

**AGENDA
CITY OF ALLEN
CITY COUNCIL WORKSHOP MEETING
JANUARY 13, 2009 – 6:00 P.M.
COUNCIL CONFERENCE ROOM
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Questions on Current Agenda.

Items of Interest.

1. Briefing Regarding Requirements for Burying Overhead Utilities —
Ogden 'Bo' Bass, Director of Planning and Development
2. Committee Updates from City Council Liaisons —
3. Discussion of Regular Agenda Items —

Adjourn to Regular Meeting.

- open to the public -

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, January 9, 2009, 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
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AGENDA DATE:	Tuesday, January 13, 2009
SUBJECT:	Briefing Regarding Requirements for Burying Overhead Utilities
STAFF RESOURCE:	Ogden “Bo” Bass, Director of Planning and Development

BACKGROUND

The City’s current policy is to require all new developments to bury existing overhead utility lines when the property develops. Staff has experienced several challenges with implementing this policy as it is currently structured. After conducting research, staff is seeking feedback regarding possible options for modifying the approach to implementing this requirement.

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JANUARY 13, 2009 – 7:00 P.M.
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizens' 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 Proclamation from the Office of the Mayor:
 - Presentation of a Proclamation to Head Coach Tom Westerberg and the Team Captains of the Allen High School Eagles Varsity Football Team for Winning the 5A State Championship and Proclaiming 2009 as "Allen Eagles Varsity Football Year."

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

3. Approve Minutes of the December 9, 2008, Regular Meeting.
4. Set August 7-9, 2009, as the Dates for the City Council Budget Work Session with City Council and Executive Staff.
5. Motion to Approve Mr. Bobby J. Baggett as an At-Large Representative to the Arts of Collin County Commission Board of Directors.

6. Adopt a Resolution Approving an Amendment to the Bylaws of the Arts of Collin County Commission, Inc.
7. Adopt a Resolution and Authorize the City Manager to Execute a Users Agreement with the Presbyterian Plano Diagnostics Surgery Center with Regard to the 800 MHz Trunked Radio System Owned by the Cities of Allen, Plano and Frisco.
8. Adopt a Resolution Accepting the Family Violence Investigation and Prevention Officer Grant from the State of Texas, Office of the Governor, Criminal Justice Division, if Awarded.
9. Adopt a Resolution Accepting the Child Abuse Investigator Grant from the State of Texas, Office of the Governor, Criminal Justice Division, if Awarded.
10. Authorize the City Manager to Execute a Professional Services Contract with Quorum Architects, Inc. for an Amount not to exceed \$125,000 for the Design of the Expansion of the Animal Shelter and Establish a Project Budget of \$147,719.
11. Authorize the City Manager to Execute a License Agreement and a Development Agreement with the North Bethany Lakes Homeowners Association for the Construction of a Masonry Screening Wall within the City of Allen Right-of-Way.
12. Accept Resignation and Declare a Vacancy in Place No. 3 of the Board of Adjustment.
13. Receive the Summary of Property Tax Collections as of November 2008.

Regular Agenda.

14. Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory, and Section 7.07 Fences and Walls, Subsection 4 – Screening Walls or Visual Barriers Required.
15. Consider an Appeal of Sign Control Board Action on October 20, 2008, to Grant a Variance to the the Allen Heights Village Shopping Center, Located at the Northwest Corner of Main Street and Allen Heights Drive, and to Take Action to Approve, Disapprove, or Modify Action of the Sign Control Board.
16. Adopt a Resolution Implementing the Water and Sewer Rate Increases Recommended for 2009 by the Water and Sewer Multi-year Financial Plan and Rate Design Study.

Other Business.

17. Calendar.

- January 17 – City Council Strategic Planning Session

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

- January 18 – Pep Rally to Honor 2008 5A State Champion Allen Eagles Football Team/Allen Eagle Stadium/2:00 p.m.

Executive Session. (As needed)

Legal, Section 551.071; Property, Section 551.072; Personnel, Section 551.074.
As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

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

19. Personnel Pursuant to Section 551.074 of the Texas Government Code –
Discuss Appointment to the Following:

- Arts of Collin County Commission

20. Reconvene and Consider Action on Items Discussed during Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, January 9, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

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*Office of the Mayor
City of Allen*

Proclamation

WHEREAS, the Allen High School Varsity Football program builds character and develops solid citizens by teaching dedication, responsibility, leadership, teamwork, self-confidence and self-discipline; and,

WHEREAS, with the leadership of Coach Tom Westerberg, coaching staff and the stellar play of all team members, the Eagles have demonstrated the kind of character and competitive spirit valued by their school and community; and,

WHEREAS, the Eagles played at the highest level throughout the season to finish with a record of 16-1 with a championship win over Fort Bend Hightower with a winning score of 21-14 at the Reliant Stadium in Houston, Texas; and,

WHEREAS, the talented athletes on the Eagles Varsity Football Team won the 2008 5A State Championship, and its third consecutive District Championship; and,

WHEREAS, with the Eagles win at State, the team brings home the Allen Independent School District's first State Football Championship in the District's history; and,

WHEREAS, the energy, spirit and determination of the team serves as an inspiration for us all; and,

WHEREAS, the Allen City Council wishes to recognize the character, talent, and hard work exemplified by the Allen Eagles Varsity Football Team for their outstanding athletic performance and commitment to teamwork.

NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim 2009 as:

"ALLEN EAGLES VARSITY FOOTBALL TEAM YEAR"

in Allen, Texas, and I urge all citizens to take cognizance of this event and participate in all the events related thereto in this community.

Stephen Terrell, MAYOR

ALLEN CITY COUNCIL

REGULAR MEETING

DECEMBER 9, 2008

Present:

Stephen Terrell, Mayor

Councilmembers:

Debbie Stout, Mayor Pro Tem
Ross Obermeyer
Joey Herald
Robin L. Sedlacek
Gary L. Caplinger
Jeff McGregor (arrived at 7:12 p.m.)

City Staff:

Peter H. Vargas, City Manager
Shelli Siemer, Assistant City Manager
Shelley B. George, City Secretary
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 6:05 p.m. on Tuesday, December 9, 2008, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Taping of the Holiday Message
- Legislative Update
- Committee Updates from City Council Liaisons
- Discussion of Regular Agenda Items

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 6:55 p.m. on Tuesday, December 9, 2008.

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 7:01 p.m. on Tuesday, December 9, 2008, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizens' Comments.

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2. **Presentation of a Proclamation by the Office of the Mayor:**
 - **Presentation of a Proclamation to Head Coach Ryan Mitchell and the Lovejoy High School Lady Leopards Volleyball Team for Winning the 3A State Championship and Proclaiming December 2008 as "Lady Leopard's Volleyball Team Month."**
3. **Recognition of the Accounting Division for Receipt of the *GFOA Certificate of Achievement for Excellence in Financial Reporting Award* for the Fiscal Year Ending September 30, 2007.**
4. **Recognition of the Purchasing Division for Receipt of the *2008 Achievement of Excellence in Procurement Award*.**
5. **Recognition of the Purchasing Division for Receipt of the *2008 Minority Enterprise Development Million Dollar Roundtable Award*.**

Councilmember McGregor took his seat on the Council dais.

Consent Agenda

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

6. **Approve Minutes of the November 25, 2008, Regular Meeting.**
7. **Authorize the City Manager to Execute a Facilities Agreement for Montgomery Boulevard and Watters Branch Creek Bridge with Wretched Land, L.P. for the Dedication of Right-of-Way.**
8. **Authorize the City Manager to Approve the Purchase of Traffic Signal Upgrade Equipment in the Amount of \$49,350 with Raptor Controls, a Sole Source Vendor, and \$109,318 with Siemens Energy, a Sole Source Provider.**
9. **Award Bid and Authorize the City Manager to Execute a Contract with Republic ITS in the Amount of \$532,326.50 for Construction/Integration Services as it Relates to the Traffic Signal Upgrade Project.**
10. **Award Bid and Authorize the City Manager to Execute a Construction Contract with JDC Construction Company for an Amount of \$192,720 and Amend the Country Meadows Park Improvements Project Budget to \$226,515.**

The motion carried.

Regular Agenda

11. **Conduct a Public Hearing and Adopt an Ordinance Granting a Request for an SUP Specific Use Permit for a Church to be Located on 3± Acres at 1403 Bethany Drive.**

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

The following individuals spoke in opposition to this item:

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Ryan Schefke, 742 Big Bend Drive, Allen, Texas
Cathy Hinkley, 747 Cheyenne Drive, Allen, Texas
Chris Farr, 1436 Berkley, Allen, Texas
Marci Farr, 1436 Berkley, Allen, Texas
Patrick Capore, 744 Cheyenne Drive, Allen, Texas

Zac Baker, Garland resident, spoke in support of the item.

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

ORDINANCE NO. 2791-12-08: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING SPECIFIC USE PERMIT NO. 106 FOR A CHURCH FOR PROPERTY ZONED "R-5" RESIDENTIAL, BEING 3.616± ACRES IN THE SIMON BURNS SURVEY, ABSTRACT NO. 92, CITY OF ALLEN, COLLIN COUNTY, TEXAS, AND FURTHER DESCRIBED IN EXHIBIT "A" ATTACHED; PROVIDING FOR A SITE PLAN ATTACHED AS EXHIBIT "B"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Sedlacek, the Council voted seven (7) for and none (0) opposed to adopt Ordinance No. 2791-12-08, as previously captioned, approving the request to grant Specific Use Permit No. 106 for Harvest Oaks Baptist Church on property zoned R-5 Residential on 3± acres of land located at 1403 Bethany Drive. The motion carried.

12. Conduct a Public Hearing and Adopt an Ordinance Amending Provisions of the Municipal Drainage Utility System and Adopt a Resolution Setting New Drainage Fees.

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. 2792-12-08: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, RENAMING AND AMENDING IN ITS ENTIRETY CHAPTER 14, "UTILITIES", ARTICLE III, "MUNICIPAL DRAINAGE UTILITY SYSTEM," SECTION 14-73 "DRAINAGE CHARGES" OF THE CODE OF ORDINANCES; AMENDING IN ITS ENTIRETY CHAPTER 14, "UTILITIES", ARTICLE III, "MUNICIPAL DRAINAGE UTILITY SYSTEM," SECTION 14-74 "EXEMPTIONS" OF THE CODE OF ORDINANCES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY 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.

RESOLUTION NO. 2793-12-08(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING A SCHEDULE OF CHARGES FOR DRAINAGE SERVICE FOR THE MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING A

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SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember McGregor and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed to adopt Ordinance No. 2792-12-08, as previously captioned, amending provisions of the Municipal Drainage Utility System and to adopt Resolution No. 2793-12-08(R), as previously captioned, setting new drainage fees. The motion carried.

Other Business

12. Calendar.

- City Facilities Holiday Closings: December 24-25, 2008 and January 1, 2009.
- Next Regular Council Meeting: January 13, 2009

13. Items of Interest. [Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]

- Council announced the Allen Eagles Varsity Football Team would be playing for the 5A Division 1 State Championship on Saturday at Reliant Stadium in Houston.
- Councilmember McGregor announced that his son is playing on the Allen Eagles Varsity Basketball Team and would be arriving late at Council meetings but would continue to inform the City Manager and City Secretary of those dates.
- Councilmember Sedlacek announced the birth of her first grandchild, Stephen Jose Sedlacek.

Executive Session

The Executive Session was not held.

14. Reconvene and Consider Action on Items Discussed during Executive Session.

Adjourn

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 9:12 p.m. on Tuesday, December 9, 2008. The motion carried.

These minutes approved on the 13th day of January, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Set August 7-9, 2009, as the Dates for the City Council Budget Work Session with City Council and Executive Staff

STAFF RESOURCE: Peter H. Vargas, City Manager
Shelley B. George, City Secretary

ACTION PROPOSED: Set Dates for the City Council Budget Work Session

BACKGROUND

Through the annual Budget Work Session, the City Council reviews the proposed budget for the upcoming Fiscal Year. This process allows staff to present projects for funding that supports the City of Allen's Strategic Plan.

STAFF RECOMMENDATION

Staff recommends the Allen City Council set August 7-9, 2009, as the dates for the City of Allen Budget Work Session.

MOTION

I make a motion to set August 7-9, 2009, as the dates for the City of Allen Budget Work Session with the City Council and executive staff.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Motion to Approve Mr. Bobby J. Baggett as an At-Large Representative to the Arts of Collin County Commission (ACC) Board of Directors

STAFF RESOURCE: Shelley B. George, City Secretary

BACKGROUND

The ACC is seeking approval of Mr. Bob Baggett as the At-Large Representative for the position previously held by Mayor Maher Maso of Frisco. An appointment has not been made to fill the vacancy and the term for the place expired on September 30, 2008. The new appointee will fill the unexpired term until September 30, 2011.

The Bylaws of the ACC require that the At-Large Representatives be "appointed by unanimous agreement of the Owners." The City of Plano approved the appointment of Mr. Baggett on December 22, 2008, and the City of Frisco approved the appointment of Mr. Baggett on January 6, 2009.

Following the unanimous approval of the ACC Amended Bylaws by the Owner Cities, the ACC will ask the City of Plano to appoint Mr. Baggett to fill its new seat on the ACC Board.

STAFF RECOMMENDATION

Staff recommends Council approve Mr. Baggett as the At-Large Representative to the ACC Board of Directors.

MOTION

I make a motion to approve Mr. Bob Baggett as the At-Large Representative to the ACC Board of Directors with a term expiration of September 30, 2011.

ATTACHMENT

Mr. Baggett's Letter of Interest
Mr. Baggett's Resume

Bobby J. Baggett
5708 Danmire Court
Plano, Texas 75093
214.912.9768

November 15, 2008

The Honorable Steve Terrell
City of Allen
305 Century Parkway
Allen, TX 75013

Dear Mayor Terrell:

Please accept this letter as an expression of my interest in serving as an at-large member of the Arts of Collin County Board of Directors, to complete the term vacated when Maher Maso resigned his position after being elected Mayor of Frisco.

As you may know, I have been involved in this project since the early stages. I am eager to continue to support the project and assist in bringing the vision to reality as an at-large representative on the Board.

Thank you for your consideration of my appointment. If you have any questions I would be happy to visit with you at your convenience. I appreciate this opportunity to represent the interests of the three owner cities, as well as all the residents of Collin County, as we continue to move forward to construction of Phase I.

Sincerely yours,

Signature on File

Bobby J. Baggett

Professional Experience

Current Position: Managing Partner of **Valeo Capital LLC** since 2007. Located in Plano, Texas, Valeo Capital is a private equity firm specializing in investments and advisory services in middle-market, basic-industry and platform technology companies.

Former Positions:

- Chairman of the Board and co-founder of **KBA Group LLP**, Certified Public Accountants
- Founding partner, **Baggett Drews Adams & Kipp LLP**, Certified Public Accountants
- Tax Partner, **Elms, Faris & Co.**, CPA's
- Tax Manager, **Ernst & Whinney**, CPA's

Bob also has served on numerous private-company boards including the advisory board of **Tienahhealth Medical Management** and **Sleep Healers of America** and currently serves on the advisory board of **Paranet Solutions LLC**, **Abacus Technical Services, Inc.** and **Knowledge Tranzfer, Inc.**

Community Service

- **Plano Symphony Orchestra Association**, board member and past President, past Treasurer, past chairman of Compensation Committee
- **Plano Arts and Cultural Endowment**, board member
- **Star Children's Charity of Collin County**, a founding board member, executive committee and Treasurer
- **PISD Education Foundation**, board member and chairman of Finance Committee
- **Arts of Collin County**, volunteer supporter
- **Dallas Museum of Science and Nature**, member of the Corporate Advisory Council
- **Chancellor's Council for Texas Tech University**, member
- **Sigma Alpha Epsilon - Texas Alpha Chapter Endowment**, member of the board of trustees
- **City of Plano Transportation Advisory Commission**, former appointed member, former liaison to the City of Plano Bicycle Plan Sub-committee
- **Accounting Advisory Board of Texas Tech University**, former member
- **Leadership Plano**, graduate of 2nd class
- **PISD Student Based Improvement Council**, former member
- **Collin County, City of Plano and PISD Bond / Election Committees**, appointed member and volunteer member of numerous campaigns supporting of bonds proposals, city and school district measures.

Professional Memberships

- Texas Society of Certified Public Accountants
- American Institute of Certified Public Accountants
- Business Valuation/Litigation Support Division of the AICPA
- Acquisitions Divestitures and Mergers Energy Forum of Dallas
- Independent Petroleum Association of America

Education & Personal

Bob is a 1979 graduate of Texas Tech University with a Bachelor of Business Administration in Accounting. His wife, Mellie, is a community volunteer and is involved with numerous organizations including the Arts of Collin County, Second Chance SPCA of Plano, Star Children's Charity, Plano Symphony Orchestra and City House, and she is the former Director of Development for Operation Kindness. Bob is a member of Prestonwood Baptist Church and has three daughters, Brooklyn (23), Emily (19) and Avery Bella (3).

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Adopt a Resolution Approving an Amendment to the Bylaws of the Arts of Collin County Commission, Inc. (ACC)

STAFF RESOURCE: Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: In February 2006, Council Adopted Resolution No. 2489-2-06(R) Amending the ACC Bylaws

BOARD/COMMISSION ACTION: On December 17, 2008, the ACC Board Approved Amendments to the Bylaws

ACTION PROPOSED: Adopt Proposed Resolution

BACKGROUND

On December 17, 2008, the ACC Board adopted Resolution No. 43-12-08, approving an amendment to Article II, Section 1(a) of the ACC Bylaws to provide for a Board of Directors made up of seven members rather than five. The new composition of the Board would include two representatives from each owner city and one at-large member appointed unanimously by the owner cities. The expanded composition of the Board is proposed as follows:

Member Name	Place	Term Expiration
<i>Current Board Members Representation and Terms</i>		
Steve Matthews	At-Large	9/30/09
Betty Muns	Plano	9/30/09
Charles Nies	Allen	9/30/10
Nick Barretta	Frisco	9/30/10
Vacant	At-Large (will convert to second Plano)	9/30/11**
<i>New Seats</i>		
Vacant	Allen	9/30/11*
Vacant	Frisco	9/30/11*

*Bylaws, Article II, Section 1 a, specifies 3 year terms for appointments after the initial Board was established. Since these seats will be filled in early 2009 the term will be slightly less than three years. Existing at-large seats can convert to represent the Owner City in which that person resides with the confirmation of the Owner City.

**At-Large seat that was held by Maher Maso term expired 9/30/08 – new appointee will fill term until next expiration 9/30/11.

Article IX of the ACC Bylaws requires that amendments to the Bylaws be approved in writing by each owner (cities) to be effective. The City of Frisco approved the amended Bylaws at its meeting on January 6, 2009. The City of Plano will consider the amended bylaws at its meeting on January 12, 2009.

STAFF RECOMMENDATION

Staff recommends City Council adopt the proposed resolution approving an amendment to the ACC Bylaws.

MOTION

I make a motion to adopt Resolution No. _____ approving an amendment to the Arts of Collin County (ACC) Bylaws as approved and recommended by the ACC Board.

ATTACHMENT

Draft - Proposed Bylaws with Changes Marked
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING AMENDMENTS TO THE BYLAWS OF THE ARTS OF COLLIN COUNTY COMMISSION, INC.; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, at a regularly scheduled meeting of the Arts of Collin County Commission, Inc. (ACC), with a quorum in attendance, the ACC reviewed and approved the Amended Bylaws.

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

SECTION 1. The proposed amendments to the Bylaws of the ACC as set forth in Resolution No. 43-12-08 approved by the ACC on December 17, 2008, and attached hereto are hereby approved.

SECTION 2. Resolutions of the City of Allen, Collin County, Texas, in conflict with the provisions of this resolution are hereby, repealed; provided, however, that all other provisions of said resolutions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. This resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY



**BYLAWS OF THE
ARTS OF COLLIN COUNTY COMMISSION, INC.**

**A Texas Local Government Corporation created on behalf of the Cities of Allen,
Frisco, and Plano, Texas**

**ARTICLE I
PURPOSES**

The Arts of Collin County Commission, Inc. (the “Corporation”) is organized and will be operated exclusively for one or more charitable purposes, within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the “Code”). The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the City of Allen, Texas, the City of Frisco, Texas, and the City of Plano, Texas (collectively the “Cities” and, each individually, a “City”) in the performance of their governmental functions to promote the common good and general welfare of the Cities, and to promote, develop, encourage and maintain cultural arts facilities, commerce and economic development in the Cities.

The Corporation is further organized to aid, assist and act on behalf of the Cities by financing, constructing, owning, furnishing, managing and operating performing and visual cultural arts facilities, together with land and improvements related thereto, and other related facilities (“Cultural Facilities”). Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government may join in the activities of the Corporation, under procedures established in these Bylaws.

The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of Texas to non-profit corporations

incorporated under the Act including, without limitation, Article 1396, Vernon's Texas Civil Statutes (the Texas Non-Profit Corporation Act).

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue any bond, certificate, note or other obligation evidenced by an instrument without the written consent of each of the Cities and except as authorized under Section 3 of Article IV Financial Responsibilities of these Bylaws.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

Each City and any other unit of local government that executes binding commitments to provide funding and otherwise is qualified to appoint a Director to the Board as permitted by these Bylaws or other documents, shall be referred to as an "Owner", and they are collectively referred to as "Owners".

All references herein to the consent or written consent of a City or an Owner shall refer to an ordinance, resolution or order of the governing body of the City or Owner.

ARTICLE II BOARD OF DIRECTORS

Section 1. Appointment, Powers, Number, and Term of Office. All powers of the Corporation shall be vested in a Board of Directors ("Board"). The Board shall independently manage and operate the Cultural Facilities in accordance with all applicable laws and documents, including the Articles of Incorporation, these Bylaws, the Contribution and Interlocal Agreements, the Arts of Collin County Vision Statement and such other documents agreed to by the Owners and as the same may be amended from time to time.

The Board shall initially consist of five (5) persons. The number of Directors on the Board may only be increased or decreased in accordance with these Bylaws. Directors of the Corporation ("Director" or "Directors") shall be appointed to the Board as follows:

(a) Each Owner shall be entitled to appoint ~~one (1)~~ two Directors to the Board in accordance with Owner's criteria for Board appointments ~~and the remaining Directors.~~ One additional Director shall be appointed by unanimous agreement of the Owners. —The number of Directors shall increase or decrease if the number of Owners

increases or decreases. However, the number of Directors shall never be less than five (5) and the Board shall always be composed of an odd number.

For the initial Board, the terms shall be staggered with one of the Owner's selections serving a one (1) year term, two of the Owner's selections serving a two (2) year term and the remaining Directors serving a full three (3) year term. Thereafter, each Director shall serve for a three (3) year term, or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director's appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director. No term limits are imposed by these Bylaws. Any restriction as to term is governed by the entity appointing such Director.

(b) Any Director may be removed from office at any time, with or without cause, by the entity authorized to appoint that Director. Directors appointed jointly by all Owners may be removed at any time by unanimous vote of all Owners.

(c) All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

Section 2. Meetings of Directors. The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Collin County as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas.

The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of a City under Chapter 551, Texas Government Code (the "Open Meetings Act").

The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Open Records Act").

Section 3. Annual Meetings. No annual meeting shall be required.

Section 4. Regular Meetings. Regular meetings of the Board shall be held at least quarterly at such times and places as shall be designated, from time to time, by resolution of the Board.

Section 5. Special and Emergency Meetings. Special and emergency meetings of the Board shall be held whenever called by the President of the Board or the Secretary or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called.

The Secretary shall give notice of each special meeting in person, by telephone, facsimile, mail or email at least three (3) days before the meeting to each Director and to

the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required of the Cities under Section 551.045 of the Open Meetings Act. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special or emergency meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act.

Section 6. Quorum. A majority of the Board then appointed and serving shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless his dissent or abstention shall be entered in the minutes of the meeting or unless he shall file his written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent or abstention by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

Section 7. Conduct of Business. At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine.

At all meetings of the Board, the President shall preside, and in the absence of the President, the Vice President shall preside. In the absence of the President and the Vice President, an acting President shall be chosen by the Board from among the Directors present.

The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 8. Executive Committee, Other Committees. The Board may, by a resolution passed by a majority of the Directors, designate two (2) or more Directors to constitute an Executive Committee or other type of committee. In addition, the Board may appoint members of Corporation staff and citizens of the Owners to be members of a committee except for an Audit, Compensation or Governance Committee, which committee may only be composed of Directors.

To the extent provided in the authorizing resolution for the committee and the Board approved committee charter, a committee shall have and may exercise the authority of the Board in the management of the Corporation, except where action of the Board is specified by statute. Each committee so designated shall keep regular minutes

of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board. Committees are subject to the regulations which apply to committees of government entities including the open records and open meetings acts.

Section 9. Compensation of Directors. Directors, as such, shall not receive any salary or compensation for their services as Directors; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes.

Section 10. Advisory Committee. The Board shall establish an Advisory Committee composed of members who are, in the judgment of the Board, qualified to advise with respect to the activities of the Corporation. The size of the Advisory Committee will be determined by the Board and may be adjusted from time to time. The Board will designate one of its Directors to be a liaison to the Advisory Committee to assure close communication between the Board and the Advisory Committee.

Committee Members shall serve for a term of one (1) year or such longer term as may be fixed by the Board. Committee Members may be removed by the Board at any time, with or without cause. The officers and Directors of the Corporation may consult with the Advisory Committees from time to time with respect to the activities of the Corporation, but the Advisory Committee shall in no way exercise or restrict the powers of the Board nor limit its responsibility for the management of the affairs of the Corporation. Committee Members shall not receive any salary or compensation for their services; provided, however, Committee Members may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

Section 11. Director's Reliance on Consultant Information. A Director shall not be liable if while acting in good faith and with ordinary care, he or she relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) One or more other officers or employees of the Corporation;
- (b) An employee of an Owner, Member, Supporter, or Patron. The terms "Member," "Supporter," and "Patron" in this section and in section 7 (c) of Article III have that meaning as set forth in Article IV of the Interlocal Agreement;
- (c) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (d) A committee of the Board of which the Director is not a member.

Section 12. Executive Director. The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Board shall establish the compensation, duties and other responsibilities of the Executive Director. The hiring and/or removal of the Executive Director shall be by a majority vote of the appointed Board.

ARTICLE III OFFICERS

Section 1. Titles and Term of Office. The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except the President shall not hold the office of Secretary. The term of office for each officer shall commence on the date of such officer's election and terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) if the officer is a member of the Board, the date that the officer is no longer a member of the Board.

All officers shall be appointed and subject to removal, with or without cause, by a vote of a majority of the Board.

A vacancy in any office shall be filled by a vote of a majority of the Board.

Section 2. Powers and Duties of the President. The President shall be a member of the Board and shall preside at all meetings of the Board. He or she shall have such duties as are assigned by the Board. The President may call special or emergency meetings of the Board. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, the President or Vice President may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, notes, contracts and other obligations in the name of the Corporation. The President shall be an ex-officio member of all committees.

Section 3. Powers and Duties of the Vice President. A Vice President shall be a member of the Board and shall have such powers and duties as may be assigned to him or her by the Board or the President, including the performance of the duties of the President upon the death, absence, disability, or resignation of the President, or upon the President's inability to perform the duties of his or her office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

Section 4. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; he or she may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; he or she shall enter or cause to be entered regularly in the books of the Corporation to be

kept by him or her for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; he or she shall perform all acts incident to the position of Treasurer subject to the control of the Board; including the monitoring and audit of all cash accounts whose existence must first be approved by the Board; and he or she shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require.

Section 5. Secretary. The Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; he or she shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, he or she may sign with the President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he or she shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, he or she shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

Section 6. Compensation. Except for Directors, Officers are entitled to receive any such salary or compensation for their duties as approved by the Board. All Officers are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with policies adopted by the Board.

Section 7. Officer's Reliance on Consultant Information. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) One or more other officers or employees of the Corporation, including members of the Board;
- (b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (c) An employee of an Owner, Member, Supporter, or Patron.

ARTICLE IV FINANCIAL RESPONSIBILITIES

Section 1. Audit. As expeditiously as possible, the Board shall have an annual audit prepared by an independent auditor, who is duly licensed or certified as a public accountant in the State of Texas, of the financial books and records of the Corporation.

Section 2. Capital Spending Authority: The Board may expend funds for capital improvements for the Cultural Facilities as follows:

(a) Funds from an Owner or Owners shall be used for the purposes of the Corporation as authorized and directed by the City or Cities.

(b) Funds from other sources, such as donations, may be used at the discretion of the Board for capital purposes as long as the uses are consistent with the Owners' direction and are not reasonably expected by the Board to increase the operation and maintenance costs of the Corporation above the limits established in Section 4, below or have a capital cost greater than \$100,000.

Section 3. Issuance of Debt. The Board is authorized to issue short-term debt only. Short-term debt is that amount which is payable in less than one (1) year from date of issuance. Where possible, the amount and purpose of the short term debt shall be projected by the Corporation in its annual budget to the Owners.

The cumulative amount of short term debt in any fiscal year shall not exceed twenty-five percent (25%) of the total operation and maintenance portion of the budget for that fiscal year. Owners shall be given the first opportunity to provide these funds before the Board incurs debt.

Section 4. Increase of O&M Costs. In the event any one or more items is added during a fiscal year that would increase or cause the annual operation and maintenance costs to exceed ten percent (10%) above the budgeted amount for that year, the Board must receive prior approval from all Owners prior to making that addition.

Section 5. Fiscal Year. The fiscal year of the Corporation shall begin October 1 of each year.

Section 6. Annual Budget. No later than 90 days prior to the beginning of each fiscal year, the Board shall prepare, or cause to be prepared, and approve a budget (the "Budget") for each fiscal year. The Budget must be approved by a three-quarters (3/4) majority vote of the Board. After approval by the Board, the Budget shall be submitted to each Owner for final approval.

If the Board fails to approve the Budget, or if the Budget is not approved by each Owner, then during the first three years of this Agreement, the Budget for the prior fiscal year shall be deemed approved.

After the third year of the Agreement and if the Budget is not approved by either the Board or all Owners, then the next year's Budget is the greater of:

The total amount of the prior year's Budget; or,

The average of the annual Budgets for the prior three (3) years.

Section 7. Line Item Flexibility. The Board has the authority to shift operation and maintenance funds from one line item to another.

Section 8. Payments. Beginning October 1, Owners shall make their annual payments to the Corporation in quarterly installments each year. Payments shall be made on or before the first business day of each quarter of the fiscal year.

Section 9. Reserve Fund. The budget shall provide for a reserve fund for the replacement of scheduled assets. Any unencumbered funds remaining at the end of the fiscal year shall be converted to the reserve fund.

Section 10. Other Funds. Other funds, such as charitable donations, may be used by the Board in accordance with the approved budget or if not anticipated in the budget as the Board directs providing the limitation set out in Section 4, above or a capital cost of \$100,000 is not exceeded.

ARTICLE V INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Subject to the limitations and conditions as provided in this Article V and the Articles of Incorporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

Section 2. Advance Payment. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section I who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

Section 3. Indemnification of Employees and Agents. The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

Section 4. Appearance as a Witness. Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

Section 5. Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation or these Bylaws, agreement, vote of shareholders or disinterested Directors or otherwise.

Section 6. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any

expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

Section 7. Notification. Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

Section 8. Savings Clause. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI

Executive Director

Powers and Duties of the Executive Director. The Executive Director shall be the principal executive officer of the Corporation and, subject to the control of the Board, he or she shall be in general charge of the properties and affairs of the Corporation. The Executive Director has management and control of the properties and operations of the Corporation, including the powers of a general manager. The Executive Director shall be an ex-officio of all Board committees, except the Audit Committee. The Executive Director will be responsible to implement all orders and resolutions of the Board of Directors, and all other powers that are not specifically reserved to the Directors or Owners, will be executed by the Executive Director within the general guidelines and policies of the Board and Owners.

The Executive Director shall be responsible for hiring and firing of the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

The Executive Director is authorized to approve all contracts and expenditures that are not greater than \$25,000 without Board approval as long as funds are budgeted and are available for the expenditure.

ARTICLE VII

CODE OF ETHICS

Section 1. Policy and Purposes.

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the

appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

Section 2. Conflicts of Interest

(a) *Abide by State and Criminal Laws for Public Officers.* All directors, officers and employees shall abide by the state civil and criminal laws regarding conflict of interest, official misconduct and other regulations and restrictions involving their official duties.

(b) *Disclosure and Abstention.* It is the intent of these Bylaws, that the Directors, Executive Director and officers shall take all steps to avoid the appearance of impropriety in the conduct of their affairs on behalf of the Corporation. This includes not engaging in any conduct, business that may be deemed to compromise their independent judgment in executing their duties as Corporation officials. In the event that a Director, officer, or Executive Director has any financial or equitable interest, direct or indirect, in a transaction that comes before the Board, or Advisory Committee or the Executive Director, the affected Director or officer, must:

- (i) Disclose that interest in writing and file it with the Board Secretary; and,
- (ii) Refrain from discussing or voting on the same.

(c) *Restrictions on Executive Director.* The Executive Director is precluded from having any financial or equitable interest in any contract, service or acquisition that is subject to his approval or that his subordinates may approve or monitor.

(d) *Definition of Financial Interest/Relative.* The "financial interest" contemplated under (b) and (c) of this Article requires that the affected person who is the Director, officer, or Executive Director or their relative receive an actual financial benefit from the transaction with the Corporation. A relative is a person related within the first degree of consanguinity or affinity to the Director, officer, or Executive Director. A financial or equitable interest does **not** include the following:

- (i) An ownership in the entity transacting business with the Corporation where the ownership interest is less than one percent (1%).
- (ii) Compensation as an employee, officer or director of the entity transacting business with the Corporation where such compensation is not affected by the entity's transaction with the Corporation.
- (iii) An investment or ownership in a publicly held company in an amount less than **TEN THOUSAND DOLLARS (\$10,000.00)**

- (iv) An employee of a public entity may serve on the Board.

Section 3. Acceptance of Gifts. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Director or officer;

(b) a gift or other benefit conferred on an account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(1) not more than one honorarium is received from the same person in a calendar year;

(2) not more than one honorarium is received for the same service; and

(3) the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) A benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported as may be required by law.

Section 5. Nepotism. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 1. Seal. The seal of the Corporation shall be such as may be from time to time approved by the Board.

Section 2. Notice and Waiver of Notice. Whenever any notice, other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. If transmitted by facsimile or email, such notice shall be deemed to be delivered upon successful transmission of the facsimile or email. A Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 3. Resignations. Any Director, officer or committee member may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignations shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 4. Gender. References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

Section 5. Appropriations and Grants. The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

Section 6. Reports. The Board shall submit to each Owner in an expedient manner an Annual Report and Annual Audit, following the end of each fiscal year.

Section 7. Use of Corporation's Property and Facilities. The Board shall from time to time develop a formal, written policy (the "Usage Policy") governing the use of the Corporation's property and facilities (collectively, the "Facilities"). The usage policy shall (a) ensure that citizen groups from each Owner are given preferential rights as to the use of the Facilities and (b) establish a fee-for-use structure for the use of the Facilities. The Usage Policy, and any amendment or alteration thereto, must be approved in writing by each Owner.

ARTICLE IX AMENDMENTS

A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board then appointed and serving at any regular or special meeting. However, any proposed change or amendment to the Bylaws must be approved in writing by each Owner to be effective.

Amended by ACC Board of Directors February 8, 2006

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Users Agreement with the Presbyterian Plano Diagnostics Surgery Center for the 800 MHz Trunked Radio System

STAFF RESOURCE: William S. Rushing, Chief of Police
Kim Sylvester, Police Captain

PREVIOUS COUNCIL ACTION: There has been no prior Council action regarding radio user agreements with the Presbyterian Plano Diagnostics Surgery Center

ACTION PROPOSED: Adopt a resolution and authorize the execution of a users agreement

BACKGROUND

The cities of Allen, Frisco, and Plano jointly own, operate, and maintain an 800 MHz trunked communications system for the purpose of providing radio communications for the safety of the public. The Presbyterian Plano Diagnostics Surgery Center desires to lease certain portions of the radio system for their services. The proposed 'users agreement' is new, but is similar to existing agreements with other users of the radio system.

BUDGETARY IMPACT

There will be a slight increase in the revenue generated in the radio users maintenance account. This account is maintained by the City of Plano for all owners of the system.

STAFF RECOMMENDATION

Staff recommends that City Council approve a resolution authorizing the City Manager to execute a users agreement with the Presbyterian Plano Diagnostics Surgery Center with regard to the 800 MHz trunked radio system owned by the cities of Allen, Plano and Frisco.

MOTION

I make a motion to adopt Resolution No. _____ authorizing the City Manager to execute a a users agreement with the Presbyterian Plano Diagnostics Surgery Center with regard to the 800 MHz trunked radio system owned by the cities of Allen, Plano and Frisco.

ATTACHMENT

Resolution
Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE PRESBYTERIAN PLANO DIAGNOSTICS SURGERY CENTER FOR THE PRESBYTERIAN PLANO DIAGNOSTICS SURGERY CENTER'S USE OF THE TRUNKED RADIO SYSTEM OWNED BY THE CITIES OF ALLEN, FRISCO, AND PLANO; AUTHORIZING EXECUTION OF THE AGREEMENT BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has before it the proposed Agreement by and between the Cities of Allen, Frisco, and Plano, Texas, and the Presbyterian Plano Diagnostics Surgery Center attached hereto as Exhibit "A," providing terms and conditions for the use of the Cities of Allen, Frisco, and Plano's trunked radio system by the Presbyterian Plano Diagnostics Surgery Center; and,

WHEREAS, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions of the Agreement should be approved, and that the City Manager should execute the Agreement on behalf of the City of Allen.

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

SECTION 1. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen, are hereby in all things approved.

SECTION 2. The City Manager is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in the Agreement.

SECTION 3. This Resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

EXHIBIT 'A'

**AGREEMENT BETWEEN THE CITIES OF ALLEN, FRISCO, PLANO AND THE
PRESBYTERIAN PLANO DIAGNOSTICS SURGERY CENTER FOR USE OF THE ALLEN,
FRISCO, AND PLANO 800 MHz TRUNKED COMMUNICATIONS SYSTEM**

The **CITIES OF PLANO, TEXAS, ALLEN, TEXAS, AND FRISCO, TEXAS**, all municipal corporations, (hereinafter referred to as "Cities"), and the **PRESBYTERIAN PLANO CENTER FOR DIAGNOSTICS SURGERY** a hospital for-profit corporation (hereinafter referred to as "PPCDS"), agree as follows:

WHEREAS, The Cities of Allen, Frisco, and Plano jointly own, operate, and maintain an 800 MHz trunked communications system (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, PPCDS wishes to use the Cities' System to provide Communications with-in PPCDS, Buildings and/or Facilities on a day-to-day basis and will have the ability to coordinate with Plano Dispatch in time of emergency.

WHEREAS, the Cities hereby consent to such use of the System by PPCDS, and recognizes that such use benefits PPCDS, and the public health and welfare.

NOW, THEREFORE, the Cities and PPCDS, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of one (1) year, beginning on the 1st day of November 2008, and ending on the 30th day of October 2009, with an optional two(2) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by either Plano or PPCDS, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of October 2011.

II. OBLIGATIONS OF PARTIES

2.01 Plano shall provide PPCDS with radio identification numbers (aliases). And/or Radio talkgroups (channels) on the Plano system.

2.02 PPCDS shall use the System in accordance with this Agreement to provide interoperability of communications to Plano Dispatch in an emergency and PPCDS and its users on the System only for conducting day-to-day operations specifically identified herein.

2.03 When using the System, PPCDS shall abide by all applicable federal, state, and local laws, rules, and regulations, including any rules and regulations of Allen, Frisco, and Plano Radio System. When PPCDS is using the System for interoperability with Talkgroups other than those provided for by this Agreement, PPCDS shall also abide by the rules for such Talkgroups.

2.04 PPCDS must make written requests to the System Manager for the activation of radios on the System, which must include the model and serial number of the radio, the name of the user, and the required Talkgroups.

2.05 PPCDS shall be responsible for furnishing/purchasing its own radios. Radio Manager must approve radio type and model.

2.06 PPCDS Programming additional units will be performed by the City of Plano Radio shop.

EXHIBIT 'A'

2.07 PPCDS may operate no more than two (2) mobile/portable units on their Talkgroup at any one time.

2.08 PPCDS shall operate on Allen, Frisco, and Plano joint system ONLY for purposes related to their provision of emergency and day-to-day services. Any other use by PPCDS is prohibited.

III. FEES

3.01 The fees assessed against PPCDS and due annually for the services and use of the System are as follows:

(1)	Lease radio airtime (per month, per radio)	\$ 8.56
(2)	Lease Talkgroup (per month, per Talkgroup)	\$ 62.97
(3)	Contract services (per month)	\$ 96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each renewal period by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to PPCDS before increasing the fees.

Total Fees for Annual Service

The Cities will calculate the annual fee due based upon seven (7) current radio units in service and one (1) Talkgroup. This amount is subject to change when PPCDS adds or deletes the number of radios and/or Talkgroups in service.

IV. PAYMENT DUE

PPCDS agrees to pay the Cities the annual fees specified under **Article III**. Within thirty (30) days of the receipt of the invoice. Should PPCDS add radios or Talkgroups to the service within a term, PPCDS agrees to pay the additional fees(s) due within thirty (30) days of invoice.

V. TERMINATION

5.01 Termination of this Agreement may occur by any of the following:

- (a) Either party may terminate this Agreement at any time by giving ninety (90) days advance written notice. PPCDS shall pay for all fees incurred through the effective date of termination.
- (b) If the Cities permanently discontinue operation of the System, this Agreement shall terminate on the date of discontinuance without further notice.
- (c) In the event of any default of any term, this Agreement may be terminated at either party's discretion if the default is not cured within ten (10) days of receipt of written notice identifying the reason for such default.

VI. INDEMNIFICATION

Contractor shall release, defend, indemnify and hold harmless the Cities 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 attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or

EXHIBIT 'A'

omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend the Cities against all such Claims.

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

VII. ASSIGNMENT AND SUBLETTING

PPCDS agrees to retain control and to give full attention to the fulfillment of this Agreement; PPCDS cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, PPCDS cannot sublet any part or feature of the work to anyone objectionable to the Cities. PPCDS also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve PPCDS from its full obligations to the Cities as provided by this Agreement.

VIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and PPCDS and supersedes all prior negotiations, representations, and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by PPCDS and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of a majority of the Cities.

IX. NOTICES

Unless notified otherwise in writing, all notices required to be given to either party shall be in writing and delivered in person or sent by certified mail to the respective parties at the following addresses:

PPCDS Representative:

Randy J. Hostettler
Facilities Director
Presbyterian Plano Diagnostics Surgery
6020 West Parker Rd
Plano Texas 75093
(972) 403-2823

Plano Representative:

Director of Public Safety Communications
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
(972) 941-7931

Allen Representative:

Police Chief
City of Allen
305 W. McDermott
Allen, Texas 75013

Frisco Representative:

Police Chief
City of Frisco
8750 McKinney Road
Frisco, Texas 75034

X. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

EXHIBIT 'A'

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 200__, the City of Allen on _____, 200__, and the City of Frisco on _____, 200__. PPCDS has executed this Agreement on _____, 200__.

XI. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XII. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XIII. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XIV. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XV. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

EXECUTED this the ____ day of _____, 200__.

PRESBYTERIAN PLANO DIAGNOSTICS SURGERY

BY: _____
Name: _____
Title: _____

EXHIBIT 'A'

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

CITY OF FRISCO, TEXAS

BY: _____
George A. Purefoy, City Manager

APPROVED AS TO FORM:

Rebecca H. Brewer, City Attorney

EXHIBIT 'A'

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 200__,
by _____. _____, of **PRESBYTERIAN PLANO DIAGNOSTICS
SURGERY**, a hospital for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

THOMAS H. MUEHLENBECK, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule
municipal corporation, on behalf of such corporation, acknowledged this instrument before me on the
_____ day of _____, 200__.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 200__ by
PETER VARGAS, City Manager, of the **CITY OF ALLEN, TEXAS**, and a _____, on
behalf of such _____.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 200__ by
GEORGE PUREFOY, City Manager of the **CITY OF FRISCO, TEXAS**, a
_____, on behalf of such _____.

Notary Public, State of Texas

**AGREEMENT BETWEEN THE CITIES OF ALLEN, FRISCO, PLANO AND THE
PRESBYTERIAN PLANO DIAGNOSTICS SURGERY CENTER FOR USE OF THE ALLEN,
FRISCO, AND PLANO 800 MHz TRUNKED COMMUNICATIONS SYSTEM**

The **CITIES OF PLANO, TEXAS, ALLEN, TEXAS, AND FRISCO, TEXAS**, all municipal corporations, (hereinafter referred to as "Cities"), and the **PRESBYTERIAN PLANO CENTER FOR DIAGNOSTICS SURGERY** a hospital for-profit corporation (hereinafter referred to as "PPCDS"), agree as follows:

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WHEREAS, the Cities hereby consent to such use of the System by PPCDS, and recognizes that such use benefits PPCDS, and the public health and welfare.

NOW, THEREFORE, the Cities and PPCDS, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

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Contractor shall release, defend, indemnify and hold harmless the Cities 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 attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or

omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend the Cities against all such Claims.

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

VII. ASSIGNMENT AND SUBLETTING

PPCDS agrees to retain control and to give full attention to the fulfillment of this Agreement; PPCDS cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, PPCDS cannot sublet any part or feature of the work to anyone objectionable to the Cities. PPCDS also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve PPCDS from its full obligations to the Cities as provided by this Agreement.

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IX. NOTICES

Unless notified otherwise in writing, all notices required to be given to either party shall be in writing and delivered in person or sent by certified mail to the respective parties at the following addresses:

PPCDS Representative:

Randy J. Hostettler
Facilities Director
Presbyterian Plano Diagnostics Surgery
6020 West Parker Rd
Plano Texas 75093
(972) 403-2823

Plano Representative:

Director of Public Safety Communications
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
(972) 941-7931

Allen Representative:

Police Chief
City of Allen
305 W. McDermott
Allen, Texas 75013

Frisco Representative:

Police Chief
City of Frisco
8750 McKinney Road
Frisco, Texas 75034

X. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 200__, the City of Allen on _____, 200__, and the City of Frisco on _____, 200__. PPCDS has executed this Agreement on _____, 200__.

XI. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XII. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XIII. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XIV. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XV. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

EXECUTED this the ____ day of _____, 200__.

PRESBYTERIAN PLANO DIAGNOSTICS SURGERY

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

CITY OF FRISCO, TEXAS

BY: _____
George A. Purefoy, City Manager

APPROVED AS TO FORM:

Rebecca H. Brewer, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 200__,
by _____, _____, of **PRESBYTERIAN PLANO DIAGNOSTICS
SURGERY**, a hospital for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

THOMAS H. MUEHLENBECK, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule
municipal corporation, on behalf of such corporation, acknowledged this instrument before me on the
_____ day of _____, 200__.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 200__ by
PETER VARGAS, City Manager, of the **CITY OF ALLEN, TEXAS**, and a _____, on
behalf of such _____.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 200__ by
GEORGE PUREFOY, City Manager of the **CITY OF FRISCO, TEXAS**, a
_____, on behalf of such _____.

Notary Public, State of Texas

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Adopt a Resolution Accepting the Family Violence Investigation and Prevention Officer Grant from the State of Texas, Office of the Governor, Criminal Justice Division, if Awarded

STAFF RESOURCE: William S. Rushing, Chief of Police
Kenneth Myers, Police Sergeant

PREVIOUS COUNCIL ACTION: Council adopted a Resolution in 2008 accepting a State of Texas, Office of the Governor, Criminal Justice Division Grant for funding a Family Violence Investigation and Prevention Officer, if awarded

ACTION PROPOSED: Adopt a resolution accepting a State of Texas, Office of the Governor, Criminal Justice Division Grant for funding a Family Violence Investigation and Prevention Officer, if awarded for fiscal year 2010

BACKGROUND

The State of Texas, Office of the Governor, Criminal Justice Division, applies for and accepts grants annually for Criminal Justice purposes. The City of Allen Police Department received a grant award which currently funds a Family Violence Investigation and Prevention Officer. This grant is funded through the Violence Against Women Act. The grant provides three years of funding. Each year the department is required to resubmit an application to continue this grant. This application is for year two of three.

This full-time officer position is assigned to the department's Criminal Investigation Division and conducts criminal investigations relating to domestic violence. This grant allows this officer to investigate crimes in which the victim is female and the crime is violent in nature. In the City of Allen, approximately 70% of domestic/family violence victims are females.

BUDGETARY IMPACT

The grant requires the City to match funding of approximately \$27,500 (35%) of the grant. This is constant for the entire life of the grant. This grant, and the matching funds, are currently in the fiscal year 2008-2009 budget and will be carried forward into the 2009-2010 budget.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into an agreement with the State of Texas, Office of the Governor, Criminal Justice Division, to accept the award of the Criminal Justice Division grant for a Family Violence Investigation and Prevention Officer, if awarded.

MOTION

I make a motion to adopt Resolution No. _____ accepting the Family Violence Investigation and Prevention Officer Grant from the State of Texas, Office of the Governor, Criminal Justice Division, if awarded.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR TERMINATE GRANT # SF-20226-02, A GRANT FROM THE STATE OF TEXAS, OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION PROVIDING FUNDING FOR A FAMILY VIOLENCE INVESTIGATION AND PREVENTION OFFICER, IF AWARDED.

WHEREAS, the City of Allen, and its police department, responds to more than 600 calls of domestic / family violence yearly; and

WHEREAS, the City of Allen Police Department recognizes that this is a very specific volatile offense that destroys lives and families; and

WHEREAS, the City of Allen Police Department believes that the addition of a Family Violence Investigation and Prevention Officer will better assist the police department, the court system, and the victims of domestic violence; and

WHEREAS, the City of Allen has agreed to provide matching funds, cash or in-kind, for a Family Violence Investigation and Prevention Officer, as it appears in the grant application.

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

SECTION 1. The City of Allen has agreed that in the event of loss or misuse of the Criminal Justice Division Funds for a Family Violence Investigation and Prevention Officer Grant (application # 20226-02), they will be returned to the State of Texas, Office of the Governor, Criminal Justice Division in full.

SECTION 2. The City of Allen is committed to funding all required and applicable matching funds through cash and/or in-kind.

SECTION 3. The City Manager is hereby authorized to apply for, accept, reject, alter, or terminate a grant from the State of Texas, Office of the Governor, Criminal Justice Division to assist the City of Allen and the Allen Police Department to fund a Family Violence Investigation and Prevention Officer (application # 2022601).

SECTION 4. This resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13th DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Adopt a Resolution Accepting the Child Abuse Investigator Grant from the State of Texas, Office of the Governor, Criminal Justice Division, if Awarded

STAFF RESOURCE: William S. Rushing, Chief of Police
Kenneth Myers, Police Sergeant

PREVIOUS COUNCIL ACTION: Council adopted a Resolution in 2008 authorizing the City Manager to apply for, accept, reject, alter, or terminate a three-year grant from the State of Texas, Office of the Governor, Criminal Justice Division grant for a Child Abuse Investigator

ACTION PROPOSED: Adopt a resolution authorizing the City Manager to apply for, accept, reject, alter, or terminate a three-year grant from the State of Texas, Office of the Governor, Criminal Justice Division grant to add a second Child Abuse Investigator

BACKGROUND

The State of Texas, Office of the Governor, Criminal Justice Division, accepts grants annually for Criminal Justice purposes. The City of Allen Police Department plans to submit a grant requesting funding to add a Child Abuse Investigator position to assist the investigator that is assigned to the Collin County Child Abuse Task Force. The Collin County Child Abuse Task Force is a multi-jurisdictional task force that operates out of the Collin County Children's Advocacy Center located in Plano, Texas.

This grant will add a second Allen Police Department Child Abuse Investigator to the Collin County Child Abuse Task Force. This investigator will review and investigate allegations of criminal offenses (sexual, physical, emotional, and neglect) and Child Protective Services reports. Additionally, the investigator will assist and/or is assisted by other task force members. The goal of the task force is to "leave no child behind." The investigator that is currently assigned to this task force started with funds from this grant, which have now expired.

This grant is a multi-year (3 years - 100%, 80 %, 60%) grant and requires a local match. Full

funding for this position by the City is required by the fourth year. This application is for the first year of funding for an additional position. A City resolution is required with the submission of the proposed grant. If awarded, this grant would be effective September 1, 2009. A new grant application is required for all subsequent years.

BUDGETARY IMPACT

The grant requires the City to assume a greater percentage of the Investigator's salary each year. The grant will provide for some incidental costs, but the City must absorb additional costs for miscellaneous supplies and equipment. The matching funds for the first year of the grant could be as much as \$15,000 (cell phone, pager, clothing allowance, overtime, and salary).

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into an agreement with the State of Texas, Office of the Governor, Criminal Justice Division to apply for, accept, reject, alter, or terminate a grant to add a second Child Abuse Investigator, if awarded.

MOTION

I make a motion to adopt Resolution No. _____ accepting the Child Abuse Investigator grant from the State of Texas, Office of the Governor, Criminal Justice Division, if awarded.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR TERMINATE A GRANT FROM THE STATE OF TEXAS, OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION PROVIDING FUNDING FOR A CHILD ABUSE INVESTIGATOR POSITION TO BE ASSIGNED TO THE COLLIN COUNTY CHILD ABUSE TASK FORCE, IF AWARDED.

WHEREAS, the City of Allen, and its police department, wishes to provide the highest level of services to all residents and visitors and especially to the youngest and most vulnerable victims of crime; and,

WHEREAS, the City of Allen Police Department has recognized the need to add a second Child Abuse Investigator to be assigned to the Collin County Child Abuse Task Force to work closely with other local law enforcement agencies, Child Protective Services, and the District Attorney; and,

WHEREAS, the Child Abuse Investigator will work with victims of crime who are young and unable to protect themselves from sexual, physical, and emotional abuse in an effort to end the cycle of abuse and arrest those who commit crimes against children; and,

WHEREAS, the City of Allen agrees to provide matching funds for the Child Abuse Investigator position as it appears in the grant application.

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

SECTION 1. The City of Allen has agreed that in the event of loss or misuse of the Criminal Justice Division Funds for the Child Abuse Investigator Grant, they will be returned to the State of Texas, Office of the Governor, Criminal Justice Division in full.

SECTION 2. The City Manager is hereby authorized to apply for, accept, reject, alter, or terminate this grant from the State of Texas, Office of the Governor, Criminal Justice Division to assist the City of Allen and the Allen Police Department to fund an additional Child Abuse Investigator position.

SECTION 3. This Resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Animal Shelter Expansion
(CIP# PS0802)

STAFF RESOURCE: John Baumgartner, Director of Engineering
Bill Rushing, Chief of Police

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Authorize the City Manager to execute a professional services contract with Quorum Architects, Inc. for architecture/engineering services for design of the City of Allen Animal Shelter Expansion

BACKGROUND

The expansion of the City of Allen Animal Shelter was a project included as part of the 2007 General Obligation Bond Program approved by the voters. The City staff went through a request for qualifications process and selected Quorum Architects, Inc. to assist with development of this project. During the last four months, Quorum Architects has worked with staff to determine the needs at the existing animal shelter and then looked at a couple of options to expand the existing facility or build a second building on the site. After reviewing the needs and evaluating the existing building, it was determined that expansion of the existing building in three locations by expanding the existing 2250 s.f. building by approximately 1600 s.f. was the best approach to meeting the needs of the Animal Control Division. Staff has worked with Quorum Architects to develop an agreement to move forward with the expansion of the animal shelter. The proposed agreement anticipates completing the design effort by June with construction starting in the summer of 2009.

BUDGETARY IMPACT

The scope of services with Quorum Architects, Inc. is as follows:

Basic Services (lump sum)	\$115,000
Reimbursable (Time and Materials)	<u>10,000</u>

TOTAL CONTRACT

\$125,000

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a professional services contract with Quorum Architects, Inc. for the design of the Animal Shelter Expansion and establish an interim budget of \$147,719 with the understanding that we will issue additional debt for construction in the summer.

MOTION

I make a motion to authorize the City Manager to execute a professional services contract with Quorum Architects, Inc. for an amount not to exceed \$125,000 for the design of the Expansion of the Animal Shelter and establish the project budget in the amount of \$147,719.

ATTACHMENT

Location Map
Agreement
Concept Plan



AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 13th day of January in the year 2009
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

City of Allen
305 Century Pkwy
Allen, TX 75013-8042
Telephone Number: (972) 727-7541

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

and the Architect:
(Name, address and other information)

Quorum Architects, Inc.
707 W. Vickery Blvd.
Suite 101
Fort Worth, TX 76104
Telephone Number: 817-738-8095
Fax Number: 817-738-9524

for the following Project:
(Name, location and detailed description)

Allen Animal Shelter
City of Allen
Renovation and addition to existing animal shelter

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Renovations and expansions to the Animal Shelter per the concept plan dated 10/29/08 showing generally three appendages and limited associated site work with the additions. Estimated construction budget is \$1,225,750.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

July 2009 (estimated)

.2 Substantial Completion date:

February 2010 (estimated)

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 "The project shall be designed and constructed to meet Federal, State and City ordinances, bylaws and regulations applicable to the Allen, Texas location in effect at the time of design including but not limited to the 2006 International Building Code, 2006 Energy Code, 2006 International Fire Code, 2005 National Electrical Code, 2006 international Mechanical Code, (all as locally amended) Texas Department of Licensing and Registration and the City of Allen Land Development Code.

Any variance, waivers or deviation from the applicable laws as set forth in Section 1.4 shall be obtained by the Architect from the applicable governmental agency notwithstanding the terms and conditions of this Agreement. This agreement does not authorize, nor shall the owners designated representatives be authorized to grant or approve any variance, waiver, or deviation from the applicable laws (E.g. Mayor, City Council, and City Manager do not have the authority to grant variances waiver or deviation from the applicable laws)."

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

In general, services shall be provided as indicated below:

Quorum Architects, Inc. – Architecture, Interiors, Programming
707 W. Vickery Blvd.
Suite 101
Fort Worth, TX 76104

BW2 Engineering, Inc. – Survey, Civil, Site Planning
1919 S. Shiloh Road
Suite 500, LB 27
Garland, Texas 75042

Frank W. Neal & Assoc., Inc. – Structural
1015 W. Broadway
Fort Worth, TX 76104

Baird Hampton Brown – MEP
6300 Ridglea Place
Suite 700
Fort Worth, TX 76116

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$2,000,000 ea. occurrence / \$4,000,000 general aggregate

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.2 Automobile Liability

\$2,000,000

.3 Workers' Compensation

\$1,000,000

.4 Professional Liability

\$1,000,000 per claim / \$2,000,000 annual aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

Schematic Design Phase has been completed by Quorum Architects, Inc. under a previous Agreement.

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~~§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.~~

~~§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.~~

~~§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.~~

~~§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.~~

~~§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.~~

~~§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.~~

~~§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.~~

~~§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.~~

~~§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.~~

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The plans will be prepared in conformance with all applicable laws and codes in effect at the time of design and shall be in a form to allow the Contractor to obtain a building permit from the City of Allen Building and Code Department.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with

reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services identified as BASIC SERVICES under Architect's responsibility shall be included in Architect's BASIC SERVICES SCOPE identified in Article 3.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	<u>Architect</u>	<u>Section 4.2 Basic Services</u>
§ 4.1.2 Multiple preliminary designs	<u>Not Provided</u>	
§ 4.1.3 Measured drawings	<u>Not Provided</u>	
§ 4.1.4 Existing facilities surveys	<u>Not Provided</u>	

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§ 4.1.5	Site Evaluation and Planning (B203™–2007)	<u>Not Provided</u>	
§ 4.1.6	Building information modeling	<u>Not Provided</u>	
§ 4.1.7	Civil engineering	<u>Architect</u>	<u>Section 4.2 Basic Services</u>
§ 4.1.8	Landscape design	<u>Not Provided</u>	
§ 4.1.9	Architectural Interior Design (B252™–2007)	<u>Not Provided</u>	
§ 4.1.10	Value Analysis (B204™–2007)	<u>Not Provided</u>	
§ 4.1.11	Detailed cost estimating	<u>Not Provided</u>	
§ 4.1.12	On-site project representation	<u>Not Provided</u>	
§ 4.1.13	Conformed construction documents	<u>Not Provided</u>	
§ 4.1.14	As-designed record drawings	<u>Architect</u>	<u>Section 4.2 Basic Services</u>
§ 4.1.15	As-constructed record drawings	<u>Not Provided</u>	
§ 4.1.16	Post occupancy evaluation	<u>Not Provided</u>	
§ 4.1.17	Facility Support Services (B210™–2007)	<u>Not Provided</u>	
§ 4.1.18	Tenant-related services	<u>Not Provided</u>	
§ 4.1.19	Coordination of Owner’s consultants	<u>Architect</u>	<u>Section 4.2 Basic Services</u>
§ 4.1.20	Telecommunications/data design	<u>Not Provided</u>	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	<u>Not Provided</u>	
§ 4.1.22	Commissioning (B211™–2007)	<u>Not Provided</u>	
§ 4.1.23	Extensive environmentally responsible design	<u>Not Provided</u>	
§ 4.1.24	LEED® Certification (B214™–2007)	<u>Not Provided</u>	
§ 4.1.25	Fast-track design services	<u>Not Provided</u>	
§ 4.1.26	Historic Preservation (B205™–2007)	<u>Not Provided</u>	
§ 4.1.27	Furniture, Finishings, and Equipment Design (B253™–2007)	<u>Not Provided</u>	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

4.2.1 Architect shall assist the Owner in coordinating Owner’s consultants, such as geotechnical engineering.

4.2.2 Programming, Civil Engineering, Record Drawings, and Coordination of Owners Consultants is part of Architect’s Basic Services.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

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- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Ten (10) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

~~§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark site related restrictions, easements, encroachments, zoning, deed, covenants, etc.~~

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

~~§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.~~

~~§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~

~~§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. ~~The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising

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from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. Architect shall provide to Owner two electronic copies and two hard copies of all instruments including project manual, drawings, and specifications for the project.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

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☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (*Specify*)

§ 8.3 ARBITRATION

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the ~~law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3, laws of the State of Texas. Venue for any action 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.

Statement of Jurisdiction. In accordance with requirements of the Texas Board of Architectural Examiners (TBAE), the Architect makes the following Statement of Jurisdiction: "The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practice of persons registered as architects in Texas". Without regard to conflict of law rules, Parties agree that exclusive venue for any action shall be in the state district court of Collin County Texas. Owner and Architect agree to submit to the personal and subject matter jurisdiction of said court. The Board may be contacted as follows: 1) By mail: Texas Board of Architectural Examiners, P.O. Box 12337 Austin, TX 78711-2337; 2) In person: 333 Guadalupe, Suite 2-350 Austin, TX 78701-3942; 3) By telephone 512.305.9000; 4) By fax: 512.305.8900 or 5) Via web site: www.tbae.state.tx.us."

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Lump sum of \$115,000 (includes \$10,000 for parking lot expansion survey and design).

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

A lump sum to be negotiated.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

As negotiated using Hourly Rate Schedule as identified in Section 11.7.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10%), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	<u>N/A</u>	percent (%)
Design Development Phase	<u>Twenty five</u>	percent (<u>25</u>	%)
Construction Documents Phase	<u>Fifty</u>	percent (<u>50</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (<u>20</u>	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
Principal	\$ 150.00/Hour
Associate	\$ 130.00/Hour
Project Manager	\$ 125.00/Hour
Project Architect	\$ 115.00/Hour
Project Designer	\$ 100.00/Hour
Project Interior Designer	\$ 100.00/Hour
Intern Architect	\$ 85.00/Hour
Interior Design Intern	\$ 85.00/Hour
Technical Staff	\$ 65.00/Hour
Project Clerical	\$ 55.00/Hour

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 ~~Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 ~~All taxes levied on professional services and on reimbursable expenses;~~
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10%) of the expenses incurred. For this project, we estimate reimbursables to be approximately \$10,000. This shall not be exceeded without Owner's written approval.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

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§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

0.50% per month

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

The Texas Board of Architectural Examiners, 5555 Lamar Blvd., H-117, Austin, Texas 78751; phone: 512-458-1363, has jurisdiction over individuals licensed under the Architect's Registration Law, Article 249a, VTCS.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if a, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

Peter H. Vargas, City Manager

(Printed name and title)

(Signature)

David G. Duman, AIA, Principal

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, David G. Duman, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:40:54 on 01/05/2009 under Order No. 1000358501_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007 - Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



HERITAGE

MONROE PL.

OXFORD WAY

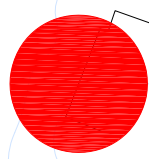
CREEK VALLEY CT.

ALLEN HEIGHTS DRIVE

ALLEN HEIGHTS DRIVE

BISHOP GATE

CARTER CT.



BETHANY DRIVE

HERITAGE CT.

S. HERITAGE PKWY

CAROLYN LANE

WESTMINSTER AVE.

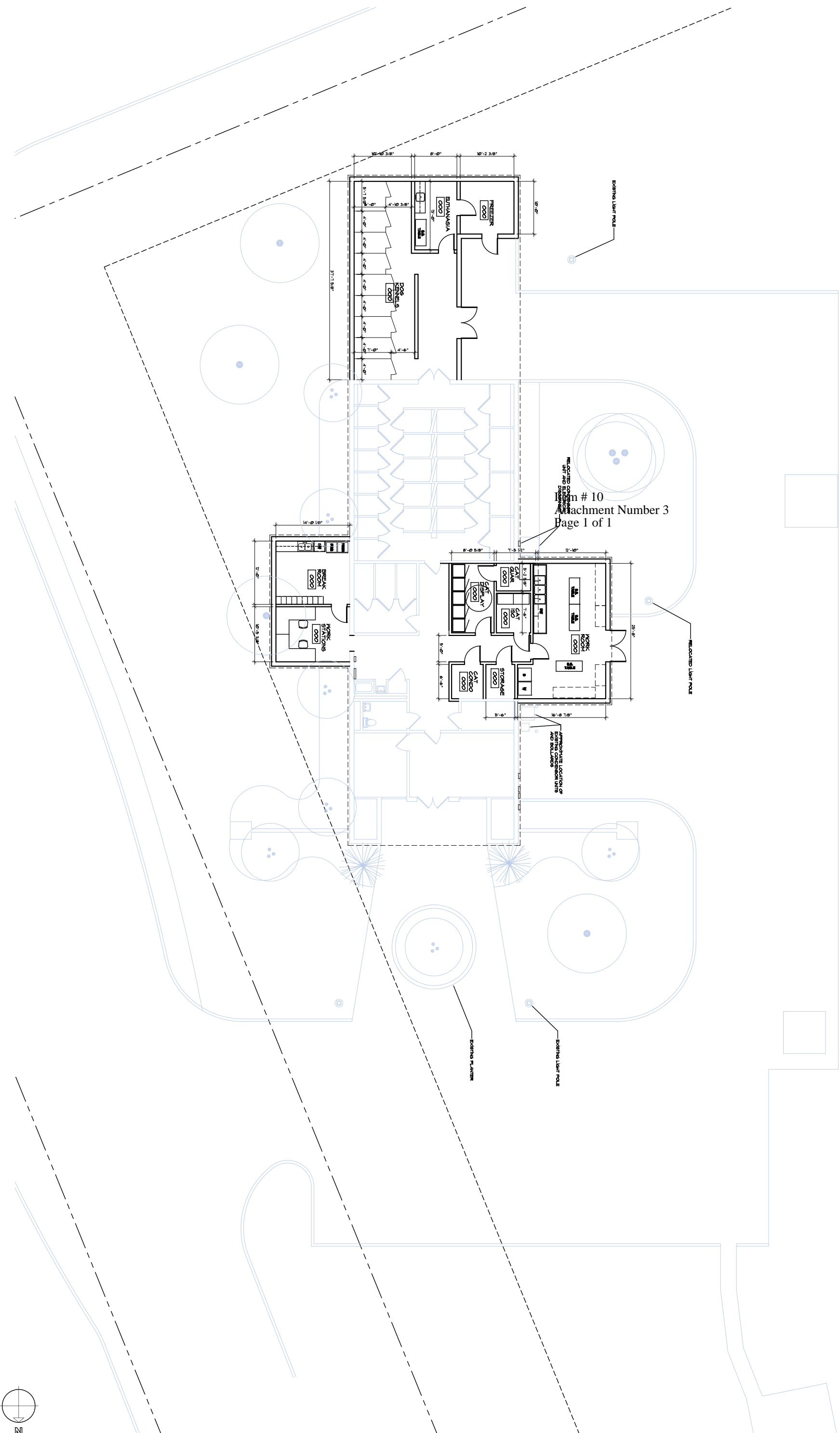
PARKVIEW CIR

PARKVIEW CIR

CARLISLE DRIVE

ANNALE

FIRESIDE DRIVE



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: License Agreement and Development Agreement for Construction of a Masonry Screening Wall within the City of Allen Right-of-Way

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Authorize the City Manager to execute a License Agreement and Development Agreement with the North Bethany Lakes Homeowners Association

BACKGROUND

The North Bethany Lakes Subdivision was a multi-phase residential development along FM 2551, between Main Street and Bethany Drive started in 1999. Normally, when a subdivision builds adjacent to an arterial roadway, a screening wall is required to be built along the roadway. In the case of North Bethany Lakes, the North Texas Municipal Water District (NTMWD) had asked that the City of Allen postpone the installation of the screening until such time as they could install a new sanitary sewer line in their easement. By agreement, the North Bethany Lakes Subdivision was allowed to delay the construction of the screening wall until after the NTMWD sewer was completed. Also, in this agreement, the subdivision was given the option to place either a 42-inch masonry wall or a wrought iron fence (with landscaping) in lieu of an 8-foot masonry wall, now required by the Allen Land Development Code.

Following the completion of the new sanitary sewer line, staff began working with the North Bethany Lakes HOA to coordinate installation of the wall. The HOA has a contractor selected for the work and needs to obtain an encroachment agreement with the NTMWD (pending), a formal license agreement with the City of Allen and a development agreement with the City of Allen. The encroachment agreement is required by the NTMWD to document that the NTMWD is not responsible for any damage to the wall that arises out of maintaining their pipelines. The license agreement is required by the City of Allen to document that the City of Allen will not be maintaining the wall, even though it will be within the public right-of-way. The development agreement is to document cost participation between the City of Allen and the HOA, using facility agreement fees for Lake Tawakoni Drive as the City share.

The North Bethany Lakes HOA intends to construct a 6-foot wall for an estimated cost of

\$195,000. They intend to use their funds (approximately \$120,000) and funding from the facility agreement fund (one-third the total cost not to exceed \$66,000) to complete this long awaited improvement to their development.

BUDGETARY IMPACT

Funding is available from the facility agreement project ST0317.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a license agreement and a development agreement with the North Bethany Lakes Homeowners Association.

MOTION

I make a motion to authorize the City Manager to execute a license agreement and a development agreement with the North Bethany Lakes Homeowners Association for the construction of a masonry screening wall within the City of Allen right-of-way.

ATTACHMENT

Development Agreement
License Agreement
Location Map

STATE OF TEXAS §
§ Development Agreement
COUNTY OF COLLIN §

This Development Agreement (“Agreement”) is by and between the City of Allen, Texas, (the “City”), and the North Bethany Lakes Estates Homeowners Association, Inc., a Texas non-profit corporation (the “HOA”) (collectively the “Parties” or singularly the “Party”) acting by and through their authorized officers.

RECITALS:

WHEREAS, the HOA has requested the City to participate in the cost to construct and install a screening wall as generally depicted in **Exhibit “A”** (the ‘Screening Wall’), a portion of which is to be located within certain City right-of-way as depicted in **Exhibit “B”** (hereinafter defined as the Right-of-Way’); and

WHEREAS, the City has determined that it is in the best interest of the citizens of Allen for the Screening Wall to be constructed and installed, a portion of which will be located within the Right-of-Way; and

WHEREAS, the City has determined that making economic development grant to the HOA through the participation of the costs of the Screening Wall in accordance with this Agreement will further the economic development and beautification objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a, of the Texas Constitution and TEXAS LOCAL GOVERNMENT CODE, CHAPTER 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

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

Article I
Definitions

“City” shall mean the City of Allen, Texas acting by and through its city manager, or designee.

“Commencement of Construction” shall mean that” (i) the plans have been prepared and a building permit has been obtained from the City for construction of the Screening Wall; (ii) all necessary permits for the Commencement of Construction of the Screening Wall have been issued by all applicable governmental authorities; and (iii) the construction of the Screening Wall has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Screening Wall; and (ii) a final inspection of the Screening Wall has been issued for the Improvements.

“Effective Date” shall mean the last date of execution of this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within ninety (90) 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 such party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean the date that all parties have fully satisfied their respective obligations hereunder.

“Grant” shall mean an economic development grant to defray a portion of the costs of the Screening Wall in an amount equal to one-third (1/3) of the costs incurred and paid by the HOA for the Screening Wall, not to exceed \$66,000 to be paid as set forth herein.

“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, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“HOA” shall mean the North Bethany Lakes Estates Homeowners Association, Inc., a Texas non-profit corporation, acting by and through its president or other officer.

“License” shall mean one or more licenses granted by the City as licensor to the HOA as licensee for the right of the HOA to construct, install, repair and maintain the Screening Wall within the Right-of-Way in a form reasonably approved by the Parties.

“Payment Request” shall mean a written request from the HOA to the City for payment of the Grant accompanied by copies of receipts and invoices evidencing the actual costs incurred and paid by the HOA for the Screening Wall and by an affidavit(s) from the contractors and subcontractors of the HOA evidencing that all bills for materials and labor for work related to the Screening Wall have been paid in a form reasonably acceptable to the City.

“Right-of-Way” shall mean the City right-of-way as depicted in **Exhibit “B”**.

“Screening Wall” shall mean a six (6) foot high solid screening wall constructed on the Right-of-Way as generally depicted in **Exhibit “A”** in accordance with plans approved by the City.

Article II Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated.

Article III Project; Grant

3.1 **Project.** The HOA agrees, subject to Events of Force Majeure, to cause the Commencement of Construction of the Screening Wall to occur on or before February 1, 2008 and subject to Events of Force Majeure to cause Completion of Construction to occur within one hundred twenty (120) calendar days thereafter. The HOA agrees and covenants, following Completion of Construction, to maintain, necessary repair and replace the Screening Wall in perpetuity.

3.2 **License.** The City agrees to grant the License to the HOA within ten (10) business days after the Effective Date.

3.3 **Grant.** The City agrees to provide the Grant to the HOA within thirty (30) days after receipt of the Payment Request following Completion of Construction of the Screening Wall.

3.4 **Grant Limitations.** Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the HOA. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.5 **Current Revenue.** The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City.

Article IV Conditions to Grant

The obligation of the City to pay the Grant hereunder shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by the HOA and the terms and conditions set forth below:

4.1 Payment Request. The HOA shall, as a condition precedent to the payment of the applicable Grant, provide the City the Payment Request.

4.2 No Breach or Default. The HOA shall not have an uncured breach or default of this Agreement.

Article V Termination

- 5.1 This Agreement shall terminate upon any one of the following:
- (a) by written agreement of the parties;
 - (b) Expiration Date;
 - (c) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
 - (d) by City, if HOA suffers an Event of Bankruptcy or Insolvency;
 - (e) by City, if any Impositions owed to City or the State of Texas by HOA shall become delinquent (provided, however the HOA retains the right to timely and properly protest and contest any such Impositions); and
 - (f) by City, if any subsequent Federal or State legislation or any final decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 In the event the Agreement is terminated by City for an uncured breach pursuant to Section 5.1(c) or pursuant to Section 5.1 (d), (e) or (f) the HOA shall immediately pay to the City a sum equal to the amount of the Grant received by the HOA as of the date of termination, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) its prime or base commercial lending rate, from the date of payment of the Grant until paid.

Article VI Miscellaneous

6.1 Assignment. This Agreement may not be assigned by any Party hereto without the prior written consent of all other Parties.

6.2 **Notice.** Except as may be provided otherwise herein, any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the Party at the address set forth below: If intended for City of Allen:

City of Allen
Attn: Mayor
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010

If intended for HOA:

North Bethany Lakes Estates Homeowners Association, Inc.
Attention: President
P.O. Box 1848
Allen, Texas 75013

Any Party may, at any time, by written notice to the other Party, designate different or additional persons or different addresses for the getting of notices hereunder.

6.3 **Amendment.** This Agreement may be amended by the mutual written agreement of both Parties hereto.

6.4 **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 the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.5 **Governing Law.** The validity of this Agreement 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 Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the jurisdiction of said court.

6.6 **Entire Agreement.** This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

6.7 **Recitals.** The recitals to this Agreement are incorporated herein.

6.8 **Exhibits.** The exhibits to this Agreement are incorporated herein

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

6.10 **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 termination of this Agreement shall survive termination.

6.11 **Employment of Undocumented Workers.** During the term of this Agreement the HOA agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the HOA shall repay the amount of the Grants and any other funds received by the HOA from the AEDC as of the date of such violation within 120 business days after the date the HOA is notified by the AEDC of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid.

EXECUTED this ____ day of _____, 2009.

City of Allen, Texas

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
Shelley George, City Secretary

Approved As To Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED this ____ day of _____, 2009.

**North Bethany Lakes Estates Homeowners
Association, Inc., a Texas non-profit corporation**

By: _____
William Stone, President

Attest:

By: _____
Corporation Secretary

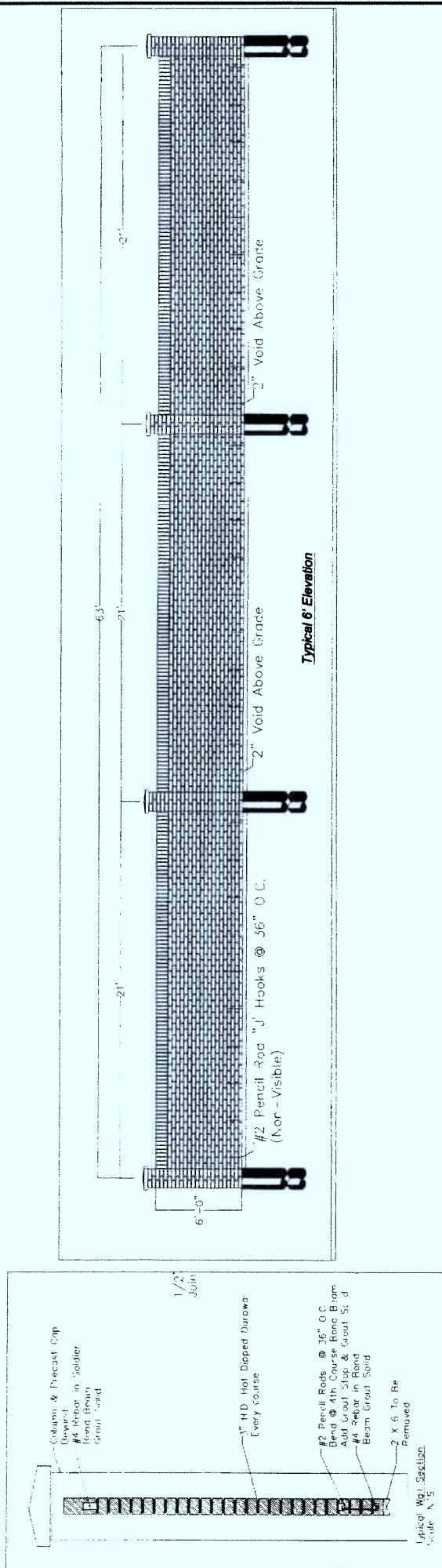


EXHIBIT 'A'

Exhibit "B"
Depiction of the Right-of-Way

Being a tract of land situated in the William Snyder Survey, Abstract No. 821, in the City of Allen, Collin County, Texas, being a part of a 67.170 acre tract, as described in Clerks File No. 0100932, in the Deed Records of Collin County, Texas, said tract also being part of North Bethany Lake Estates Phase One recorded in Volume L, page 959 and 960 and North Bethany Lake Estates Phase Two recorded in Volume L, pages 987 and 988, in the Plat Records of Collin County, Texas, being more particularly described as follows:

Commencing at a 1 inch iron rod found on the west right-of-way line of F.M. 2551, (90' R.O.W.) being the northeast corner of North Bethany Lakes Phase One filed in Cabinet L, Slide 319 and filed in County Clerks File No. 99 0104626 of the Deed Records of Collin County;

Thence South 00 degrees 24 minutes 16 seconds East along said west right-of-way line a distance of 611.06 feet;

Thence departing said west right-of-way line South 89 degrees 35 minutes 44 seconds West a distance of 21.85 feet to the **POINT OF BEGINNING**:

Thence North 00 degrees 24 minutes 51 seconds East a distance of 129.62 feet;

Thence North 00 degrees 24 minutes 16 seconds West a distance of 481.45 feet;

Thence North 00 degrees 24 minutes 16 seconds West a distance of 901.50 feet;

Thence North 89 degrees 35 minutes 44 seconds West a distance of 3.50 feet;

Thence South 00 degrees 24 minutes 16 seconds East a distance of 901.50 feet;

Thence South 00 degrees 24 minutes 16 seconds East a distance of 481.45 feet;

Thence South 00 degrees 24 minutes 51 seconds East a distance of 129.62 feet;

Thence North 00 degrees 24 minutes 51 seconds East a distance of 3.50 feet to the POINT OF BEGINNING, and containing 5294 square feet of land.

STATE OF TEXAS §
 § **LICENSE AGREEMENT**
COUNTY OF COLLIN §

THIS LICENSE is made by and between City of Allen, Texas (“City”) and North Bethany Lakes Estates Homeowners Association, Inc., a Texas non-profit corporation (“Licensee”) acting by and through their authorized representatives.

WITNESSETH:

WHEREAS, City owns the public right-of-way described in **Exhibit “A”** attached hereto (the “Premises”); and

WHEREAS, Licensee desires to construct and maintain a six (6) foot high screening wall within the Premises (the “Screening Wall”) as depicted in **Exhibit “B”**;

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. **Purpose:** City hereby grants Licensee a revocable non-exclusive license for the purpose of constructing, maintaining, repairing and replacing the Screening Wall within the Premises. The Licensee shall submit to, and obtain approval of the construction and engineering plans for the Screening Wall prior to commencement of construction of the Screening Wall. The Licensee shall be responsible for obtaining all permits and other approvals from the Licensors and other governmental agencies having jurisdiction over the Premises. The Licensee shall maintain the Screening Wall in a good state of repair, reasonable wear and tear excepted, and shall repair and replace the Screening Wall as necessary, and when requested in writing by the Licensors.
2. **Term:** The term of this License shall be perpetual, subject, however, to termination as provided herein.
3. **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. **Environmental Protection:** Licensee shall not use or permit the use of the property 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 Premises will not result in the disposal or other release of any hazardous substance or solid waste on or to the property, 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 waste” 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, at 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. Licensee shall indemnify and hold Licensor harmless against all costs, environmental clean up to the Premises and the property surrounding the Premises resulting from Licensee's use of the Premises under this License.

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

6. **Future use:** This License is made expressly subject and subordinate to the right of Licensor to use the Premises for any public purpose whatsoever. In the event that Licensor shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation or removal of the Screening Wall shall be necessary or convenient for public use of the Premises, Licensee shall at the sole cost and expense make or cause to be made such modifications or relocate said Screening Wall so as not to interfere with the Licensor's use of the property. A minimum of ninety (90) days written notice for the exercise of the above action shall be given by Licensor and Licensee shall promptly commence to make the required changes and complete them as quickly as possible or reimburse Licensor for the cost of making such required changes.

8. **Indemnification:** Licensee shall defend, protect and keep City 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 use of the Premises by the Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, or contractors. Licensee shall at all times defend, protect and indemnify and it is the intention of the parties hereto that Licensee hold Licensor 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 causing personal injury, death or property damage resulting from use of the Premises by Licensee, its agents, employees, officers and contractors, except when caused by the willful misconduct or negligence of Licensor, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against Licensor for its willful misconduct or negligence.

9. **Termination:** This License shall terminate upon any one of the following:

- a. written agreement of the parties;
- b. by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- c. by Licensor, if Licensee suffers an event of Bankruptcy or Insolvency;
- d. by Licensor, if any Impositions (taxes or other assessments or fees payable to the Licensor) owed to the Licensor or the State of Texas by Licensee shall become

- delinquent (provided, however Licensee retains the right to timely and properly protest and contest any such Impositions);
- e. by either party upon sixty (60) days prior written notice to the other party; and
 - f. by Licenser in the event Licensee shall abandon the Screening Wall, or in the event Licensee shall cease to use the Premises; and

At such time as this License may be terminated or canceled for any reason whatsoever, Licensee, shall remove the Screening Wall located within the Premises, and shall restore such Premises to substantially the condition of the Premises prior to Licensee's use of the Premises at Licensee's sole expense.

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

11. **Attorney's fees:** Any signatory to this License, who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this License shall be entitled to recover court cost and reasonable attorney's fees from the non-prevailing party.

12. **Governing law:** This License is governed by the laws of the State of Texas; and venue for any action shall be in State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

13. **Binding effect:** This License shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and permitted assigns.

14. **Entire License:** This License 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.

15. **Recitals:** The recitals to this License are incorporated herein by reference.

16. **Exhibits:** All exhibits to this License are incorporated herein by reference for all purposes wherever reference is made to the same.

17. **Legal Construction:** The provisions of this License are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of Licensee who acquires any right, title, or interest in or to the Premises or any part thereof. Any person who acquires any right, title, or interest in or to the Premises, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this agreement with respect to the right, title or interest in such property.

EXECUTED this _____ day of _____, 2009.

City of Allen, Texas

By: _____
Peter H. Vargas, City Manager
City of Allen
Attn: City Manager
One Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

EXECUTED this _____ day of _____, 2009.

**North Bethany Lakes Estates Homeowners
Association, Inc., a Texas non-profit corporation**

By: _____
William Stone, President
North Bethany Lakes Estates
Homeowners Association, Inc.
P.O. Box 1848
Allen, Texas 75013

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by Peter H. Vargas, City Manager of the City of Allen, Texas, a Texas municipality, on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires:

LICENSEE'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by William Stone, President of the North Bethany Lakes Estates Homeowners Association, Inc. a Texas non-profit corporation on behalf of said corporation.

Notary Public, State of _____

My Commission expires:

EXHIBIT "A"
Legal Description of Right-of-Way

Being a tract of land situated in the William Snyder Survey, Abstract No. 821, in the City of Allen, Collin County, Texas, being a part of a 67.170 acre tract, as described in Clerks File No. 0100932, in the Deed Records of Collin County, Texas, said tract also being part of North Bethany Lake Estates Phase One recorded in Volume L, page 959 and 960 and North Bethany Lake Estates Phase Two recorded in Volume L, pages 987 and 988, in the Plat Records of Collin County, Texas, being more particularly described as follows:

Commencing at a 1 inch iron rod found on the west right-of-way line of F.M. 2551, (90' R.O.W.) being the northeast corner of North Bethany Lakes Phase One filed in Cabinet L, Slide 319 and filed in County Clerks File No. 99 0104626 of the Deed Records of Collin County;

Thence South 00 degrees 24 minutes 16 seconds East along said west right-of-way line a distance of 611.06 feet;

Thence departing said west right-of-way line South 89 degrees 35 minutes 44 seconds West a distance of 21.85 feet to the **POINT OF BEGINNING**:

Thence North 00 degrees 24 minutes 51 seconds East a distance of 129.62 feet;

Thence North 00 degrees 24 minutes 16 seconds West a distance of 481.45 feet;

Thence North 00 degrees 24 minutes 16 seconds West a distance of 901.50 feet;

Thence North 89 degrees 35 minutes 44 seconds West a distance of 3.50 feet;

Thence South 00 degrees 24 minutes 16 seconds East a distance of 901.50 feet;

Thence South 00 degrees 24 minutes 16 seconds East a distance of 481.45 feet;

Thence South 00 degrees 24 minutes 51 seconds East a distance of 129.62 feet;

Thence North 00 degrees 24 minutes 51 seconds East a distance of 3.50 feet to the POINT OF BEGINNING, and containing 5294 square feet of land.

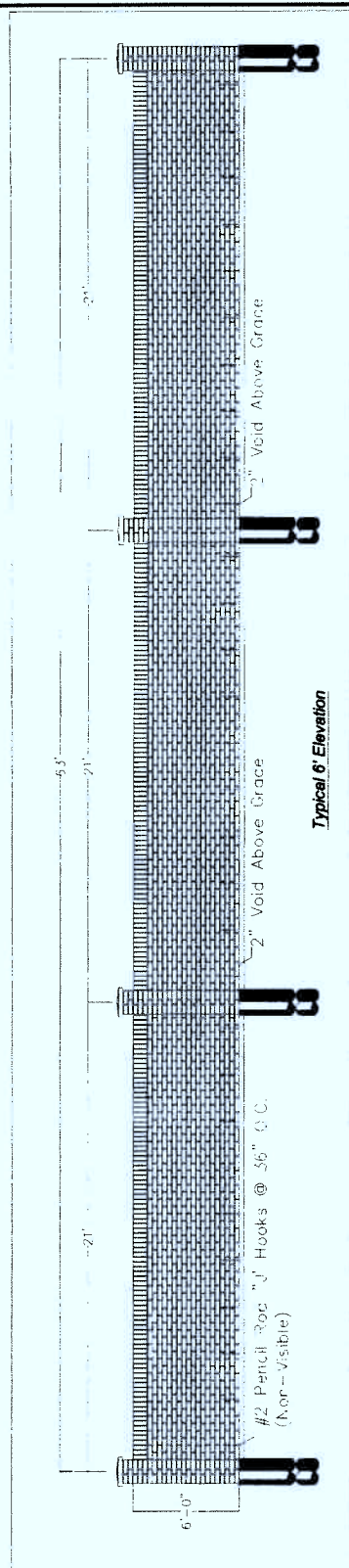
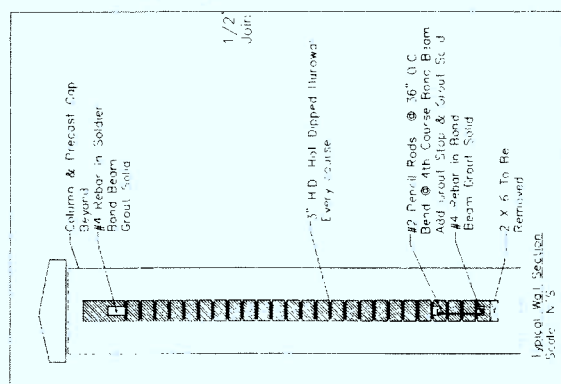


EXHIBIT 'B'



ANGEL PKWY (FM 2551)

BETHANY DRIVE

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Accept Resignation and Declare a Vacancy in Place No. 3 of the Board of Adjustment

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Accept Resignation and Declare a Vacancy on the Board of Adjustment

BACKGROUND

On January 5, 2009, Sally Leeper presented a letter of resignation to the City Secretary's Office for her position on the Board of Adjustment, Place No. 3. Please note that the members of the Board of Adjustment also serve as members of the Building and Standards Commission and Sign Control Board.

STAFF RECOMMENDATION

Staff recommends the City Council accept the resignation of Ms. Leeper and declare a vacancy in Place No. 3 of the Board of Adjustment.

MOTION

I make a motion to accept the resignation of Ms. Sally Leeper and to declare a vacancy in Place No. 3 of the Board of Adjustment.

ATTACHMENT

Ms. Leeper's Resignation Letter

From: Sally Leeper
Sent: Monday, January 05, 2009 6:04 PM
To: Shelley George
Subject: Board Appointments

Shelley,

I have given a lot of thought to my appointment to the Board of Adjustment, etc, and I have decided it is time to resign from the Boards in order to be able to serve our City in other ways.

It has been fulfilling to serve in this capacity for the past three years since my retirement from the City, but I feel there are other avenues that need to be explored.

Thank you, and I'm sure we'll be seeing each other in the future at different events.

Sally Leeper

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

Page 1

Monthly Collection Status Report
November 2008

City of Allen #06

	Collections Month of November	Cumulative Total 10/1/08 thru 11/30/08	% of Collections
Current Tax Year Collections			
Base M&O	\$741,068.61	925,282.28	3.15%
Base I&S	231,409.06	288,932.48	
Base I&S Bond			
P&I M&O	0.00	0.00	
P&I I&S	0.00	0.00	
P&I I&S Bond			
Attorney Fee	0.00	0.00	
Subtotal	<u>\$972,477.67</u>	<u>\$1,214,214.76</u>	3.15%
Delinquent TaxYears Collections			
Base M&O	\$38,012.08	146,855.63	
Base I&S	12,721.49	46,369.23	
Base I&S Bond			
P&I M&O	8,631.15	15,658.93	
P&I I&S	2,950.89	5,242.32	
P&I I&S Bond			
Attorney Fee	12,270.43	22,271.06	
Other>	0.00	0.00	
Subtotal	<u>\$74,586.04</u>	<u>\$236,397.17</u>	0.61%
Combined Current & Delinquent:			
Base M&O	\$779,080.69	\$1,072,137.91	
Base I&S	\$244,130.55	\$335,301.71	
Base I&S Bond			
P&I M&O	8,631.15	15,658.93	
P&I I&S	2,950.89	5,242.32	
P&I I&S Bond			
Attorney Fee	12,270.43	22,271.06	
Other>	0.00	0.00	
Total Collections	<u><u>\$1,047,063.71</u></u>	<u><u>\$1,450,611.93</u></u>	3.77%
			100.00%
Original 2008 Tax Levy		<u><u>\$38,516,734.63</u></u>	

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

Page 3

Levy Outstanding Status Report
November 2008

City of Allen #06

	Current Tax Year	Delinquent Tax Years
Current Month:		
Tax Levy Remaining as of 10/31/08	\$38,901,309.17	\$422,295.26
Base M&O Collections	972,477.67	50,733.57
Supplement/Adjustments	53,134.23	0.00
Write-off	0.00	0.00
Remaining Levy as of 11/30/08	<u>\$37,981,965.73</u>	<u>\$371,561.69</u>
Cumulative (From 10/01/08 thru 11/30/08)		
Original 2008 Tax Levy (as of 10/01/08)	\$38,516,734.63	\$466,141.10
Base M&O + I&S Collections	1,214,214.76	193,224.86
Supplement/Adjustments	679,445.86	98,645.45
Write-off	0.00	0.00
Remaining Levy as of 11/30/08	<u>\$37,981,965.73</u>	<u>\$371,561.69</u>

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

Monthly Distribution Report
November 2008

City of Allen #06

	Distribution Month of November	Distribution 10/1/08 thru 11/30/08
Weekly Remittances:		
Week Ending 11/7/08	\$238,472.73	\$242,148.09
Week Ending 11/14/08	274,732.54	\$293,388.52
Week Ending 11/21/08	293,726.41	\$298,088.42
Week Ending 11/26/08	\$227,812.48	\$294,196.54
	0.00	\$300,464.92
Total Weekly Remittances	<u>\$1,034,744.16</u>	<u>\$1,127,821.57</u>
Overpayment from Prior Month	\$0.00	\$0.00
Manual Adjustment Refund	\$0.00	\$0.00
Commission Paid Delinquent Attorney	\$12,270.43	\$22,271.06
Entity Collection Fee	\$0.00	\$0.00
Judgement Interest	0.00	\$0.00
5% CAD Rendition Penalty	49.12	\$54.38
Total Disbursements	<u><u>\$1,047,063.71</u></u>	<u><u>\$1,450,611.93</u></u>
Carryover to Next Month	\$0.00	\$0.00

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	Tuesday, January 13, 2009
SUBJECT:	Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory, and Section 7.07 Fences and Walls, Subsection 4 – Screening Walls or Visual Barriers Required
STAFF RESOURCE:	Lee Battle, Assistant Director of Planning and Development
PREVIOUS COUNCIL ACTION:	None
BOARD/COMMISSION ACTION:	A Public Hearing was held at the January 6, 2009, Planning and Zoning Commission meeting and a recommendation was made
ACTION PROPOSED:	Adopt an ordinance and table the Public Hearing

BACKGROUND

Recent projects have caused staff to evaluate the requirements in the Allen Land Development Code related to parking and screening requirements for churches and institutional facilities. Staff has researched existing developments in town as well as other cities in the area. As a result two specific changes are being proposed:

1. The proposed changes will modify the parking requirements for churches and other religious facilities. Specifically the new requirement will take into account additional building area outside the main sanctuary or assembly area. This will ensure that adequate parking is provided for the multiple buildings and uses that often occur at these developments.
2. The proposed changes will clarify the requirement for screening for non-residential uses. Currently the code specifies that “commercial and industrial” uses are required to construct a screening wall adjacent to residential developments. However, there are some uses, such as institutional uses, that may not be considered “commercial and industrial” but may warrant screening. The proposed change states “non-residential” uses instead. Because the ALDC also allows the Planning Commission to approve alternative screening standards where appropriate, staff believes there is enough flexibility in the

code to provide relief where warranted.

These items were discussed at the January 6, 2009 Planning and Zoning Commission meeting . The Planning Commission recommended approval of the amendment for the screening requirements, and tabled the amendment for the parking standards. During the Public Hearing, representatives from local churches asked for additional time to meet with staff and discuss the proposed parking amendment. The item was tabled to allow time for staff to meet with the local church community and return with a recommendation.

STAFF RECOMMENDATION

Staff concurs with the recommendation of the Planning and Zoning Commission to open the Public Hearing and continue the Public Hearing to the next Council Meeting.

MOTION

I make a motion to open the Public Hearing and continue it to the next Council Meeting.

ATTACHMENT

DRAFT Minutes from January 6, 2009, P&Z Meeting
Ordinance

Regular Agenda

Agenda Item #2: Public Hearing/ALDC Amendments – Conduct a Public Hearing and consider amendments to the Allen Land Development Code by amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements and Section 7.07 Fences & Walls.

Lee Battle, Assistant Director of Planning & Development presented the item to the Commission. Changes are sometimes made to the Allen Land Development Code to reflect changes in the community and new development trends. In addition, specific cases can bring to light the need to review and update specific requirements in the code. The proposed amendments are a result of the review that took place for the recent Harvest Oaks Baptist Church specific use permit case.

The current parking requirement for churches/religious facilities is 1 space/3 fixed seats. The proposed parking requirement for churches/religious facilities is 1 space/3 fixed seats plus 1 space/300 sq.ft. for additional building areas other than the main sanctuary/assembly area. The purpose of this amendment is to ensure that there is adequate parking provided to meet the need of the development and prevent overflow parking that will negatively impact adjacent properties and neighborhoods.

The second modification proposed is to the screening requirements for non-residential developments. Currently screening is required between single-family and commercial and industrial uses. The proposed requirement is for screening between single-family and non-residential uses. The purpose of this amendment is to ensure that adequate screening can be required when non-residential uses develop adjacent to residential.

The proposed standards would only apply to site plans and/or SUPs for a new church or expansions of an existing church.

Staff recommends approval of this item.

Chairman Wendland opened the Public Hearing.

Chad Selph, 204 Willow Creek Circle, Allen, pastor of First Baptist Church of Allen, spoke in opposition of the request. He is concerned with the parking requirement. He questioned what was considered parking impact space when determining the 1/300 sq.ft. requirement. Would encourage the City and the church community leaders working together to find a solution.

Bryce Greene, 708 Franklin Drive, Allen, representative of Cottonwood Creek Baptist Church, spoke in opposition of the request. He is concerned with the parking requirement. The parking requirements of neighboring cities are tied to the number of seats in the worship area. He states that the proposal may have some unintended results; such as having to meet requirements for additional handicap spaces, landscaping, irrigation, screening, storm drainage, etc. He recommends talking with the church leaders to find a solution.

Robert Reeves, 900 Jackson Street Suite 160, Dallas, representative of The Harvest Church, spoke in opposition of the request. He is concerned with the parking requirement. He questions the need to revise the code if the market is already handling the need to provide additional parking. He is concerned that the religious community was not informed of this proposal. He recommends the City and the church community leaders work together to find a resolution.

Rex Taylor, 26 White Rock Trail, Lucas, representative of Greenville Oaks Church of Christ, spoke in opposition of the request. He is concerned with the parking requirement. He believes the 1 space/300 sq.ft. of additional building area is excessive.

Ken Crawford, 1526 Prairie View, Allen, pastor of Forest Grove Christian Church, spoke in opposition of the request. He is concerned with the parking requirement. He would hope that the City would communicate with congregational leaders to come to a resolution.

With no one else wishing to speak, Chairman Wendland closed the Public Hearing.

Lee Battle was invited to respond to the speakers' concerns. He stated that shared parking agreements are also an available opportunity to address parking issues. He continued by stating the gross area of a building falls in the 1 space/300 sq.ft. requirement. The calculation takes into account the spaces of a building that do not impact parking. The challenge of establishing one requirement is having the understanding that each church is different. The parking requirements of over 15 surrounding cities were looked at and they were all different. He concluded by stating the City is always willing to work with the community to come up a solution that makes the most sense.

Commissioner Jones asked what the City's ability would be to enforce more parking if the minimum parking requirements have already been met. Mr. Battle answered that the goal is to be pro-active and set requirements that allow a development to function properly in order to avoid an enforcement situation. The City does not have a mechanism to require additional parking if minimum standards are met.

Motion: Upon a motion by Commissioner Rushing, and a second by Commissioner Jones, the Commission voted 3 IN FAVOR, 4 OPPOSED, to approve the parking requirement proposal as amended to require additional parking of 1 space/500 sq.ft. for all buildings except the main assembly area and to approve the screening requirement proposal as submitted by staff.
The motion failed.

Motion: Upon a motion by Commissioner Cocking, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, 0 OPPOSED, to sever Item #2 Section 7.04.1 from Section 7.07 for the purposes of further action.
The motion carried.

Motion: Upon a motion by Commissioner Cocking, and a second by Commissioner Grimes, the Commission voted 7 IN FAVOR, 0 OPPOSED, to recommend approval of the amendments to Section 7.07 Fences & Walls.
The motion carried.

Motion: Upon a motion by Commissioner Cocking, and a second by Commissioner Mangrum, the Commission voted 7 IN FAVOR, 0 OPPOSED, to reopen the public hearing on the proposed amendments to Section 7.04.1 Parking Requirements and to table the item until the January 20, 2009 Planning & Zoning Commission meeting.
The motion carried.

Adjournment

Motion: Upon a motion by Commissioner Dreggors and a second by Commissioner Rushing the Commission voted 7 IN FAVOR and 0 OPPOSED to adjourn the Planning and Zoning Commission meeting at 8:38 p.m.

These minutes approved this _____ day of _____ 2009.

Robert Wendland, Chairman

Tiffany McLeod, Planner

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE SECTION 7.07 “FENCES & WALLS,” SUBSECTION 4 “SCREENING WALLS OR VISUAL BARRIERS REQUIRED” WITH RESPECT TO SCREENING OF NON-RESIDENTIAL USES ADJACENT TO EXISTING RESIDENTIAL USES; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that in order to preserve and enhance the City as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance; and,

WHEREAS, one method of achieving a visually attractive environment within the City is to provide for screening walls and visual barriers between different uses; and,

WHEREAS, Section 7.07, Subsection 4, Paragraph e. of the Allen Land Development Code sets forth regulations requiring screening walls and visual barriers between existing residential uses and certain “commercial or industrial” uses; and,

WHEREAS, the City Council has determined that to achieve the goal of obtaining a visually attractive environment in the community, non-residential uses that may not be considered “commercial and industrial” should also be screened from adjacent residential uses; and,

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 persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations of the City of Allen, Texas, as previously amended, should be further amended as follows.

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

SECTION 1. Section 7.07, “Fences & Walls”, Subsection 4, “Screening Walls or Visual Barriers Required,” Paragraphs 3.i and 3.ii of the Allen Land Development Code be, and the same are hereby amended to read as follows:

“Section 7.07 Fences & Walls

. . . .

4. Screening Walls or Visual Barriers Required

. . . .

- e. Screening walls or visual barriers are required adjacent to existing residential uses and shall be placed and maintained by the property owner at the following locations:
 - i. Along any property line or district boundary between any single-family detached or attached or any two family use and any multi-family, mobile home park, or non-residential, use, but not across a dividing street between such uses.

- ii. Along any property line or district boundary between any multi-family use and any non-residential use, but not across a dividing street between such uses.”

SECTION 2. All ordinances of the City of Allen, Collin County, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, 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, as amended hereby, which shall remain in full force and effect.

SECTION 4. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. 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 the Allen Land Development Code, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and publication in accordance with its 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 13TH DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Allen Heights Village Shopping Center Sign Variance Appeal

STAFF RESOURCE: Ogden "Bo" Bass, Director of Planning and Development

BOARD/COMMISSION ACTION: On October 20, 2008, the Sign Control Board denied the request to grant a variance to increase the copy area of an existing multi-tenant sign for the Allen Heights Village Shopping Center

ACTION PROPOSED: Approve, disapprove, or modify action of the Sign Control Board

BACKGROUND

The property is located at 1201 E. Main at the northwest corner of Main Street and Allen Heights Drive. The zoning for this property is Planned Development 1 - Shopping Center. The sign ordinance permits Retail/Commercial Multi-tenants (between 2.1 and 5 acres) to have one monument sign that is a maximum height of 8 feet, has a maximum copy area of 80 square feet and a maximum structure area of 110 square feet.

The existing multi-tenant sign (located on the property) has a copy area of 140 square feet, a structure area of 246 square feet and is 24.6 feet tall. Because these dimensions exceed the current sign regulations, this existing sign is non-conforming. Section 7.09.10.3 of the Allen Land Development Code states that "any non-conforming sign in existence prior to the adoption of these regulations may be repaired, but not altered or moved unless made to conform to these regulations."

An increase in copy area will alter the existing sign. Per the ALDC, any new sign constructed will be required to adhere to current sign regulations. In this case, the multi-tenant sign would need to be removed and replaced with a smaller sign. The copy area would have to be configured to display the names of all the shopping center tenants while still adhering to the maximum copy area of 80 square feet. Requiring Allen Heights Village Shopping Center to comply with the existing sign code is consistent with what has been required of other businesses in the past.

VARIANCE

The request is being made by Main Street Plaza Ltd. c/o KCRE Properties. The request is to increase the copy area of the existing multi-tenant sign in order to add three additional rows of tenant business names.

ANALYSIS

The ordinance states that the Sign Control Board should consider the following: (1) reasons for the variance; (2) the effect on public safety, (3) protection of neighborhood property, and (4) the degree of hardship or injustice involved and the effect of the variance on the general plan for signing within the City. The applicant's justification for requesting the variance is based on the current economic downturn and the assumption that some of the businesses are not thriving because they have no advertising along the street frontage. This shopping center is not different from many others in town that have monument signs and comply with the sign ordinance. Economics are not typically considered an acceptable hardship for a variance, and in this case the economic downturn is not specific to this property as it impacts every business in town.

On October 20, 2008, the Sign Control Board denied the variance request to allow an increase in copy area for the existing multi-tenant sign. The owner of the Allen Heights Village Shopping Center is appealing the Sign Control Board's decision and is requesting that the variance be granted. On November 11, 2008, the City Council tabled this item to allow the applicant time to return with more information and options.

STAFF RECOMMENDATION

Staff supports the Sign Control Board's action to deny the variance request.

MOTION

I make a motion to deny a variance to the Allen Heights Village Shopping Center, located at the northwest corner of Main Street and Allen Heights Drive, to allow an increase in maximum allowable copy area for an existing multi-tenant sign to a maximum area of 185 square feet.

ATTACHMENT

Allen Heights Shopping Center Appeal Letter
Existing and Proposed Signs
Minutes from October 20, 2008, Sign Board

KCRE Properties Inc.

4230 LBJ Freeway, Suite 105
Dallas, Texas 75244

Item # 15
Attachment Number 1
Page 1 of 1

Phone (972) 404-1431
Fax (972) 404-9126

October 29, 2008

Mr. Ogdeen Bo Bass
Director of Planning and Development
City of Allen
City Hall
305 Century Parkway
Allen, Texas 75013

Subject:

Appeal of the Sign Board's Denial of Sign Variance to add two additional rows of signage to existing pylon sign at property located at Allen Heights Village, 1201 E. Main Street, Allen, Texas 75002

Dear Mr. Bass:

Please accept this letter as our formal request to appeal the decision of sign board at City Council meeting on October 20, 2008 to deny our request as stated above.

Please contact David Mottahedeh at 1-818-209-7321 or Sally Anderson with KCRE Properties, Inc. 972-404-1431 as soon as possible with information regarding the date and time of next City hearing to appeal this decision.

Regards,

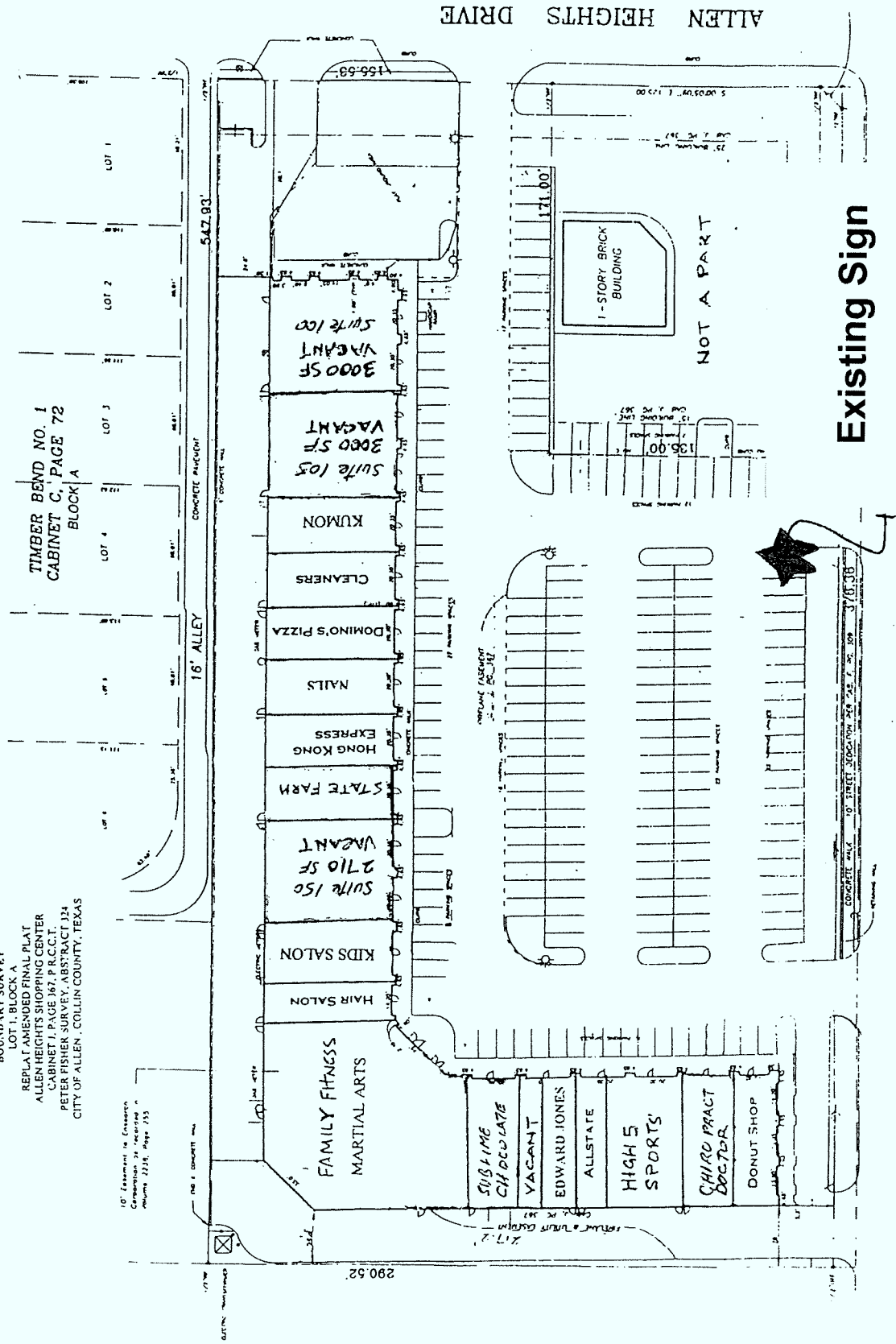


KCRE Properties, Inc./
Allen Heights Village

Cc: Allen Heights
Tiffany McCloud, City of Allen

ALLEN HEIGHTS 1201 E. MAIN ST. SHOPPING CENTER, ALLEN TEXAS

BOUNDARY SURVEY
LOT 1, BLOCK A
REPLAT AMENDED FINAL PLAT
ALLEN HEIGHTS SHOPPING CENTER
CABINET J, PAGE 167, P.R.C.C.T.
PETER FISHER SURVEY, ABSTRACT 124
CITY OF ALLEN, COLLIN COUNTY, TEXAS

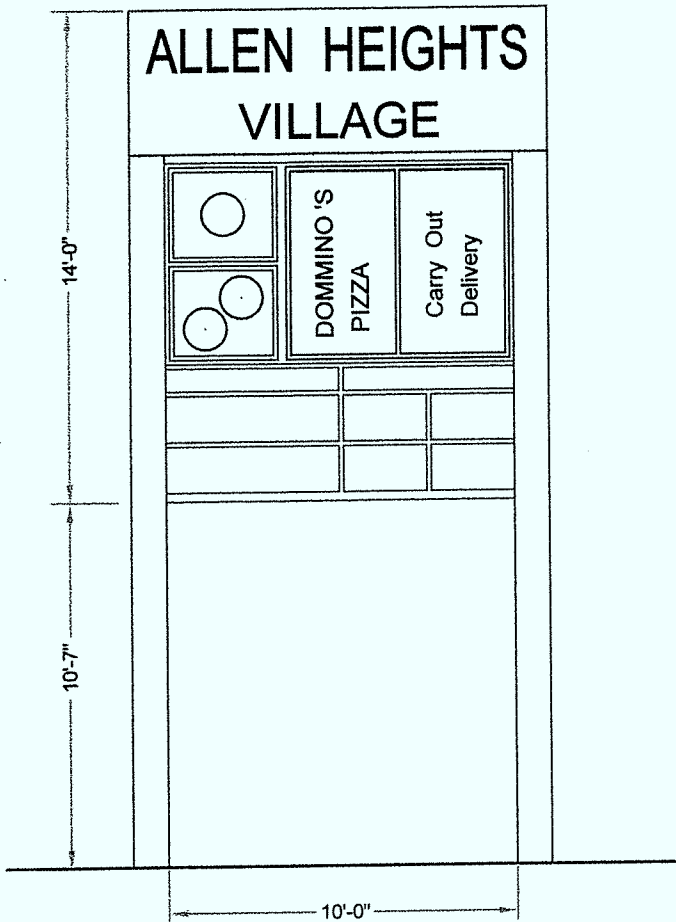


Existing Sign

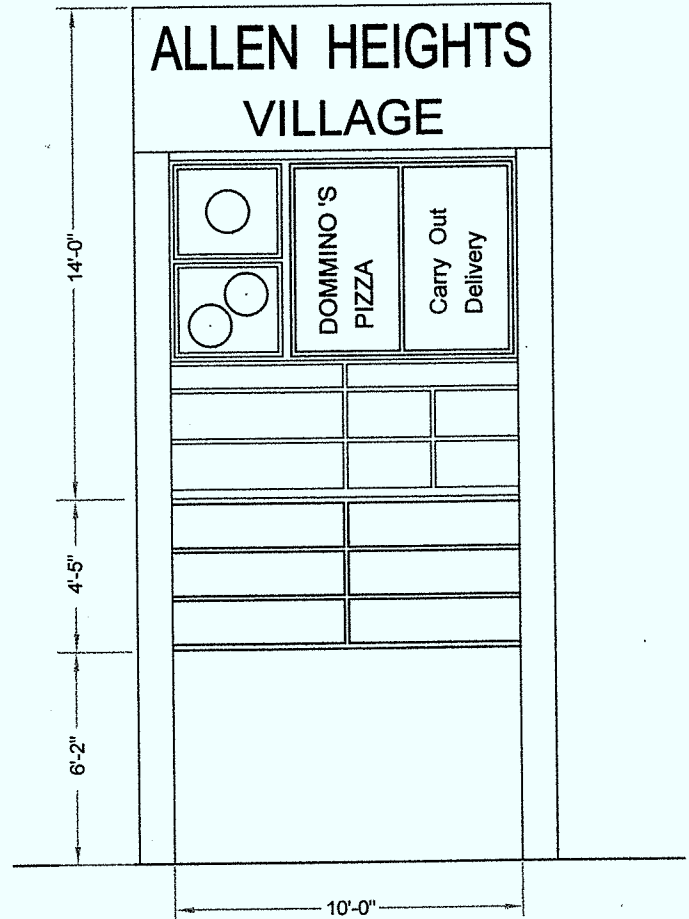
F. M. NO. 2170 / MAIN STREET VARIABLE WIDTH ROW

JOB NO. 10132
REV. 10/13

DUE JANUARY 11, 2018

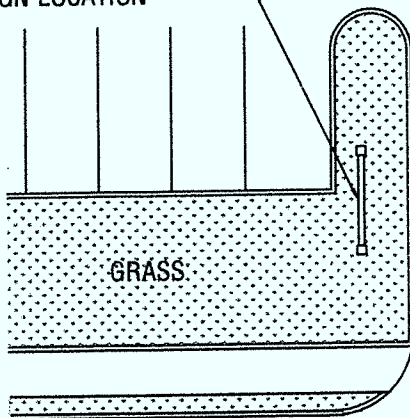


EXISTING SIGN



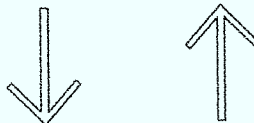
PROPOSED SIGN

SHOPPING CENTER
SIGN LOCATION



MAIN STREET ENTRANCE

SIGN PLAN



ALLEN HEIGHTS SHOPPING CENTER

1201 F MAIN ALLEN TEXAS 75002





SIGN CONTROL BOARD

Special Called Meeting

October 20, 2008

ATTENDANCE:

Board Members Present:

Sally Leeper, Chair
Frank Brown, Vice Chair
Alexander Kirk
Gene Autrey
Barbara McNutt
Hugh Brown, Alternate
Deborah Angell Smith, Alternate

Board Members Absent:

None

City Staff Present:

Ogden "Bo" Bass, Director
Lee Battle, Assistant Director
Tiffany McLeod, Planner
Pam Conway, Senior Administrative Assistant
Amber Slayton, Attorney

Regular Agenda

Call to Order and Announce a Quorum is Present:

With a quorum of the Board Members present, Chairman Leeper called the meeting to order at 6:00 p.m. in the City Hall Council Conference Room at Allen City Hall, 305 Century Parkway.

Agenda Item 1: Approve minutes from the September 10, 2007 Sign Control Board Meeting.

Chairman Leeper called for a motion to approve the September 10, 2007 minutes of the Sign Control Board.

MOTION: Upon a Motion by Board Member Kirk, and a Second by Board Member Autrey, the Board voted 5 FOR and 0 OPPOSED to approve the September 10, 2007 Sign Control Board Minutes. The motion carried.

SIGN CONTROL BOARD
October 20, 2008

PAGE 2

Agenda Item 2: Public Hearing – Conduct a Public Hearing and consider a request for a variance for the Allen Heights Village Shopping Center to increase the copy area of an existing non-conforming multi-tenant sign. The sign is located at the Allen Heights Village Shopping Center, 1201 E Main Street.

Tiffany McLeod, Planner, presented the case to the Board. She described the request and the location of the sign. The ordinance states that the Sign Control Board should consider the following reasons for the variance: the effect on public safety, protection of neighborhood property, the degree of hardship or injustice involved and the effect of the variance on the general plan for signing within the City. Staff does not believe that there are adequate reasons provided to justify a variance to allow the existing sign to increase in copy area. There is not a significant hardship or injustice involved and this request is contrary to the general plan for allowing signage in Allen. Therefore, staff recommends denial of the requested variance.

Board Member Brown stated that disallowing this variance could cause a hardship for these businesses. He explained his thoughts on the difficulties businesses, especially small businesses, face especially considering our current economy.

Ogden “Bo” Bass, Director, explained that staff’s recommendation should not be taken that we are anti-business. Staff is here to uphold the ordinance.

Chairman Leeper opened the Public Hearing.

Sally Anderson, Kelley Commercial, Representing the Allen Heights Shopping Center, stated that the request is based on keeping the tenants – some of the businesses don’t have room on the current sign. Some are “mom and pop” and have no other means of advertising. She stated that due to the economic downturn, she requested that the Board approve the variance.

Morey Young, 1340 Red Oak Trail, Fairview, stated that he is one of the anchor tenants (Marshall Arts and a real estate office). He stated that signage is needed and currently he has none.

Shen Won, Suite 108, Allen Heights Shopping Center, requested approval of this variance. He has been in this space for 3 years with no sign.

With no one else wishing to speak, the Public Hearing was closed.

Board Member Autrey questioned Ms. Anderson about bringing the sign up to current code. Ms. Anderson stated that the owner is not financially able to do that at this time.

Board Member Kirk stated that he disagrees with the Allen Land Development Code in this situation, but won’t “legislate from the bench” by granting a variance. He stated that if the Sign Board denies the variance – the applicant can appeal to the City Council.

SIGN CONTROL BOARD
October 20, 2008

PAGE 3

Ms. Anderson stated that all the tenants are “for” the approval of this variance and many wrote letters of support. The letters will be attached to these minutes for the record.

Board Member McNutt questioned why the sign was not originally designed for the number of tenants? Ms. Anderson was not sure. She stated even if the variance is granted, there is not enough space for all tenants.

Board Member Brown again stated that the economic downturn is a valid reason to grant the variance.

Chairman Leeper stated that the economy is very difficult right now. The intent of the Council was for all signs to comply with the ordinance and for pylon signs to eventually go away. Many already have been replaced with monument signs. Allen Heights Shopping Center has always had a lot of tenant turn-over. Every tenant does not get their name on the pylon sign – this is the case for any shopping center. This shopping center does not have any special conditions or hardship compared to any other shopping center in town – all shopping centers are facing the same challenge. Their would need to be a condition or hardship that was different from other shopping centers.

Board Member Kirk stated that as a consumer, it is difficult to find some businesses with such small signs (monuments). His suggestion was just for the applicant to take this on to the Council.

Chairman Leeper suggested that the Board review the sign ordinance in the future for discussion and possible amendments.

Mr. Bass stated that staff would follow that direction and place a discussion item on an upcoming agenda for review.

Chairman Leeper requested a survey of surrounding Cities to give the Board information about what is being allowed in neighboring communities.

MOTION: Upon a motion by Board Member Autrey and a second by Board Member McNutt, the Board voted 4 FOR 1 OPPOSED to DENY the request for a variance to increase the copy area of an existing non-conforming multi-tenant sign for Allen Heights Village Shopping Center. Board Member Brown was Opposed. The Motion Carried.

**Edward Jones Investments
1201 E. Main Street, Suite 240
Allen, TX 75002**

**City of Allen
Planning & Zoning Department
City Hall
305 Century Parkway
Allen, TX 75013**

Dear Planning & Zoning Committee:

We are current tenants at the Allen Heights Village Shopping Center at Main Street and Allen Heights. We are writing in regards to the request to add additional signage for our shopping center.

Many of the tenants cannot advertise because the sign does not have enough space to include their company name. Several new tenants are moving in and want to place their name on the sign but there is just not room.

Six more tenants would be able to advertise their business on the marquee with the proposed change. It will help draw attention to their business from both Main Street and Allen Heights. This can make a major difference to the additional walk in business that these tenants may be able to incur thus helping the City of Allen in turn.

Please consider approving the request for the expansion of the marquee sign at Allen Heights Village Shopping Center. It can only help in additional revenues for both the businesses and the city. Thank you for your time and consideration of this matter.

Sincerely,



**J. Maurice White
Financial Advisor
Edward Jones Investment**

Finger & Toe
1201 E. Main Street
Suite 130
Allen, Texas 75002

(Kim Tran, Owner)

City of Allen
Planning & Zoning Department
City Hall
305 Century Parkway
Allen, TX 75013


RE: Marquee sign

To Whom It May Concern:

I have a business at 1201 E. Main St. STE 280, Allen, TX (Young Donuts).

As a tenant, it is important to have any visible signage in my surrounding business neighborhood. This would include a banner, roadway sign, marquee sign, etc. We want to advertise our business in any forms of matter possible. Please consider amendment to enlarge the marquee sign at 1201 E. Main Street, Allen, TX.

Sincerely,


Jung Hee Lee
Young Donuts

September 5, 2008

City of Allen
Planning and Zoning Department
City Hall
305 Century Parkway
Allen, TX 75013

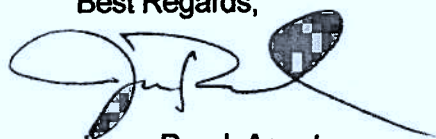
To Whom It May Concern:

As an independent business owner, advertisement is a vital part of our business. The marquis that is currently out front is too small for all the businesses here to advertise on and is too small to be seen by passing traffic.

Please approve our signage request so that we can all take advantage of being seen by the citizens of Allen and contribute to the city's growth as a whole.

Feel free to contact me with any questions you may have.

Best Regards,

A handwritten signature in black ink, appearing to read 'Jason Reed', with a stylized flourish extending from the end.

Jason Reed, Agent
State Farm Insurance and Financial Services
972-908-3448 (office); 972-908-3449 (fax)
www.jasonreedagent.com

CASTLE REALTY
1201 E. MAIN ST. SUITE 200B
ALLEN, TEXAS 75002
972-390-9126

MARTIAL ARTS FITNESS CENTER
1201 E. MAIN ST. SUITE 200
ALLEN, TEXAS 75002
972-290-9122

TO: CITY OF ALLEN
PLANNING AND ZONING DEPARTMENT
CITY HALL 305 CENTURY PARKWAY
ALLEN, TX. 75013

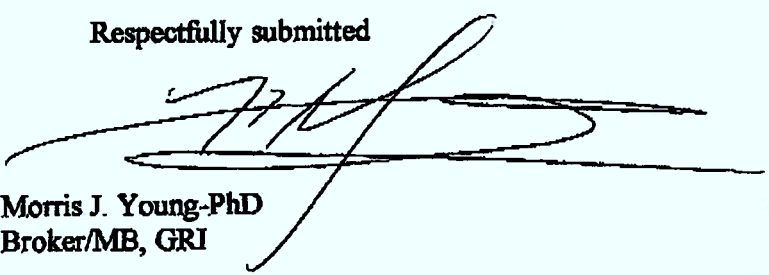
SUBJECT. LACK OF SIGNAGE SPACE

I operate several business at the Allen heights Village. I have been in Real Estate/ Mortgage and M/A fitness for over 30 years. I was led to believe by the Landlord , KCRE properties that I would be able to have ample signage as to represent my Both companies here. I have none since there is no place to put them. Resultantly I am loosing considerable revenue due to lack of traffic. I have been a long time resident and tax payer in Allen and Collin County since 1985. I firmly believe that the addition Of additional signage space would be a great boon to us all. Conversely , the continued lack of appropriate advertising opportunity could give me the incentive to seek another Site— Perhaps outside of Allen where signage is in abundance.

My two business comprise anchor tenancy here in the center and a larger roll of taxes of course are absorbed. Hopefully we can all come to agreement on expanding our sign needs.

If you have any questions please do not hesitate to call me.

Respectfully submitted



Morris J. Young-PhD
Broker/MB, GRI

Jim Berrios
The Kid Salon Inc.
Allen, TX 75002
September 8, 2008

City of Allen
Planning & Zoning Dept.
City Hall
305 Century Parkway
Allen, TX 75013

Dear City of Allen:

My name is Jim Berrios and I own The Kid Salon. We are a specialty children's hair salon in Allen located in the Allen Heights Village. We are asking for approval from the City for six additional sign space allotments for our existing marquee sign. Being able to advertise our business on this marquee would greatly benefit our business. Please, give great consideration in approving this sign space addition. Thanks in advance for your time and efforts.

Sincerely,



Jim A. Berrios
The Kid Salon Inc.
President

Sublime Chocolate

1201 E. Main Street

Ste. 230

Allen, Texas 75002

(972) 747-0848

September 5, 2008

City of Allen,
Planning & Zoning Department
City Hall,
305 Century Parkway
Allen, TX 75013

RE: Variance for Existing Marquee Sign

To Whom It May Concern,


I, as a business owner and being in business for just over a month, would like to acknowledge the important part that having a prominent sign does for the "walk-in" portion of my business. These days, with so many people on the go which means they are mostly driving, it is so easy to miss going into a shop that these people might easily see if for example they were walking through a mall.

Just yesterday I had a customer tell me that they don't normally coming to this shopping center but saw my sign and made the effort to park and come in. I truly believe if more businesses have this same opportunity to advertise using not only their store signs but also the marquee sign under the Allen Heights Village street sign, it would go a long way to expanding their customer base.

Being not only a business taxpayer in Allen but also a residential taxpayer in Allen, I see both sides as far as having local businesses close and successful. Not only does this benefit the City of Allen but it also benefits us as residents because we don't have to travel to Plano or McKinney in order to go to a restaurant or buy something that we can't find in Allen.

Please consider Allen Heights Village for the six additional spaces on the Marquee street sign. Thank you very much for taking the time to read my letter.

Sincerely,



Troy Easton
Owner/Chocolatier of Sublime Chocolate



Kumon of Allen – East

1201 E. Main Street, Ste. 108
Allen, TX 75002
972.908.2508

City of Allen

Planning & Zoning Department
City Hall
305 Century Parkway, Allen, TX 75013

September 6, 2008

To Whom It May Concern:

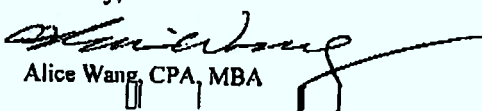
This letter is to request to have Kumon Pylon sign up again at the NW corner of Allen Heights
~~and E. Main Street~~

We have been in business in the said location since Nov. 2005 and strived to survive since then. We have contacted the landlord to have a Kumon pylon sign since day one at the location. However, there were no spaces for Kumon pylon sign. We have been waited for more than two and half years until Hong Kong Express Chinese restaurant went out of business in May 2008. It was a great opportunity to put up Kumon pylon sign which will allow drivers and pedestrians to see our Kumon center from E. Main Street.

Unfortunately, three months later our Kumon pylon sign was disappeared without us being notified. A new tenant, Lucky Wok Chinese/Japanese Restaurant, moved in and took down Kumon pylon sign without consulting us on phone or sending a written notice. We went to visit Lucky Wok owner and he made an apology of his wrong doing. The owner explained that he took over the commercial space that Hong Kong Express was and he needed more business exposure, which is exactly the same story as ours. He thought he has the right to retake the pylon sign space used by the defunct Hong Kong Express without even informing landlord or us. He even said that the contract he signed with landlord has the provision allowing him to do so. This dispute is not solved yet and Lucky Wok owner has not responded to our request to reimburse us the cost of having Kumon pylon sign up at the shopping square.

We could not but contact the landlord. The landlord is willing to expand the pylon sign space out of his pocket to help his tenants. We would appreciate if City of Allen would approve the landlord's request to expand existing spaces at the shopping square to avoid unnecessary disputes among tenants fighting for limited Pylon sign spaces at the shopping square.

Sincerely,


Alice Wang, CPA, MBA
Director of Kumon of Allen - East

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, January 13, 2009

SUBJECT: Water and Sewer Rate Adjustments

STAFF RESOURCE: Steve Massey, Director of Community Services
Kevin Hammeke, Director of Finance
John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: Council adopted Resolution No. 2692-1-08(R) on January 8, 2008, implementing the FY 07-08 water and sewer rates recommended by the water and sewer multi-year financial plan and rate design study

ACTION PROPOSED: Adopt a resolution implementing the water and sewer rate increases recommended for 2009 by the water and sewer multi-year financial plan and rate design study

BACKGROUND

The City of Allen continues to face increasing operating costs from the North Texas Municipal Water District (NTMWD) as well as internal growth in demand for water and sewer system improvements. It is important that the City plan financially so the Water and Sewer Fund can both create and rehabilitate water and sewer infrastructure ahead of new demand and prior to system failures stemming from natural system aging. In an effort to ensure the Water and Sewer Fund's financial viability, the consulting firm of economists.com was hired in 2006 to assess the City's current water and sewer financial plan and rate design, and provide recommendations for modifying the plan to meet future costs of service and population growth needs.

The following issues identified during the rate study continue to apply:

- 1 Water rates are subsidizing sewer rates in all classes of customers.
- 1 Residential customers are paying more than their proportionate share.
- 1 Irrigation accounts are significantly below their appropriate cost of water service.
- 1 Commercial/school/apartment sewer accounts are significantly out of balance with cost of sewer service.

Listed below are highlights of the proposed rate structures.

Water

- 1 The volumetric rate for “irrigation only” customers increases 10% annually until 2010, thereafter 5-6% annually through 2014.
- 1 Base charges (minimum bill) for all customers were converted to meet the AWWA meter equivalency standards, phased in over three years for 1½-inch and smaller meters and phased in over five years for 2-inch and larger meters.

Wastewater

- 1 Base and volumetric charges for residential customers increase 7% annually over the next few years.
- 1 Base and volumetric charges for commercial/apartments customers increase 15% annually over the next few years.
- 1 Base and volumetric charges for schools/municipal customers increase 10% annually over the next few years.

A discussion and a series of tables concerning the proposed rate changes are provided as an Attachment to this Agenda Communication.

For residential customers, the combined water and sewer rate increase for the annual average amount of water used of 16,000 gallons amounts to a rate increase from \$72.15 to \$74.19 per month, a 2.8 percent overall cost increase per month.

The cost increases recommended are justified based on continuing NTMWD cost increases for water, sewer transport, sewer treatment, and industrial pretreatment programs; as well as the increasing cost of our internal water and sewer services.

In the current Fiscal Year, the City budget funds an update to the existing Water and Sewer multi-year financial plan and rate design study. This study update was necessitated by the NTMWD Board’s 2008 decision to advance the costly implementation of the capability to disinfect by use of the ozonation process. The implementation date of ozonation was advanced in order to assure the water district could meet the new Environmental Protection Agency limits on disinfection by-products that are now expected to be introduced in 2012. The conversion to use of ozonation to disinfect drives significant new capital improvement costs to install the equipment associated with the new system as well as significantly increases electricity costs. The combination of these two factors causes such a material change in wholesale water rates that a rate study update is warranted.

BUDGETARY IMPACT

Application of the proposed water and sewer rate adjustments will generate an approximate additional \$580,000 in revenues that is already included in the \$25,177,976 total revenue that is budgeted for the water and sewer fund in FY 08-09.

STAFF RECOMMENDATION

Staff recommends the City Council adopt a Resolution to set new rates for residential and commercial water and sewer service.

MOTION

I make a motion to adopt Resolution No. _____ setting new rates for residential and commercial water and sewer service.

ATTACHMENT

Resolution

Rate Tables and Discussion

Annotated Version with Prior Rates

Discussion of Proposed Water and Sewer Rate Changes

The proposed percentage rate increases shown below were recommended for implementation in January of each calendar year by the multiyear financial plan and rate design study.

Proposed Water Percentage Rate Increases

	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
Water								
Minimum Charge (¾ to 1½ inch Meters)	25%	0%	25%	0%	0%	0%	0%	0%
Minimum Charge (2 to 6 inch Meters)	25%	0%	25%	25%	25%	0%	0%	0%
Volumetric Residential	5%	0%	0%	0%	0%	6%	6%	6%
Volumetric Municipal/Commercial/Schools/Apts	0%	0%	0%	0%	0%	6%	6%	6%
Volumetric Irrigation	12%	10%	10%	10%	5%	6%	6%	6%
Volumetric Construction	5%	10%	10%	12%	10%	6%	6%	6%

Rate Study Proposed Sewer Percentage Rate Increases

	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
Sewer								
Minimum Charge Residential	7%	7%	7%	7%	6%	6%	6%	6%
Volumetric Residential	7%	7%	7%	7%	6%	6%	6%	6%
Minimum Charge Commercial/Apartments	15%	15%	15%	15%	15%	6%	6%	6%
Volumetric Commercial/Apartments.	15%	15%	15%	15%	15%	6%	6%	6%
Minimum Charge Schools/Municipal	10%	10%	10%	10%	10%	6%	6%	6%
Volumetric Schools/Municipal	10%	10%	10%	10%	10%	6%	6%	6%

Residential Water and Sewer Rate Changes

The following table shows historic and proposed residential water rates. No water rate changes are proposed that affect residential water rates in FY 08-09.

Residential Water	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill (for 5/8" meter)	\$8.47	\$8.47	\$8.47	\$8.47	\$8.47
1,501 - 15,000 Gallons	\$2.36	\$2.36	\$2.36	\$2.36	\$2.36
15,001 - 25,000 Gallons	\$2.83	\$2.95	\$2.95	\$2.95	\$2.95
25,001 – 50,000	\$3.30	\$3.69	\$3.69	\$3.69	\$3.69
50,001 – 75,000	\$3.30	\$3.69	\$5.54	\$5.54	\$5.54
Over 75,000	\$3.30	\$3.69	\$8.31	\$8.31	\$8.31

The following table shows historic and the 7 percent proposed residential sewer rates increase for FY 08-09. The maximum sewer cost increase beginning February 1, 2009, for a residential home using 10,000 gallons or more of water is \$2.04 per month.

Residential Sewer-Charges are capped at 10,000 gallons of water	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill	\$16.97	\$18.16	\$18.16	\$19.43	\$20.79
1,501 - 10,000 Gallons	\$0.97	\$1.04	\$1.04	\$1.11	\$1.19
Maximum Bill at 10,000 gallons of water usage	\$25.22	\$27.00	\$27.00	\$28.87	\$30.91

Irrigation-Only Water Rate Changes

The following table shows historic and proposed irrigation-only water rates for FY08-09:

Irrigation- Only Water (assumes 2" meter for minimum bill)	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill	\$21.17	\$30.00	\$30.00	\$30.00	\$38.83
Over 1,501 Gallons	\$3.30	\$3.30	\$3.69	\$3.99	\$4.39

Construction Water (Fire Hydrant Meters) Rate Changes for FY 08-09

The following table shows historic and proposed construction (fire hydrant meter) rates for FY 08-09:

Construction Water All 3" Meters	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill	\$33.87	\$46.58	\$46.58	\$46.58	\$59.29
Over 1,501 Gallons	\$2.36	\$2.36	\$2.48	\$2.73	\$3.00

Commercial/School/Apartment Water Rate Changes for FY 08-09

The following table shows historic and proposed commercial/school/apartment rates for interior facility (domestic) water use:

Commercial/School /Apartment Assume 2" Meter For Minimum Bill	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill	\$21.17	\$30.00	\$30.00	\$30.00	\$38.83
1,501 – 4,000 Gallons	\$2.36	\$1.89	\$1.89	\$1.89	\$1.89
Over 4,001	\$2.36	\$2.36	\$2.36	\$2.36	\$2.36

Water Minimum Bill- AWWA Meter Equivalency.

An additional water rate modification from the rate study was implementation of the American Waterworks Association (AWWA) Meter Equivalency Table as a basis for setting the rates of our minimum water bill charges. Our past minimum water bill charges that included the first 1,500 gallons of water did not increase proportionate to the flow rate of each meter. You can see how the rates were set in 2005 in the table below in the “2005 Minimum Charge” column. However, those minimum bill charges did not increase in proportion to the flow rate in gallons per minute as compared to the smallest meter size - a five-eighths inch (5/8”) water meter. The AWWA meter equivalency table specifies how much more water would flow through all size meters as a ratio to the water that would flow through a standard residential five-eighths inch (5/8”) water meter. It is a way to charge appropriately in the minimum bill for the meter’s capacity to make a demand on the water system and is the accepted practice nationally for setting minimum bill amounts. The AWWA Meter Equivalency Table is presented below.

AWWA Meter Equivalency Table					
Meter Size	Flow Rate in Gallons per Minute	Equivalency	Flow Rate Minimum Charge	2005 Minimum Charge	Cost Difference
5/8"	15	1	\$8.47	\$8.47	\$0.00
3/4"	25	1.67	\$14.12	\$9.38	\$4.74
1"	40	2.67	\$22.59	\$11.20	\$11.39
1-1/2"	50	3.33	\$28.23	\$15.72	\$12.51
2"	100	6.67	\$56.47	\$21.17	\$35.30
3"	150	10.00	\$84.70	\$33.87	\$50.83
4"	200	13.33	\$112.93	\$52.00	\$60.93
6"	500	33.33	\$282.33	\$97.35	\$184.98

Minimum Bill Charges for Water. Allen’s water minimum bill began a phase-in towards use of AWWA meter equivalency charge with the rate changes that was effective on June 1, 2007. The transition plan is to convert to use of the AWWA meter equivalency table by phasing in the adjusted charges for meters under two inches over a three year period (above dark line in the table below); and for meters two inches and over a five year period (below dark line in the table below). The table below shows the minimum bills that would result from implementation of the AWWA meter equivalency standards. The current round of rate increases implements the third year of phase-in and is reflected under the “Feb 1, 2009 Minimum Water Charge” column.

Minimum Bill Adjustments Resulting from Phase-in of AWWA Meter Equivalency for Computing Water Minimum Bill							
Meter Size	FY 06 Minimum Water Charge	June 1, 2007 Minimum Water Charge	Feb 1, 2008 Minimum Water Charge	Feb 1, 2009 Minimum Water Charge	2010 Minimum Water Charge	2011 Minimum Water Charge	Meter Size
5/8"	\$8.47	\$8.47	\$8.47	\$8.47	\$8.47	\$8.47	5/8"
3/4"	\$9.38	\$11.75	\$11.75	\$14.12	\$14.12	\$14.12	3/4"
1"	\$11.20	\$16.90	\$16.90	\$22.59	\$22.59	\$22.59	1"
1-1/2"	\$15.72	\$21.98	\$21.98	\$28.23	\$28.23	\$28.23	1-1/2"
2"	\$21.17	\$30.00	\$30.00	\$38.83	\$47.65	\$56.47	2"
3"	\$33.87	\$46.58	\$46.58	\$59.29	\$72.00	\$84.70	3"
4"	\$52.00	\$67.23	\$67.23	\$82.46	\$97.69	\$112.93	4"
6"	\$97.35	\$143.60	\$143.60	\$189.85	\$236.10	\$282.33	6"

Wastewater- Schools and Municipal Rate Changes

The following table shows historic and proposed school and municipal rates for interior facility (domestic) use. The wastewater volumetric charges that apply to the total water volume after the first 1,500 gallons is not limited.

School & Municipal	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2009	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill	\$16.97	\$18.67	\$18.67	\$20.53	\$22.56
Rate/1,000 Gal Water over 1,500 Gallons	\$0.97	\$1.07	\$1.07	\$1.17	\$1.29

Wastewater- Commercial and Apartments Rate Changes

Commercial & Apartments	Rate per 1,000 Gallons Oct 1, 2005	Rate per 1,000 Gallons Jun 1, 2007	Rate per 1,000 Gallons Aug 1, 2007	Rate per 1,000 Gallons Feb 1, 2008	Proposed Rate per 1,000 Gallons Feb 1, 2009
Minimum Bill includes first 1,500 Gallons	\$16.97	\$19.52	\$19.52	\$22.44	\$25.81
Rate/1,000 Gal Water over 1,500 Gallons	\$0.97	\$1.12	\$1.12	\$1.28	\$1.47

The following table compares the combined impact of water and sewer rate changes on various customer classes using typical usage volumes of water. This table is useful to see how the rate adjustments address the overall water and sewer rate inequities pointed out by the multi-year financial plan and the rate study:

- Water rates are subsidizing sewer charges, so sewer rates increase faster than water rates
- Residential customers are paying more than their fair share, so their rates increase slower
- Irrigation accounts are significantly below their appropriate cost of service, so their water rates should increase faster
- Commercial/school/apartment sewer rates are significantly below the actual cost of sewer service, so their sewer rates should rise faster than residential

Customer Class	Gallons	2008 Water Cost \$	2008 Sewer Cost \$	Total Cost \$	2009 Water Cost \$	2009 Sewer Cost \$	2009 Total Cost \$	Overall Percent Change
Residential 5/8" Meter	16,000	\$43.28	\$28.87	\$72.15	\$43.28	\$30.91	\$74.19	+ 2.8%
Commercial Domestic 2" Meter	60,000	\$166.89	\$97.32	\$264.21	\$175.72	\$111.81	\$287.53	+ 8.8%
Apartment Domestic 2" Meter	80,000	\$214.09	\$122.92	\$337.01	\$222.92	\$141.21	\$364.13	+ 8.1%
School 2" Meter	150,000	\$379.29	\$194.28	\$573.57	\$388.12	\$214.13	\$602.25	+ 5.0%
Irrigation 2" Meter	100,000	\$315.49	N/A	\$315.49	\$354.79	N/A	\$354.79	+12.5%

Version Annotated with Prior Rates

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING SANITARY SEWER CHARGES AND WATER SERVICE CHARGES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, due to the increased service costs for the purchase of water, and the transport and treatment of waste water by the City of Allen from the North Texas Municipal Water District, City staff finds it in the best interest of the City to recommend that the fees for sanitary sewer charges and water services charges be increased; and,

WHEREAS, the City Council finds that the increase in rates will serve to better balance the sewer revenue to match sewer expenses; and,

WHEREAS, the City Council further finds that the continuation of a tiered year-round water conservation rate structure for water will encourage water conservation.

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

SECTION 1. The following Sanitary Sewer Charges are hereby established.

SANITARY SEWER CHARGES

- (1) *Monthly minimum charge.* The following minimum charges are based on the first one thousand five hundred (1,500) gallons.
 - a) Twenty dollars and seventy-nine cents (~~\$19.43~~) (\$20.79) for all separately metered single-family dwelling units and other dwelling units separately metered for water.
 - b) Twenty-two dollars and fifty-six cents (~~\$20.53~~) (\$22.56) for schools and municipal customers.
 - c) Twenty-five dollars and eighty-one cents (~~\$22.44~~) (\$25.81) for other than residential customers, including mobile home parks and apartment complexes, commercial and industrial customers.
- (2) *Volumetric charge.*
 - a) 1,500 – 10,000 gallons: One dollar and nineteen cents (~~\$1.11~~) (\$1.19) per one thousand (1,000) gallons for all separately metered single-family dwelling units and other dwelling units separately metered for water.
 - b) The maximum charge for single-family residential sewer service shall be thirty dollars and ninety-one cents (~~\$28.87~~) (\$30.91) per month.
 - c) Over 1,500 gallons: One dollar and twenty-nine cents (~~\$1.17~~) (\$1.29) per thousand (1,000) gallons for schools and municipal customers.
 - d) Over 1,500 gallons: One dollar and forty-seven cents (~~\$1.28~~) (\$1.47) per thousand (1,000) gallons for other than residential customers, including mobile home parks and apartment complexes, commercial and industrial customers.

SECTION 2. The following Water Service Charges are hereby established.

WATER SERVICE CHARGES

- (1) *Monthly minimum charge.* The following minimum monthly charges are based on the meter size and include the cost of one thousand five hundred (1,500) gallons of water usage:

For a 5/8 inch standard meter	\$8.47	\$ 8.47
For a 3/4 inch standard meter	\$11.75	\$14.12
For a 1 inch standard meter.....	\$16.90	\$22.59
For a 1-1/2 inch standard meter	\$21.98	\$28.23
For a 2 inch standard meter.....	\$30.00	\$38.83
For a 3 inch standard meter.....	\$46.58	\$59.29
For a 4 inch standard meter.....	\$67.23	\$82.46
For a 6 inch standard meter.....	\$143.60	\$189.85

- (2) *Volumetric charge.* Water consumption in excess of one thousand five hundred (1,500) gallons shall be charged at the following rate per one thousand (1,000) gallons of water usage or fraction thereof:

Residential customer

0-1,500	Monthly minimum charge
1,501- 15,000	\$2.36 per 1,000 gallons unchanged
15,001- 25,000	\$2.95 per 1,000 gallons unchanged
25,001- 50,000	\$3.69 per 1,000 gallons unchanged
50,001- 75,000	\$5.54 per 1,000 gallons unchanged
Over 75,000	\$8.31 per 1,000 gallons unchanged

Non-Residential customers (commercial, industrial, municipal, apartment complexes)

0-1,500	Monthly minimum charge
1,501- 4,000	\$1.89 per 1,000 gallons unchanged
Over 4,000.....	\$2.36 per 1,000 gallons unchanged

Irrigation and Fire Protection

0-1,500	Monthly minimum charge
Over 1,500	\$3.99 \$4.39 per 1,000 gallons

Construction Fire Hydrant Meters – All 3” Meters

0-1,500	Monthly minimum charge
Over 1,500	\$2.73 \$3.00 per 1,000 gallons

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution, which shall remain in full force and effect.

SECTION 4. All prior Resolutions of the City of Allen, Collin County, Texas, in conflict with the provisions of this Resolution, and the same are hereby repealed; provided, however, that all other provisions of said Resolutions not in conflict with the provisions of this Resolution shall remain in full force and effect.

SECTION 5. This Resolution shall take effect on February 1, 2009, by use of pro-rated monthly consumption, and it is accordingly so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JANUARY, 2009.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING SANITARY SEWER CHARGES AND WATER SERVICE CHARGES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council finds that the increase in rates will serve to better balance the sewer revenue to match sewer expenses; and,

WHEREAS, the City Council further finds that the continuation of a tiered year-round water conservation rate structure for water will encourage water conservation.

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

SECTION 1. The following Sanitary Sewer Charges are hereby established.

SANITARY SEWER CHARGES

- (1) *Monthly minimum charge.* The following minimum charges are based on the first one thousand five hundred (1,500) gallons.
 - a) Twenty dollars and seventy-nine cents (\$20.79) for all separately metered single-family dwelling units and other dwelling units separately metered for water.
 - b) Twenty-two dollars and fifty-six cents (\$22.56) for schools and municipal customers.
 - c) Twenty-five dollars and eighty-one cents (\$25.81) for other than residential customers, including mobile home parks and apartment complexes, commercial and industrial customers.
- (2) *Volumetric charge.*
 - a) 1,500 – 10,000 gallons: One dollar and nineteen cents (\$1.19) per one thousand (1,000) gallons for all separately metered single-family dwelling units and other dwelling units separately metered for water.
 - b) The maximum charge for single-family residential sewer service shall be thirty dollars and ninety-one cents (\$30.91) per month.
 - c) Over 1,500 gallons: One dollar and twenty-nine cents (\$1.29) per thousand (1,000) gallons for schools and municipal customers.
 - d) Over 1,500 gallons: One dollar and forty-seven cents (\$1.47) per thousand (1,000) gallons for other than residential customers, including mobile home parks and apartment complexes, commercial and industrial customers.

SECTION 2. The following Water Service Charges are hereby established.

WATER SERVICE CHARGES

- (1) *Monthly minimum charge.* The following minimum monthly charges are based on the meter size and include the cost of one thousand five hundred (1,500) gallons of water usage:

For a 5/8 inch standard meter	\$8.47
For a 3/4 inch standard meter	\$14.12
For a 1 inch standard meter	\$22.59
For a 1-1/2 inch standard meter	\$28.23
For a 2 inch standard meter	\$38.83
For a 3 inch standard meter	\$59.29
For a 4 inch standard meter	\$82.46
For a 6 inch standard meter	\$189.85

- (2) *Volumetric charge.* Water consumption in excess of one thousand five hundred (1,500) gallons shall be charged at the following rate per one thousand (1,000) gallons of water usage or fraction thereof:

Residential customer

0-1,500	Monthly minimum charge
1,501- 15,000	\$2.36 per 1,000 gallons
15,001- 25,000	\$2.95 per 1,000 gallons
25,001- 50,000	\$3.69 per 1,000 gallons
50,001- 75,000	\$5.54 per 1,000 gallons
Over 75,000	\$8.31 per 1,000 gallons

Non-Residential customers (commercial, industrial, municipal, apartment complexes)

0-1,500	Monthly minimum charge
1,501- 4,000	\$1.89 per 1,000 gallons
Over 4,000	\$2.36 per 1,000 gallons

Irrigation and Fire Protection

0-1,500	Monthly minimum charge
Over 1,500	\$4.39 per 1,000 gallons

Construction Fire Hydrant Meters – All 3” Meters

0-1,500	Monthly minimum charge
Over 1,500	\$3.00 per 1,000 gallons

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution, which shall remain in full force and effect.

SECTION 4. All prior Resolutions of the City of Allen, Collin County, Texas, in conflict with the provisions of this Resolution, and the same are hereby repealed; provided, however, that all other provisions of said Resolutions not in conflict with the provisions of this Resolution shall remain in full force and effect.

SECTION 5. This Resolution shall take effect on February 1, 2009, by use of pro-rated monthly consumption, and it is accordingly so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JANUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY