNITY PARK PHASE I IMPROVEMENTS BID # 2017-12-30

City of Allen
Allen Civic Plaza
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 **Schmoltdt Construction, Inc.**, (hereinafter referred to as the "Contractor") for the construction of **Watters Branch Community Park Phase I Improvements**, (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):

Addendum No.1: January 20th 2017

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, privity 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 Construction of Watters Branch Community Park Phase I Improvements per plans and specifications complete and in place. The following Bid Alternate Items shall be included with the Base Bid and project Scope of Work as identified below:

Alternate #1: Partial Alternate selected - only to include Tree Bubbler Irrigation System complete and in place.

Alternate #2: Ornamental Grassing excluding expanded shale complete and in place.

Alternate #3: Enhanced Planting/Pollinator Garden complete and in place.

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 **(315) 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 **(\$500) 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 **\$7,372,895.72 (Seven million, three hundred seventy-two thousand, eight hundred ninety-five and .72/100 cents).**

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 (95%)** 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 GOVERN-MENTAL 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	\$2,000,000 each occurrence; \$4,000,000 general aggregate; \$4,000,000 Umbrella/ Excess Liability
Business Auto Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate or; \$2,000,000 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

Allen Civic Plaza
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)

(Street Address)

(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., 2017.

Notary Public In and For

County, _____

My Commission expires: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 11, 2017

SUBJECT:

Receive the Summary of Property Tax Collections as of February 2017.

STAFF RESOURCE:

Eric Cannon, Chief Financial Officer
Chris Landrum, Budget Manager

ATTACHMENTS:

Summary of Property Tax Collections as of February 2017

**Kenneth L. Maun
Tax Assessor Collector
Collin County
2300 Bloomdale Rd
P.O. Box 8046
McKinney, Texas 75070
972- 547-5020
Metro 424-1460 Ext.5020
Fax 972-547-5040**

March 10, 2017

**Mayor Stephen Terrell
City of Allen
305 Century Parkway
Allen, Texas 75013**

Dear Mayor Terrell,

**Enclosed is the Monthly Collection Report for:
The City of Allen tax collections for the month were:
The Rollback Collections for the month were:**

**February 2017
\$7,513,221.68
\$0.00**

Sincerely,


**Kenneth L. Maun
Tax Assessor Collector**

Attachment

**cc: Peter Vargas, City Manager
Eric Cannon, Chief Financial Officer
Joanne Stoehr, Assistant Finance Director**

KM:ds

Kenneth L Maun
Tax Assessor/Collector
Collin County
P O Box 8046
McKinney Tx 75070

Page 1

Monthly Collection Status Report
February 2017

City of Allen #06

	Collections Month of February	Cumulative Total 10/1/16 thru 2/28/17	% of Collections
Current Tax Year Collections			
Base M&O	\$5,693,892.25	\$43,411,480.63	99.52%
Base I&S	1,777,784.93	\$13,554,223.44	
Late Rendition Penalty	3,116.05	\$16,367.50	
P&I M&O	21,176.35	\$21,180.09	
P&I I&S	6,575.61	\$6,575.61	
P&I I&S Bond			
Attorney Fee	1,529.77	\$1,529.77	
Other>	0.00	682.54	
Subtotal	<u>\$7,504,074.96</u>	<u>\$57,012,039.58</u>	99.60%
Delinquent TaxYears Collections			
Base M&O	\$4,144.53	\$218,826.32	
Base I&S	1,365.44	\$75,750.81	
Late Rendition Penalty	26.58	\$182.09	
P&I M&O	3,769.79	\$46,925.55	
P&I I&S	1,370.15	\$16,513.36	
P&I I&S Bond			
Attorney Fee	2,055.23	\$6,687.00	
Other>	0.00	2,440.83	
Subtotal	<u>\$12,731.72</u>	<u>\$367,325.96</u>	0.64%
Combined Current & Delinquent:			
Base M&O	\$5,698,036.78	\$43,630,306.95	
Base I&S	1,779,150.37	13,629,974.25	
Late Rendition Penalty	3,142.63	16,549.59	
P&I M&O	24,946.14	68,105.64	
P&I I&S	7,945.76	23,088.97	
P&I I&S Bond			
Attorney Fee	3,585.00	8,216.77	
Other>	0.00	3,123.37	
Total Collections	<u>\$7,516,806.68</u>	<u>\$57,379,365.54</u>	100.24%
			100.00%
Original 2016 Tax Levy		<u>\$57,241,851.90</u>	

Kenneth L Maun
Tax Assessor/Collector
Collin County
P O Box 8046
McKinney Tx 75070

Page 2

Cumulative Comparative Collection Status Report
February 2017

City of Allen #06

	Collections thru February 2017	% Collections	Collections thru February 2016	% Collections
Current Tax Year Collections				
Base M&O + I&S	\$56,965,704.07	99.52%	\$52,813,933.88	97.95%
Late Rendition Penalty	16,367.50		16,375.86	
P&I M&O + I&S	27,755.70		37,113.67	
Attorney Fee	1,529.77		0.00	
Other>	682.54		0.00	
Subtotal	<u>\$57,012,039.58</u>	99.60%	<u>\$52,867,423.41</u>	98.05%
Delinquent Tax Years Collections				
Base M&O + I&S	\$294,577.13		\$81,689.99	
Late Rendition Penalty	182.09		794.52	
P&I M&O + I&S	63,438.91		22,903.17	
Attorney Fee	6,687.00		10,327.57	
Other>	2,440.83		0.00	
Subtotal	<u>\$367,325.96</u>	0.64%	<u>\$115,715.25</u>	0.21%
Combined Current & Delinquent:				
Base M&O + I&S	\$57,260,281.20		\$52,895,623.87	
P&I M&O + I&S	91,194.61		60,016.84	
Late Rendition Penalty	16,549.59		17,170.38	
Attorney Fee	8,216.77		10,327.57	
Other	3,123.37		0.00	
Total Collections	<u>\$57,379,365.54</u>	100.24%	<u>\$52,983,138.66</u>	98.26%
Adjusted 2015 Tax Levy			<u>\$53,919,688.10</u>	100.00%
Original 2016 Tax Levy	<u>\$57,241,851.90</u>	100.00%		

Kenneth L. Maun
Tax Assessor/Collector
Collin County
P O Box 8046
McKinney Tx 75070

Page 3

Levy Outstanding Status Report
February 2017

City of Allen #06

	Current Tax Year	Delinquent Tax Years
Current Month:		
Tax Levy Remaining as of 1/31/17	\$8,968,120.19	\$321,864.22
Base M&O Collections	7,471,677.18	5,509.97
Supplement/Adjustments	-40,221.72	-6,544.14
Write-off	0.00	0.00
Remaining Levy as of 2/28/17	<u>\$1,456,221.29</u>	<u>\$309,810.11</u>
Cumulative (From 10/01/16 thru 2/28/17)		
Original 2016 Tax Levy (as of 10/01/16)	\$57,241,851.90	\$452,274.53
Base M&O + I&S Collections	56,965,704.07	294,577.13
Supplement/Adjustments	1,180,073.46	152,112.71
Write-off	0.00	0.00
Remaining Levy as of 2/28/17	<u>\$1,456,221.29</u>	<u>\$309,810.11</u>

Kenneth L Maun
 Tax Assessor/Collector
 Collin County
 P O Box 8046
 McKinney Tx 75070

Monthly Distribution Report
 February 2017

City of Allen #06

	Distribution Month of February	Distribution 10/1/16 thru 2/28/17
Weekly Remittances:		
Week Ending 2/3/17	\$4,927,746.21	\$9,286,597.49
Week Ending 2/10/17	\$2,205,287.30	\$7,268,773.52
Week Ending 2/16/17	\$151,400.67	\$5,608,568.43
Week Ending 2/24/17	\$122,630.54	\$24,459,077.27
Week Ending 2/28/17	\$105,999.82	\$10,744,863.64
Total Weekly Remittances	<u>\$7,513,064.54</u>	<u>\$57,367,880.35</u>
Overpayment from Prior Month	\$0.00	\$0.00
Manual Adjustment Refund	\$0.00	\$0.00
Commission Paid Delinquent Attorney	\$3,585.00	\$10,657.60
Entity Collection Fee	\$0.00	\$0.00
Judgement Interest	\$0.00	\$0.00
5% CAD Rendition Penalty	\$157.14	\$827.59
Total Disbursements	<u><u>\$7,516,806.68</u></u>	<u><u>\$57,379,365.54</u></u>
Carryover to Next Month	\$0.00	\$0.00

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	April 11, 2017
SUBJECT:	Conduct a Public Hearing and Adopt an Ordinance Establishing Planned Development Mo. 127 for Corridor Commercial and Adopt Development Regulations, a Concept Plan, Building Elevations, and a Sign Plan for a 60± acres of Land Generally Located at the Southeast Corner Custer Road and Sam Rayburn Tollway. [Cornerstone Village at Allen - Mixed-Use]
STAFF RESOURCE:	Madhuri Mohan, Senior Planner
PREVIOUS COUNCIL ACTION:	Zoning approved from AO to CC - January, 2003
BOARD COMMISSION ACTION:	On March 7, 2017, the Planning and Zoning Commission voted 5 in favor (Commissioners Cocking, Trahan, Platt Jr., Orr, and Ogrizovich) and 0 opposed to recommend approval of the request to change the zoning of 60± acres of land in the Chadrick Jackson Survey, Abstract No. 489; generally located at the southeast corner of the intersection of Custer Road and Sam Rayburn Tollway, for Cornerstone Village at Allen, with three recommendations.
ACTION PROPOSED:	Conduct a Public Hearing and Adopt an Ordinance Establishing Planned Development No. 127 for Corridor Commercial and Adopt Development Regulations, a Concept Plan, Building Elevations, and a Sign Plan for a 60± acres of Land Generally Located at the Southeast Corner Custer Road and Sam Rayburn Tollway. [Cornerstone Village at Allen - Mixed-Use]

BACKGROUND

The property is generally located at the southeast corner of the intersection of Custer Road and Sam Rayburn Tollway (SH 121). The property to the north (across Sam Rayburn Tollway/SH 121) is the City of McKinney. To the west (across Custer Road), is the City of Plano. The property to the east is zoned Planned Development PD No. 101 for Corridor Commercial CC. The properties to the south are zoned Planned Development PD No. 63 for Corridor Commercial CC, Community Facilities CF, Planned Development PD No. 63 for R-6 Single-Family Residential, and Planned Development PD No. 63 for Community Facilities CF.

The property is currently zoned Corridor Commercial CC. The applicant is requesting to change the zoning by creating a Planned Development for a mixed use development containing retail, restaurant, and urban living

uses, and adopting Development Regulations, a Concept Plan, Building Elevations, and a Sign Plan for the property. The rezoning to a mixed-use development is consistent with the future land use plan adopted in the Comprehensive Plan.

The Concept Plan identifies two tracts - Tract 1 and Tract 2. Tract 1 shows twenty-three (23) retail and restaurant buildings totaling about 324,480± square feet on approximately 44± acres. Tract 2 shows a conceptual urban living residential use on approximately 16± acres at the southeastern portion of the property. There will be three main buildings with a maximum height of 4 stories. The development regulations provide a list of requirements that must be met when the urban living portion will develop, including a regulation that any construction on Tract 2 must be contemporaneous or after the development of Tract 1.

Screening through an eight-foot (8') masonry screening wall is shown on the southern side adjacent to the existing residential subdivision. Screening will not be provided between the retail/restaurant piece (Tract 1) and the urban living piece (Tract 2) in order to promote a walkable and pedestrian friendly cross-connection. Additionally, to achieve such an environment, the buildings have primarily been placed along the perimeter of the site and the majority of the parking placed within the interior.

Landscaping will meet ALDC standards. A development regulation regarding the ability to group required trees is included.

Parking provided for the majority of the retail/restaurant development on Tract 1 complies with ALDC. The restaurant portions of buildings 6-10 will have a reduced parking ratio of 0.75 spaces per 100 square feet. Additionally, a cross-access easement for vehicle and pedestrian travel as well as cross-easements for parking shall be granted between and among all parcels and future parcels.

There are nine (9) access points for the site; two (2) on Custer Road, five (5) on Sam Rayburn Tollway (SH 121), and three (3) on the south through a firelane. For efficient vehicular access and circulation, deceleration lanes for every driveway (with approval from TxDot) will be provided on SH 121. Additionally, there will be no outbound left-turn on the northern access point on Custer Road. A traffic signal may be required on Custer Road at the intersection of the proposed firelane for which an escrow agreement has been drafted and specific elements included in the development regulations.

On-site detention may be required, and will be defined after a drainage analysis is vetted by the Engineering Department. If an on-site detention pond is required, then the Developer shall construct it in keeping with the nature and character of the Concept Plan.

Sign locations are shown on the Concept Plan and specific sign elevations will also be adopted with this PD Amendment.

The architectural style of all of the buildings within the Tract 1 portion of the development are cohesive and include several decorative elements (such as the trellises, awnings, and pergolas) and articulated buildings. The primary exterior building materials are stone and stucco with standing seam metal roofing. The elevations of Tract 2 are conceptual per the renderings, and show an urban style with flat roofs.

The development regulations include design standards to establish the Planned Development, including signs, setbacks, utilities, screening, parking/access easements, traffic, drainage, and urban living requirements.

The request has been reviewed by the Technical Review Committee and meets the requirements of the Allen Land Development Code.

On March 7, 2017, the Planning and Zoning Commission approved the request with the following recommendations:

1. To construct an 8' foot masonry wall on the northern border of the City of Allen Parks property;
2. To limit the height to 2 stories and not have open balconies or decks (and the actual height in feet to be determined by City Staff before the City Council meeting) within 100' feet adjacent to the single-family residential subdivision property;
3. To add a provision that no Building Permit shall be issued for any building on Tract 2 until after Commencement of Construction of 1/3 of the total square footage of Tract 1 shown on the Concept Plan.

The requirements above have been incorporated into the draft ordinance.

LEGAL NOTICES

Public Hearing Sign - February 24, 2017

Public Hearing Notices - February 24, 2017

Newspaper Notice - March 23, 2017

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ establishing Planned Development No. 127 for Corridor Commercial and adopting development regulations, a concept plan, building elevations, and a sign plan for a 60± acres of land generally located at the Southeast Corner Custer Road and Sam Rayburn Tollway.

ATTACHMENTS:

Ordinance

Property Notification Map

Draft Minutes from the March 7, 2017 P&Z Meeting

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, RELATING TO THE USE AND DEVELOPMENT OF A 59.629± ACRE TRACT OF LAND IN THE CHADRICK JACKSON SURVEY, ABSTRACT NO. 489, PRESENTLY ZONED AS “CC” CORRIDOR COMMERCIAL BY CHANGING THE ZONING TO CREATE “PD” PLANNED DEVELOPMENT NO. 127 WITH A BASE ZONING OF CORRIDOR COMMERCIAL “CC” AND MULTIFAMILY RESIDENTIAL “MF-18” AND ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, BUILDING ELEVATIONS, AND A SIGN PLAN; 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.

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, as previously amended, be further amended relating to the use and development of 59.629± acres of land in the Chadrick Jackson Survey, Abstract No. 489 described in “Exhibit A,” attached hereto and incorporated herein by reference, (“the Property”) which is presently zoned “CC” Corridor Commercial by changing the zoning to create “PD” Planned Development No. 127 with a base zoning of Corridor Commercial “CC” and Multifamily Residential “MF-18” subject to the use and development regulations set forth in Section 2 of this Ordinance.

SECTION 2. The Property shall be developed and used in accordance with the applicable provisions of the Allen Land Development Code, as amended, (“ALDC”) except to the extent modified by the Development Regulations set forth below:

A. BASE ZONING DISTRICT:

- (1) The portion of the Property shown as “Tract 1” on the Concept Plan attached hereto as Exhibit “B,” and incorporated herein by reference (“the Concept Plan”), shall be developed and used in accordance with “CC” Corridor Commercial zoning regulations except as provided herein.
- (2) The portion of the Property shown as “Tract 2” on the Concept Plan shall be developed and used in accordance with the Multifamily Residential “MF-18” zoning regulations except as provided herein.

- B. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan. Minor modifications to streets that do not alter the general alignment shown on the Concept Plan may be made at the time of Site Plan approval.
- C. LANDSCAPING:** Trees required to be planted may be planted in groupings to provide a more dramatic impact of the landscaping upon approval of the Director of Parks and Recreation or his designee.
- D. BUILDING ELEVATIONS:** The buildings constructed and/or reconstructed on Tract 1 of the Property shall be developed in general conformance with the Building Elevations (style and materials) attached hereto as Exhibit “C,” and incorporated herein by reference.
- E. SIGNS:** The signage for the Property shall be in general conformance with the Concept Plan and the sign elevations attached hereto as Exhibit “D,” and incorporated herein by reference. The pylon and monument signs shall be used exclusively to identify the retail center constructed on Tract 1 and the owners and tenants of buildings located on Tract 1.
- F. SETBACKS:** All buildings constructed on the Property must comply with the following minimum setbacks:
- (1) 100 feet from State Highway 121/Sam Rayburn Tollway (“SH121”) Frontage Road and
 - (2) 25 feet from Custer Road.
- G. UTILITIES:** All existing and new powerlines on the site shall be placed underground prior to issuance of a Certificate of Occupancy for the first building constructed anywhere on the Property.
- H. SCREENING:** The developer shall construct an eight foot (8.0’) tall masonry screening wall where shown on the Concept Plan.
- I. PARKING AND ACCESS EASEMENTS:**
- (1) Prior to approval of any plat subdividing the Property, a cross-access easement for vehicle and pedestrian travel as well as cross-easements for parking shall be granted between and among all lots within the Property.
 - (2) Restaurants developed in association with Retail/Restaurant Buildings 6 through 10 as shown on the Concept Plan shall require a parking ratio of 0.75 cars per 100 square feet of floor area of the buildings.
- J. TRAFFIC:**
- (1) The location of driveways shown on the Concept Plan providing ingress and egress to and from the Property to and from SH 121 may be adjusted without requiring an amendment to the Concept Plan based on driveway permits issued by the Texas Department of Transportation (TxDOT) upon application made by the owner and/or developer of the Property through the City’s Department of Engineering.
 - (2) The location of driveways shown on the Concept Plan providing ingress and egress to and from the Property to and from Custer Road must be approved jointly by the City and the City of Plano and may be adjusted based on that approval without requiring an amendment to the Concept Plan.

- (3) All driveways providing access to and from SH 121 or Custer Road shall be constructed with throat-depths in accordance with applicable standards set forth in the ALDC or other design criteria approved by the Director of Engineering.
- (4) Deceleration lanes and related roadway illumination shall be constructed at each driveway contemporaneously with the construction of each driveway providing access to Custer Road or SH 121.
- (5) Prior to issuance of the first Certificate of Occupancy for any building constructed on the Property, and subject to adjustment based on final designs approved by the Director of Engineering or designee and the City of Plano, improvements to the medians within Custer Road, including construction of new left turn bays and adjustment to existing left-turn bays serving others, shall be constructed in accordance with the Concept Plan, subject to the following additional conditions:
 - (a) The proposed dual left turn lanes on southbound Custer Road at its intersection with the most southern driveway into the Property shall not conflict with the existing northbound left turn lane to the extent that a split phase operation of a future signal would be required;
 - (b) The left turn lane from southbound Custer Road into the central driveway marked as a "Major Access Point" on the Concept Plan shall be designed and constructed to avoid conflict with the proposed extension of the northbound left turn lane on approach to SH 121 to be designed by others); and
 - (c) The driveway on Custer Road marked as a "Major Access Point" on the Concept Plan shall be designed and constructed to prohibit southbound left turns when exiting the Property.
- (6) Prior to approval of the first final plat for the Property, the owner and/or developer of the Property shall enter into an agreement with the City providing for, among other things, payment to the City of \$300,000 with such funds to be held by the City until such funds are expended to pay costs related to the design and construction of a traffic signal at the intersection of Custer Road and the southern driveway into the Property shown on the Concept Plan.

K. DETENTION/RETENTION: On-site detention ponds determined at the time of platting to be required must be designed and constructed in a manner consistent with the nature and character of the development of the Property as shown on the Concept Plan as determined by the Director of Community Development.

L. URBAN LIVING: The use and development of Tract 2 shall be subject to the following:

- (1) Shall be constructed with urban styling conceptually similar to the Urban Living Renderings attached hereto as Exhibit "E" and incorporated herein by reference;
- (2) Not less than seventy percent (70%) of all parking spaces shall be located in an on-site parking structures and garages constructed in association with residential units' construction on Tract 2;
- (3) The parking ratio shall be at not less than 1.5 parking spaces per residential unit;
- (4) The maximum building height shall be four (4) stories, except that no building located within 100 feet of the adjacent single family residential zoning district shall exceed the lesser of two (2) stories or thirty (30) feet in height.

- (5) No open balconies or decks may be constructed above the ground floor on a wall facing the adjacent single family residential zoning district;
- (6) All residential units must be accessed by climate controlled enclosed interior;
- (7) No Building Permit shall be issued for any building to be constructed on Tract 2 until Commencement of Construction has occurred with respect to one-third (1/3) of the collective air conditioned floor area of the total square footage shown on the Concept Plan. For purpose of this paragraph (7), the phrase "Commencement of Construction" with respect to a building means (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the building, (ii) all necessary permits for the construction of the building have been issued by the applicable governmental authorities and (iii) the building slab is complete and construction of the vertical elements of the building has commenced.

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 THE 11TH DAY OF APRIL 2017.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:3/28/17:84822)

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT "A"
LEGAL DESCRIPTION

Being a 59.629 acre tract or parcel of land situated in the Shadrick Jackson Survey, Abstract No. 489, in the City of Allen, Collin County, Texas, and being all of a tract of land conveyed to Mixon Investment Company, Inc. (herein called Mixon #1) by deed recorded in Volume 5131, Page 4246 of the Land Records of Collin County, Texas, and being all of a tract of land conveyed to Mixon Investment Company, Inc. (herein called Mixon #2) by deed recorded in Volume 803, Page 446 of the Deed Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at an Aluminum TxDOT Monument found for the northwest corner of said Mixon #1 tract, and being the intersection of the south line of State Highway 121 (variable width R.O.W.) and the east line of Custer Road (variable width R.O.W.);

THENCE along the north line of said Mixon #1 tract, same being the south line of State Highway 121, the following courses and distances:

North 67° 05' 32" East, a distance of 251.46 feet, to a ½" iron rod set with yellow plastic cap stamped "SGI RPLS 3664";

North 69° 37' 04" East, a distance of 361.25 feet, to a found Aluminum TxDOT Monument;

North 62° 37' 46" East, a distance of 469.30 feet, to an Aluminum TxDOT Monument found at the intersection of the south line of State Highway 121 and the west line of an unimproved road, and being in the northeast corner of said Mixon #1 tract;

North 61° 56' 45" East, a distance of 47.05 feet, along the south line of State Highway 121, to an Aluminum TxDOT Monument found at the intersection of the south line of State Highway 121 and the east line of an unimproved road, and being the northwest corner of said Mixon #2 tract;

THENCE along the north line of Mixon #2 tract, same being the south line of State Highway 121, the following courses and distances:

North 62° 37' 53" East, a distance of 268.62 feet, to a ½" iron rod set with yellow plastic cap stamped "SGI RPLS 3664";

North 67° 04' 46" East, a distance of 544.66 feet, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set in the beginning of a non-tangent curve to the left, having a radius of 23140.58 feet, and a delta angle of 00°45'12" (chord bears: North 66°42'05" East, a distance of 304.23 feet);

Continuing along said curve to the left, an arc distance of 304.23 feet, to a ½" iron rod set with yellow plastic cap stamped "SGI RPLS 3664";

North 66° 19' 29" East, a distance of 306.91 feet, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set for the northeast corner of said Mixon #2 tract, and being the northwest corner of a tract of land conveyed to Briar Ridge Investments, Ltd., by deed recorded in Instrument Number 20150429000486420 of the Official Public Records of Collin County, Texas;

THENCE South 00° 37' 08" East, a distance of 275.61 feet, along the west line of said Briar Ridge tract, same being the east line of said Mixon #2 tract, to a ½" iron rod set with yellow plastic cap stamped "SGI RPLS 3664";

THENCE South 01° 34' 27" East, a distance of 1350.87 feet, along the west line of said Briar Ridge tract, same being the east line of said Mixon #2 tract, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set for the southeast corner of said Mixon #2 tract, and being the northeast corner of a tract of land conveyed to

Our Lady of Angels Parish, by deed recorded in Volume 5291, page 384 of the Deed Records of Collin County, Texas, and being in the west line of said Briar Ridge tract, and being in the approximate centerline of West Rowlett Road (County Road 113);

THENCE South 89° 15' 17" West, along the south line of said Mixon #2 tract, and being the approximate centerline of West Rowlett Road, passing at a distance of 1019.39 feet, the northwest corner of said Our Lady of Angels Parish tract, and being the northeast corner of Creekside at Ridgeview Addition, Phase 2, recorded in Instrument Number 2013040410000930 of the Official Public Records of Collin County, Texas, and continuing for a total distance of 1319.68 feet, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set in the southwest corner of said Mixon #2 tract, and being at the intersection of the approximate centerline of West Rowlett Road, and the east line of an unimproved road;

THENCE South 89° 15' 17" West, a distance of 34.45 feet, along the north line of Creekside at Ridgeview Addition, Phase 2, same being the approximate centerline of West Rowlett Road, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set for the southeast corner of said Mixon #1 tract, and being in the intersection of the approximate centerline of West Rowlett Creek and the west line of an unimproved road;

THENCE South 89° 15' 17" West, along the south line of said Mixon #1 tract, and being the approximate centerline of West Rowlett Road, passing at a distance of 52.19 feet, the northwest corner of Creekside at Ridgeview Addition, Phase 2, and being the northeast corner of a tract of land conveyed to the City of Allen (herein called Allen #1), by deed recorded in Instrument Number 20120228000228500 of the Land Records of Collin County, Texas, passing at a distance of 178.88 feet, the northwest corner of said Allen #1 tract, and being the northeast corner of a tract of land conveyed to the City of Allen (herein called Allen #2), by deed recorded in Instrument Number 2012022400021570 of the Land Records of Collin County, Texas, passing at a distance of 428.05 feet, the northwest corner of said Allen #2 tract, and being the northeast corner of a tract of land conveyed to Gulf Coast Package, Ltd., by deed recorded in Collin County Clerk's File Number #94-0060164, of the Land Records of Collin County, Texas, and continuing for a total distance of 894.76 feet, to a found "X" cut in concrete, for the southwest corner of said Mixon #2 tract, and being the northwest corner of said Gulf Coast tract, and being in the east line of Custer Road (variable width R.O.W.), and being the beginning of a non-tangent curve to the left, having a radius of 1858.70 feet, and a delta angle of 04° 27' 50" (chord bears: North 07° 44' 53" West, a distance of 144.78 feet);

THENCE along the west line of said Mixon #1 tract, same being the east line of Custer Road, the following courses and distances:

Continuing along said curve to the left, an arc distance of 144.81 feet, to a ½" capped iron rod found;

North 06° 23' 45" West, a distance of 63.19 feet, to a ½" iron rod with yellow plastic cap "SGI RPLS 3664" set in the beginning of a non-tangent curve to the left, having a radius of 1047.56 feet, and a delta angle of 15° 21' 53" (Chord Bears: North 14° 01' 00" West, a distance of 280.08 feet);

Continuing along said curve to the left, an arc distance of 280.02 feet, to a ½" iron rod with yellow plastic cap stamped "SGI RPLS 3664" set in the beginning of a non-tangent curve to the right, having a radius of 1712.02 feet, and a delta angle of 00° 59' 51" (Chord Bears: North 22° 11' 53" West, a distance of 29.81 feet), to a ½" iron rod set with yellow plastic cap stamped "SGI RPLS 3664";

North 22° 41' 14" West, a distance of 91.01 feet, to a found Aluminum TxDOT Monument;

North 66° 35' 04" East, a distance of 8.08 feet, to a found Aluminum TxDOT Monument;

THENCE North 30° 22' 23" East, along the west line of said Mixon #1 tract, same being the east line of Custer Road, a distance of 25.14 feet, to the POINT OF BEGINNING, and containing 2,597,447 square feet or 59.629 acres of gross land area, save and except 40,281 square feet or 0.925 acres of unimproved road, for a total area of 2,557,166 square feet or 58.704 acres of land, more or less.

EXHIBIT "B"
CONCEPT PLAN

Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas

RPS Development Company Texas
5706 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 237-8067



**BENNER
STANG
ASSOCIATES**
ARCHITECTS, INC.
200 S.W. MEADOWS RD.
SUITE B-10
KEOSAUWEE, OR 97032
(503) 670-0223
FAX (503) 670-0223
bsa@bsaarch.com

Zone Change Submittal
August 30, 2011
Reusubmittal #
October 6, 2011
Reusubmittal #
November 13, 2011
Reusubmittal #
February 14, 2012

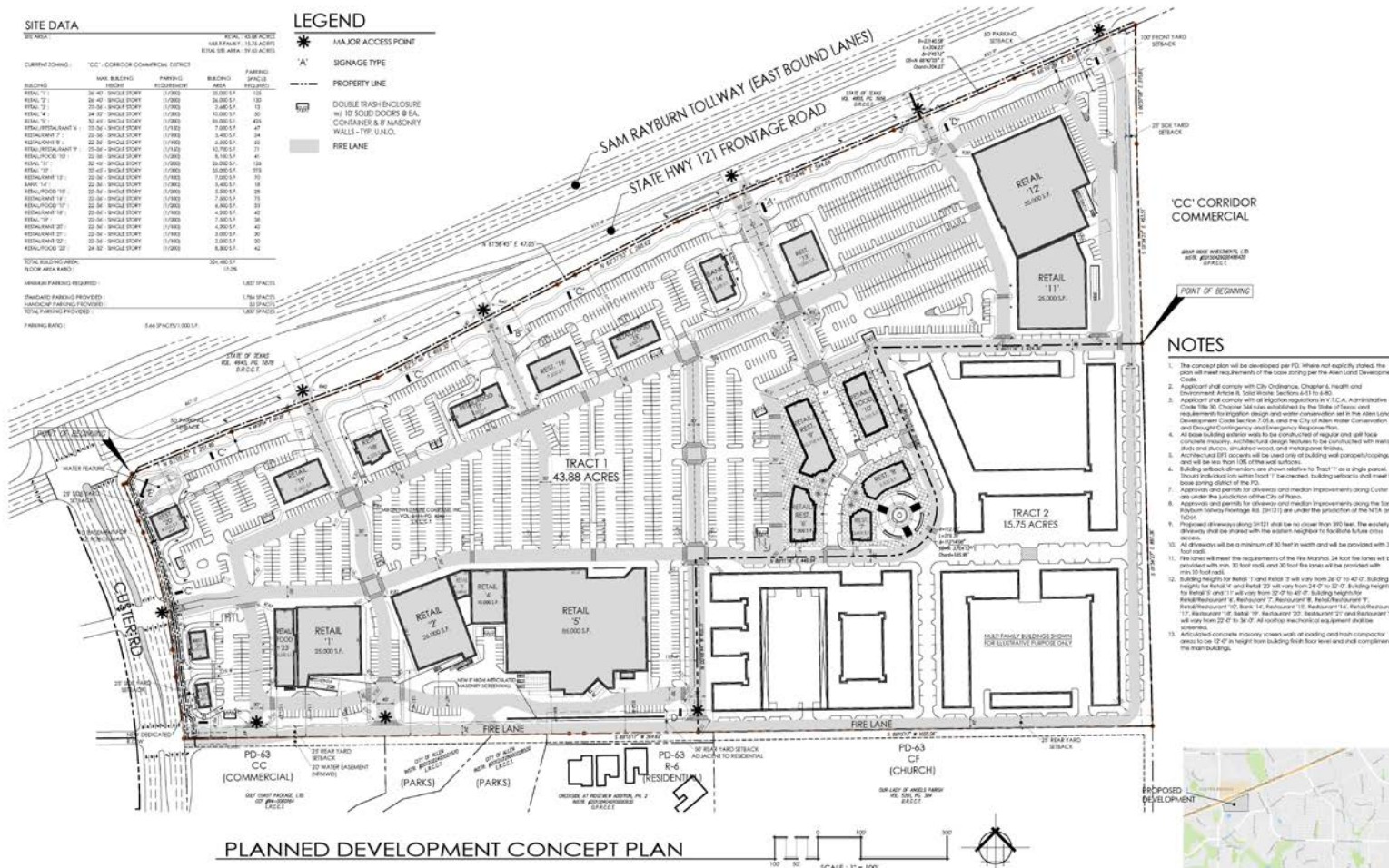
SPD 1



VICINITY MAP

Cornerstone Village @ Allen
Hwy 121 & Custer Rd | Allen, TX
RPS Development Company Texas
5706 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 237-8067

Resubmittal #4: February 14, 2017
Total Site Area: 59.63 acres



MDS & ASSOCIATES, LLC
1026 BEAVER CREEK DRIVE
DUNCANVILLE, TX 75137
(214) 543-3128

**BENNER
STANGE
ASSOCIATES**
ARCHITECTS, INC.
200 S.W. ARADORS RD.
SUITE 5-130
LAKE OSWEGO, OR 97035
(503) 670-0234
FAX (503) 670-0235
bsa@bsnarch.com



BSAA
ARCHITECTURE & PLANNING



EXHIBIT “C”
BUILDING ELEVATIONS - TRACT 1



Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas
RPS Development Company Texas
5706 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 237-8067



**BENNER
STANGE
ASSOCIATES**
ARCHITECTS, INC.
5200 S.W. MEADOWS RD.
SUITE 8-130
LAKE OSWEGO, OR 97031-3130
(503) 670-0234
FAX (503) 670-0235
bsa@bsaarch.com
14-121

Zone Change Submittal
September 30, 2016
Resubmittal #1
October 6, 2016

PD1



Cornerstone Village @ Allen

Highway 121 & Custer Road | Allen, Texas

RPS Development Company Texas

5706 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 237-8067

Phone: (971) 237-8067



**BENNER
STANGE
ASSOCIATES**
ARCHITECTS, INC.
12200 S.W. MEADOWS RD.
SUITE B-130
LAKE OSWEGO, OR 97035
(503) 470-0234
FAX (503) 470-0285
bsa@starch.com

14-121
Zone Change Submittal
September 30, 2016
Resubmittal #1
October 6, 2016

PD2

EXHIBIT "C"
BUILDING ELEVATIONS - TRACT 1 cont.



Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas
RPS Development Company Texas
5704 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 257-8067



PD3

EXHIBIT "C"
BUILDING ELEVATIONS - TRACT 1 cont.

11/2/14 BSA Project 14-1211497 121 & Custer - Allen TX Zoning Development, 2017.09.13 Zoning Change 14-121.000 Sections 20170914.dwg



SHOPS '23'
NORTH ELEVATION

SCALE: 1/8" = 1'-0"



SHOPS '23'
WEST ELEVATION

SCALE: 1/8" = 1'-0"



SHOPS '23'
EAST ELEVATION

SCALE: 1/8" = 1'-0"

Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas
RFS Development Company Texas
706 E. McDowell Lane Suite 115 Dallas, TX 75206
Phone: (972) 251-8686



BENNER
STANGE
ASSOCIATES
A/E/C/F/T/E/C/T/S, INC.
5000 S.W. MEADOWS RD., SUITE 8-100
LAKE OREGON, OR 97035
(503) 470-0234
FAX (503) 470-0235
bsastange@aol.com
14-121
Zone Change Submittal
September 30, 2014
Resubmittal #1
October 6, 2014

PD4

EXHIBIT "C"
BUILDING ELEVATIONS - TRACT 1 cont.

FILED WITH TRACT MAP 63, 447, 003, 3, Corner Allen, 74000 Energy Development, LLC (L2013) Building Change, LA 63120 (BENNER STANGE ASSOCIATES)



Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas
BPS Development Company Texas
5708 E. Highway 121, Suite 110 Dallas, TX 75206
Phone: (972) 237-8067

BSAA
Architecture & Planning
BENNER STANGE ASSOCIATES
A R G H I T E C T S, P C
1801 N. MEADOWS RD.
SUITE 8-100
LAKE CRAWFORD, TX 76049
(972) 434-0554
FAX: (972) 434-0555
bsa@bennerstange.com
14-121
Zone Change Submittal
September 06, 2015
Resubmittal #1
October 5, 2015

PD6

EXHIBIT "C"
BUILDING ELEVATIONS - TRACT 1 cont.



Cornerstone Village @ Allen

Highway 121 & Custer Road | Allen, Texas
RPS Development Company Texas
5706 E Mockingbird Lane Suite 115 Dallas, TX 75206
Phone: (971) 237-8067



**BENNER
STANGE
ASSOCIATES**
ARCHITECTS, INC.
3900 S.W. NEADOWS RD.
SUITE 8-130
LAKE OSWEGO, OR 97031
(503) 670-0054
FAX (503) 670-0020
bsta@vandalia.com
(4-12)

Zone Change Submittal
September 30, 2016
Resubmittal #1
October 6, 2016

PD5

EXHIBIT "C"
BUILDING ELEVATIONS - TRACT 1 cont.



F:\2014 BSA Projects\14-121-001 121 & Custer - Allen, TX\20 Design Development\2017_05_12 Zoning Change\14-121-001 Signs.dwg



Cornerstone Village @ Allen
Highway 121 & Custer Road | Allen, Texas
RPS Development Company Texas
14001 Highway 121, Suite 113 Dallas, TX 75266
Phone: (972) 237-8847


BSAA
Architecture & Planning
BENNER
STANGE
ASSOCIATES
A ARCHITECTS, INC.
5300 S.W. MEADOWS RD.
SUITE 8-130
LAKE OSWEGO, OR 97035
TEL: (503) 470-0254
FAX: (503) 470-0255
bsa@bsaarch.com
14-121
Zone Change Submittal
September 30, 2014
Resubmittal #1
October 6, 2014

PD7



EXHIBIT "D"
SIGNAGE



EXHIBIT “E”
RENDERINGS - TRACT 2

ARCHITECTURAL IMAGERY REFERENCE

Highway 121 and Custer
Allen, Texas



2808 Fairmount Street, Suite 300
Dallas, Texas 75201 | 214.303.1500

3300 West 7th Street, Suite 110
Fort Worth, Texas 76107 | 817.303.1500

EXHIBIT "E"
RENDERINGS - TRACT 2



ARCHITECTURAL IMAGERY REFERENCE
Highway 121 and Custer
Allen, Texas



2808 Fairmount Street, Suite 300
Dallas, Texas 75201 | 214.303.1500

3300 West 7th Street, Suite 110
Fort Worth, Texas 76107 | 817.303.1500



EXHIBIT "e"
RENDERINGS - TRACT 2

ARCHITECTURAL IMAGERY REFERENCE
Highway 121 and Custer
Allen, Texas



2808 Fairmount Street, Suite 300
Dallas, Texas 75201 | 214.303.1500

3300 West 7th Street, Suite 110
Fort Worth, Texas 76107 | 817.303.1500

EXHIBIT "E"
RENDERINGS - TRACT 2



ARCHITECTURAL IMAGERY REFERENCE

Highway 121 and Custer
Allen, Texas



2808 Fairmount Street, Suite 300
Dallas, Texas 75201 | 214.303.1500

3300 West 7th Street, Suite 110
Fort Worth, Texas 76107 | 817.303.1500



Property Ownership Notification

Cornerstone

Map Legend

<all other values>

PARCELTYPE

- ABSTRACT
- COA
- RESIDENTIAL
- 200' Notification Buffer
- Railroad
- Public Rezone
- CollinCAD Parcels

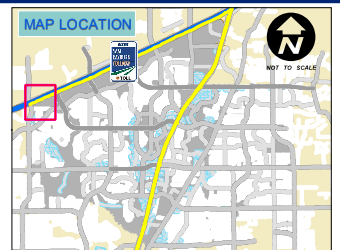


0 170 340 510
Feet

Community Development - GIS

Date Saved: 11/18/2016

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



March 7, 2017, Planning and Zoning Commission Meeting Minutes

Public Hearing – Conduct a Public Hearing and consider a request to establish a Planned Development for Corridor Commercial and adopt Development Regulations, a Concept plan, Building Elevations, and a Sign Plan for a 60± acres of land in the Chadrick Jackson Survey, Abstract No. 489; generally located at the southeast corner of the intersection of Custer Road and Sam Rayburn Tollway (SH 121). (Z-9/2/16-89) [Cornerstone Village at Allen]

Mr. Bo Bass, Director of Community Development, presented the item to the Commission. He stated this item is a public hearing for a Planned Development for a series of mixed-uses for residential and retail uses. He further explained that it is the City's intent for this type of development along State Highway 121.

The property is generally located at the southeast corner of the intersection of Custer Road and Sam Rayburn Tollway (SH 121). The property to the north (across Sam Rayburn Tollway/SH 121) is the City of McKinney. To the west (across Custer Road), is the City of Plano. The property to the east is zoned Planned Development PD No. 101 for Corridor Commercial CC. The properties to the south are zoned Planned Development PD No. 63 for Corridor Commercial CC, Community Facilities CF, Planned Development PD No. 63 for R-6 Single-Family Residential, and Planned Development PD No. 63 for Community Facilities CF.

Mr. Bass explained that the Concept Plan is broken into two tracts containing a total of 60± acres. Tract 1, approximately 323,480 square feet, is mainly along Custer Road and is exclusively retail/restaurant. There are twenty-three total buildings that make up the retail/restaurant portion. The proposed parking spaces for Tract 1 meet the Allen Land Development Code standard. Tract 2 is a 16-acre tract for a Multi-Family development by Trammell Crow. The development for roughly 638 units will have 70% structured parking. All of the corridors are air conditioned and climate-controlled with internal access only.

There are several points of access: five on SH 121, two on Custer Road, and three on the private road on the south. The SH 121 access points will require permits from TxDOT. The vast majority of the traffic for the multi-family tract have ingress/egress on one of the two peripheral roads the developer will build on the eastern and southern sides alongside the property. The City of Plano has also been involved with a \$300,000 escrow (traffic signal), dedicated left turn lanes, and improvements to the medians which is the responsibility of the developer on Custer Road.

Elevations submitted for Tract 1 include various combination of materials and colors and all four sides of the buildings will have distinct architecture. The Tract 2 MF portion ties down urban style architecture with structured parking and a wrapped product. The maximum height for the MF buildings is four stories.

Mr. Bass also explained that sign locations are shown on the Concept Plan and specific sign elevations will also be adopted with this PD Amendment.

All existing and new power lines will be placed underground prior to the issuance of a Certificate of Occupancy. City Staff is not requiring screening on the southern portion of the property to encourage future developers of the vacant lot to mirror this standard of urban styling. There will, however, be an 8' masonry screening wall behind the grocery anchor adjacent to the existing single-family lots. A cross-access easement for vehicle/pedestrian travel and cross-easements will be granted among all lots prior to platting.

Throat-depths of driveways will meet ALDC, but other design criteria can be approved by the Director of Engineering. Declaration lanes and roadway illumination is to be constructed at the same time as all

driveways are constructed. On-site detention/retention ponds are to be determined at the time of platting. The developer is aware that if the detention/retention ponds are required on-site and substantially change the spirit and intent of the project, the case will go back through the Planned Development process. A building permit for Tract 2 will not be issued until either the "Retail 5/ main grocery anchor" within Tract 1 has commenced construction, or a combination of 85,000 square feet of Tract 1 pad sites have commenced construction.

Mr. Ben Roodhouse, RPS Company Texas Manager and applicant, also presented to the Commission. He stated that drainage still has to be contemplated and could affect the site. The drainage issues will be handled with off-site facilities and will accommodate run-off to City standards. Traffic is also not fully satisfied, but his team has met with the City of Plano and Allen to understand the requirements. RPS Company feels comfortable with solving all the issues but will not be able to construct the traffic signal on Custer Road until Plano provides approval because the potential signal is dependent on actual traffic counts.

Chairman Cocking opened the public hearing.

Chairman Cocking closed the public hearing.

2nd Vice-Chair Platt expressed concern for the traffic impact and the traffic light on Custer Road.

Mr. Bass responded that the traffic light's construction is dependent on the City of Plano's consent that traffic counts warrant a traffic light. He said he will make sure Plano is aware the Commission would prefer the installation occur as soon as possible.

1st Vice-Chair Trahan stated he shared the same concerns on the traffic impact.

Kevin Laughlin, City Attorney, stated he is working on the negotiation and development of the agreements and escrow with both the developer and inter-local agreement with the City of Plano. Mr. Laughlin stated it is the City of Plano that requested the traffic light not be installed on Custer Road at this time. The City of Plano prefers to wait for any additional development to occur in the area to justify the need for the traffic light before its installation.

Mr. Bass indicated that the largest of the signs will be placed on the southwest corner of the property on Custer Road, which the City is anticipating to be the point of access for the bulk of the MF traffic. He stated it would be far worse if the next point of access, just north of the potential main entrance, became the major point of access as it would be too close to the future traffic light, which Plano would not allow.

2nd Vice-Chair Platt agreed with Mr. Bass' statement. However, he emphasized his discontent on the idea that the traffic light, which would be much needed, could be put in at any time.

Chairman Cocking stated that the City does not arbitrarily put in traffic lights in advance and recognizes the need for a traffic impact study. Too many lights can become a nuisance for the City.

2nd Vice-Chair Platt agreed with Chairman Cocking, but reiterated he does not like the ambiguity of when the traffic light may or may not be installed.

Mr. Bass stated he understood and that ultimately Plano controls when the light is required, but by providing for an opportunity to collect \$300,000 (roughly a third of the cost) from the developer, and escrowing that into an agreement with Plano, City staff has at least provided an opportunity when the need is warranted. This escrow would also save time as this would not require going through a bond or

Capital Improvements Program. Mr. Bass also stated that this is a perfect retail corner where the property lines converge close to a regional highway. There is confidence the traffic signal will ultimately help mitigate the impacts but the timing is under Plano's control.

2nd Vice-Chair Platt stated that traffic and the ambiguity of the traffic signal is his only area of concern.

Chairman Cocking stated that there is typically a screening wall between commercial and residential properties and that the residential property already has a screening wall along the eastern side. However, he still has concerns with the entire western side of Creekside at Ridgeview being wrought iron. If around 300-400 vehicles travel the firelane (one of the major entrances for the apartment complex), there would be shining headlights along the side of the existing houses. Chairman Cocking recommended the screening wall be extended along the southern border from the eastern most point of Creekside to the western most part of Gulf Coast Package Limited property to protect the residents from light pollution shining on the houses.

Chairman Cocking also stated the property will be MF-18 at four stories, but one of the standards for MF-18 is that if there is any portion of the multi-family use that is within 100 feet adjacent to a single-family residential district, then it shall not exceed 25' feet in height or have open balconies or decks. He asked that the developers maintain this standard.

Mr. Bass asked for clarification on the height standards, which he thought was no more than 35' feet or 2.5 stories per the City Code. He stated if the Chairman is interested in two stories, it will be less than 35' feet, but was not completely sure if 25' is enough to build two stories of MF.

Chairman Cocking said that he also did not know if 25' equated to two stories, and stated that he just does not want this portion of apartments to exceed two stories.

Mr. Bass asked Mr. Roodhouse if he happened to know the height in feet, which he did not.

Mr. Bass stated one solution would be if this portion of the building is to be two stories, and clearly not as high as 35', but around the 25' range, staff and the developer can decide on the height before the case is heard at the City Council meeting.

Chairman Cocking agreed. He said the key issue is that there is an elevation change where the MF portion is higher than the existing residential, so he would like to keep this area at two stories within the 100' distance to keep people from looking into the single-family residential backyards and to be in compliance with MF-18 standards.

Chairman Cocking stated his last concern is regarding the Certificate of Occupancy for the apartment complex. The ordinance is currently written such that the developer either constructs Building 5 or a total of buildings equaling 85,000 square feet in order to begin construction on Tract 2. He stated this number is too low (only about 22% of the total square footage), and believes it should be closer to 1/3. He wanted to change the development regulations to indicate that once a third of the proposed building square footage is constructed, then the CO could be issued for the apartment complex. He stated this means the primary tenant and one of the secondary tenants would have to be developed at around 108,000 total square feet.

Mr. Bass clarified that using that calculation, about 33% of the 324,480 total square footage would be about 108,000 square feet.

Chairman Cocking replied that he would like to see the number be defined as one third of the final square footage because things change and buildings might have to be reduced or enlarged to accommodate drainage and other factors.

Mr. Laughlin said he would be more comfortable stating a specific number like the previously mentioned 108,000 square feet to make sure the number is an objective measurement for future reference.

Chairman Cocking reiterated that he was concerned because the detailed site work had not been completed yet and the square footage could change in the process. After further discussion, the final decision was to refer to one third of the square footage as noted on the Concept Plan with the understanding that if the PD Concept Plan is amended, the required square footage will change as well. Chairman Cocking stated that hopefully there is enough demand to build the site all at once, but if not, this is a good way to ensure it develops the way the City desires.

Chairman Cocking asked the developer if he could agree to these changes.

Mr. Roodhouse stated that this is the plan they expect to develop and the anchor grocery store is the main component that makes this whole plan work. He explained that that was the reason they chose to include that language in there to begin with. They would prefer to keep it as the anchor, but are willing to agree to the 1/3 standard. He also mentioned that the simpler the language, the easier it is for them to structure their lease agreements and transfer land when required.

Chairman Cocking concluded by saying that those were the only three items he wanted to change.

1st Vice-Chair Trahan asked if those items could be repeated to ensure he understood them.

Chairman Cocking stated the following changes/additions:

- To construct an 8' masonry screening wall on the southern border along the northern property of the City of Allen Parks property to block light pollution, foot traffic, litter, etc;
- To limit the height to 2 stories and to not have any balconies or decks within 100 ft. of the existing residential;
- To change the square footage requirement to one third of the total square footage of Tract 1 for the development of Tract 2.

Mr. Bass said staff would translate two stories into feet and include that number in the final ordinance for City Council.

1st Vice-Chair Trahan asked for clarification on the building stories.

Mr. Bass said staff will discuss the height with subject matter experts to determine the ultimate height in feet.

Motion: **Upon a motion by Chairman Cocking, and a second by 2nd Vice-Chair Platt, the Commission voted 5 IN FAVOR, and 0 OPPOSED to recommend approval of the request to change the zoning of 60± acres of land in the Chadrick Jackson Survey, Abstract No. 489; generally located at the southeast corner of the intersection of Custer Road and Sam Rayburn Tollway (SH 121), for Cornerstone Village at Allen, with the addition of the following:**

1. To construct an 8' foot masonry wall on the northern border of the City of Allen Parks property (from the eastern edge of the Creekside at Ridgeview addition to the western edge of the Gulf Coast Package Limited);
2. To limit the height to 2 stories and not have open balconies or decks (and the actual height in feet to be determined by City Staff before the City Council meeting) within 100' foot adjacent to the single-family residential subdivision property;
3. To remove clause "i" in Paragraph 6 of Section L within the development regulations and to edit section "ii" and replace it with the provision that no Building Permit shall be issued for any building on Tract 2 until after Commencement of Construction of 1/3 of the total square footage shown on the Concept Plan.

The motion carried.