

**AGENDA  
CITY OF ALLEN  
CITY COUNCIL WORKSHOP MEETING  
JANUARY 27, 2009 – 6:00 P.M.  
305 CENTURY PARKWAY  
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 Creation of an Employee Health and Wellness Clinic —  
Laura Morrow, Director of Human Resources
2. Briefing Regarding Public Art Sculpture for Fire Station #5 —  
Tim Dentler, Director of Parks and Recreation  
Lori Smeby, Assistant Director of Parks and Recreation
3. Committee Updates from City Council Liaisons —
4. 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 23, 2009, at 5:00 p.m.

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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.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Creation of an Employee Health and Wellness Clinic

**STAFF RESOURCE:** Laura Morrow, Director of Human Resources

**ACTION PROPOSED:** Discussion Item Only

**BACKGROUND**

The City of Allen is researching the possibility of creating an employee health and wellness clinic. Health care costs continue to spiral, and cities are looking at various ways of reducing those costs. Over the past few years, the City has established a wellness program and instituted a disease management program within our health plan.

Additional cost control strategies have evolved around the country, including consumer driven plans (HRAs, HSAs), cost shifting with higher deductibles, co-payments and out-of-pocket rates, and employee health clinics. Several cities have established the clinic concept, and have been reporting good results. The cities of Odessa (one of the first), Carrollton, Plano, Mesquite, and Garland have clinics either onsite or near city facilities. Dallas is the most recent city to embrace this concept.

In conjunction with IPS Advisors, our benefits consulting group, we have been reviewing the benefits of establishing an onsite health clinic. The return on investment (ROI) from clinics is rooted primarily in wellness and preventive care measures. According to industry publications, the estimated ROI from clinic operations are between 1.4:1 to 3.0:1 over a five year period. These benefits include improving early detection and intervention, improving disease management, reducing lost work time incurred for doctor visits, and improving the health and wellness of plan members, resulting in healthier and happier employees.

The City of Allen employee clinic would require a variety of measures to contain costs. Full transparency of the cost of supplies, lab visits, and imaging will allow tracking for cost containment. Rather than paying a negotiated fee for wellness and primary care services, we would be paying actual costs. The City would also utilize performance guarantees to ensure the clinic is meeting established goals and standards.

Some employees have established doctor patient relationships. However, many employees currently go to clinics like CareNow or the emergency room resulting in higher costs, for the employee, the City, or both. Medical services that the clinic cannot provide would still continue to be covered by our health plan.

**BUDGETARY IMPACT**

We anticipate the cost of the employee health and wellness clinic equipment and services to be approximately \$240,000 during the first year of operation. This includes start up costs like furniture, computer equipment, medical equipment, and supplies. The City of Allen Risk Fund will absorb the costs in the existing budget. The suggested location is in the former Central Fire Station. Some renovation work would be needed to accomodate a clinic.

**STAFF RECOMMENDATION****Next Steps:**

With direction from Council, Staff will send out a request for proposal (RFP) to determine the best organization to partner with in devloping an employee health clinic. It is anticipated bringing a recommendation for Council consideration by the end of March. Upon signing an agreement, the clinic should be opened within six to nine months.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Presentation of Recommended Public Art Sculpture for Fire Station #5

**STAFF RESOURCE:** Tim Dentler, Director of Parks and Recreation  
Lori Smeby, Assistant Director of Parks and Recreation

**PREVIOUS COUNCIL ACTION:** None

**BOARD/COMMISSION ACTION:** Approved for Recommendation by the Public Art Committee on January 20, 2009

**ACTION PROPOSED:** Information Item Only

**BACKGROUND**

The Public Art Committee convened a selection panel for the purpose of reviewing proposals and interviewing artists for a proposed public art project for Fire Station #5. Twenty-six proposals were reviewed and three artists were interviewed with concepts presented on January 9, 2009. A proposal and concept from Christopher Fennell from Birmingham, AL was recommended by the selection panel to the Public Art Committee. Staff will be presenting the recommendation to the City Council.

**BUDGETARY IMPACT**

\$60,000 allocated through the Public Art bond funds

**AGENDA  
CITY OF ALLEN  
CITY COUNCIL REGULAR MEETING  
JANUARY 27, 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 by Christopher DeBord, Allen Firefighter, to Mayor Stephen Terrell and Fire Chief Bill Hawley of a United States Flag flown during Mr. DeBord's Military Deployment in 2007 in Iraq.

**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 January 13, 2009, Regular Meeting.
4. Approve Minutes of the January 17, 2009, Special Called Workshop for Strategic Planning.
5. Adopt a Resolution Suspending the Effective Date of CoServ Gas Ltd.'s Statement of Intent to Increase Gas Rates.

6. Adopt a Resolution Authorizing the City's Bond Counsel, the City's Financial Advisor, City Manager and Staff to proceed with Arrangements for the Sale of Water and Sewer System Revenue Refunding Bonds, Series 2009.
7. Authorize the City Manager to Execute a Contract with Soper Fabric Products, Ltd. in the Amount of \$64,300 to Repair and Replace the Tensile Fabric for the Sails at Celebration Park.
8. Authorize the City Manager to Execute a Ground Lease Agreement Between the City of Allen and Blue Sky Sports Center of Allen, L.P. for the Lease of Property at 900 East Main Street for the Development of an Indoor Soccer Facility and Supporting Infrastructure.
9. Authorize the City Manager to Execute a Professional Services Agreement with Solutions for Local Control, LLC in the Amount of \$3,000 per Month for Legislative Consulting Services.
10. Award Bid and Authorize the City Manager to Execute a Contract with Criterion Contractors, Inc. for Replacing the HVAC Units at the Chase Oaks Golf Course Club House and Establish a Project Budget of \$69,438.
11. Award Bid and Authorize the City Manager to Execute a Contract with Progressive Services dba Progressive Roofing for Replacing Roofing at the Chase Oaks Golf Course Club House in the Amount of \$60,600 and Establish a Budget of \$72,720.
12. Award Bid and Authorize the City Manager to Execute a Contract with Jim Bowman Construction, Inc. for the Construction of the Fountain Gate Drainage Project for an Amount Not to Exceed \$65,991.50 and Establish a Project Budget of \$98,000.
13. Receive Investment Report for the Period Ending September 30, 2008.
14. Receive Financial Report for the Period Ending September 30, 2008 (unaudited).
15. Receive the Summary of Property Tax Collections as of December 2008.
16. Receive the CIP (Capital Improvement Program) Status Report.

**Other Business.**

17. Calendar.

■ February 9, 10 – Collin County Day/Austin

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

- February 7 – Celebrate Allen!

**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 –  
Annual Performance Review of the City Manager
20. Reconvene and Consider Action on Items Discussed during Executive Session.

**Adjournment.**

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Shelley B. George, City Secretary

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**ALLEN CITY COUNCIL**

**REGULAR MEETING**

**JANUARY 13, 2009**

**Present:**

Stephen Terrell, Mayor

**Councilmembers:**

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor

**City Staff:**

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney

**Workshop Session**

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With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:20 p.m. on Tuesday, January 13, 2009, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Briefing Regarding Requirements for Burying Overhead Utilities
- 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 7:03 p.m. on Tuesday, January 13, 2009.

**Call to Order and Announce a Quorum is Present**

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With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:09 p.m. on Tuesday, January 13, 2009, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

**Pledge of Allegiance**

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**Public Recognition**

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**1. Citizens' Comments.**

**ALLEN CITY COUNCIL  
REGULAR MEETING  
JANUARY 13, 2009**

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2. **Presentation of a Proclamation by 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 Team Year."**

**Consent Agenda**

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

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.**

**RESOLUTION NO. 2794-1-09(R):** 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.

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.**

**RESOLUTION NO. 2795-1-09(R):** 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.

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.**

**RESOLUTION NO. 2796-1-09(R):** 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.

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

**ALLEN CITY COUNCIL  
REGULAR MEETING  
JANUARY 13, 2009**

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**RESOLUTION NO. 2797-1-09(R):** 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.

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.**

The motion carried.

**Regular Agenda**

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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.**

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

**MOTION:** Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Sedlacek, the Council voted seven (7) for and none (0) opposed to continue the public hearing to the February 13, 2009, Regular Meeting. The motion carried.

15. **Consider an Appeal of Sign Control Board Action on October 20, 2008, to Grant a Variance to 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.**

The following individuals spoke in regarding to the appeal:  
Bill Kelly, property manager, 2230 LBJ Freeway, Dallas, Texas;  
Maury Young, tenant, 1340 Red Oak Trail, Allen, Texas; and  
Troy Easton, tenant, 1201 E. Main Street, #230, Allen, TX 75002.

**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 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. The motion carried.

**ALLEN CITY COUNCIL  
REGULAR MEETING  
JANUARY 13, 2009**

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**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.**

**RESOLUTION NO. 2798-1-09(R):** 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.

**MOTION:** Upon a motion made by Councilmember Sedlacek and a second by Council McGregor, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 2798-1-09(R), as previously captioned, setting new rates for residential and commercial water and sewer service. The motion carried.

**Other Business**

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**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.
- Council recognized Boy Scout Troop 223 in attendance as a requirement for obtaining the communications merit badge.
- Council congratulated Mr. Vargas on his 10<sup>th</sup> anniversary as Allen's City Manager.
- Council requested information regarding painting the water tower to honor the AHS Football Team. Mr. Vargas stated that estimates for the project are \$30-40,000.

**Executive Session**

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The Executive Session was not held.

**Adjourn**

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**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 8:12 p.m. on Tuesday, January 13, 2009. The motion carried.

These minutes approved on the 27<sup>th</sup> day of January, 2008.

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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**Shelley B. George, CITY SECRETARY**

**ALLEN CITY COUNCIL  
REGULAR MEETING  
JANUARY 13, 2009**

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**ALLEN CITY COUNCIL**  
**SPECIAL CALLED WORKSHOP**  
**JANUARY 17, 2009**

**Present:**

Stephen Terrell, Mayor

**Councilmembers:**

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor

**City Staff:**

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney

Bret McCullough, Chief Building Official

Steve Massey, Community Services Director

Robert Winningham, Economic Development  
Director

John Baumgartner, Engineering Director

Kevin Hammeke, Finance Director

Bill Hawley, Fire Chief

Laura Morrow, HR Director

Sid Hudson, IT Director

Jeff Timbs, Library Director

Tim Dentler, Parks and Recreation Director

Ogden "Bo" Bass, Planning and Development  
Assistant Director

Bill Rushing, Police Chief

Teresa Warren, Public and Media Relations Officer

**Facilitator:**

Karen S. Walz, Strategic Community Solutions

Rollie Waters, Waters Consulting

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

**Call to Order and Announce a Quorum is Present**

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With a quorum of the Allen City Council present, the Special Called Workshop Session of the Allen City Council was called to order by Mayor Terrell at 8:40 a.m. on Saturday, January 17, 2009, in the Ballroom at the Hilton Garden Inn, 706 Central Expressway South, Allen, Texas.

**Workshop**

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1. Introductions/Overview
2. Dynamic Communication Workshop
3. Strategic Planning Process: Overview of the Approach for the Afternoon
  - Review Management Staff Report

**ALLEN CITY COUNCIL  
SPECIAL CALLED WORKSHOP  
JANUARY 17, 2009**

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**Lunch Served: 12:00 p.m. – 1:00 p.m.**

**4. Goals for Strategic Plan 2009: Identify & Prioritize Most Pressing Issues for 2009**

- Identify Top Accomplishments in 2008
- Review Current Strategic Plan Goals & Strategies
- Discuss Priority Issues for 2009
  - Identify Most Pressing Issues for 2009
  - Prioritize Top Issues
  - Further Define Top Issues

**5. Items of Interest**

**Adjourn**

Mayor Terrell called for the adjournment of the Special Called Workshop Session of the Allen City Council at 4:57 p.m. on Saturday, January 17, 2009.

These minutes approved on the 27<sup>th</sup> day of January, 2009.

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	Tuesday, January 27, 2009
<b>SUBJECT:</b>	Adopt a Resolution Suspending the Effective Date of CoServ Gas Ltd.'s Statement of Intent to Increase Gas Rates
<b>STAFF RESOURCE:</b>	Shelli Siemer, Assistant City Manager
<b>PREVIOUS COUNCIL ACTION:</b>	None
<b>ACTION PROPOSED:</b>	Adopt Resolution

**BACKGROUND**

On December 18, 2008, CoServ Gas Ltd. (CoServ) filed with the City a Statement of Intent to increase rates for residential and commercial customers in the Company's service area. The system wide rate change would increase CoServ's revenues by \$2.9 million, an overall total revenue increase of approximately five percent (5%).

CoServ's most recent rate case was filed by the Company in 2004. The City, participating in a coalition with other cities served by CoServ, ultimately settled CoServ's rate request in 2005, reducing the Company's requested increase by more than fifty percent.

The law provides that a rate request made by a natural gas utility cannot become effective until 35 days following the rate request filing. The law permits the City to suspend the effective date for 90 days to allow the City time to evaluate the filing. There are 24 cities included in CoServ's rate filing, which will work together as a Coalition through the rate review process. The resolution also authorizes the City to work together with other cities served by CoServ to investigate the rate increase request, negotiate with the Company, intervene and participate in the litigation of any necessary administrative proceedings or court litigation related to an appeal of city action taken regarding the Company's filing. If the suspension period is not changed by CoServ, the City must take final action on CoServ's request to raise rates by April 23, 2009.



**BUDGETARY IMPACT**

Like the 2004 rate case, it is not anticipated that there will be any assessment or monetary encumbrance for participating cities. CoServ will reimburse cities' rate case expenses. However, because the Company is permitted by law to surcharge its customers to recover rate case expenses, it is important to be cost efficient while working for the best possible outcome for ratepayers. In the 2004 rate case, the coalition was able to significantly reduce the Company's requested increase while keeping cities' total rate case expenses to less than \$1 per customer.

**STAFF RECOMMENDATION**

Staff recommends the City Council adopt a resolution suspending CoServ's application to increase gas rates.

**MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_suspending the effective date of CoServ Gas Ltd.'s requested rate changes to permit the City time to study the request and to establish reasonable rates.*

**ATTACHMENT**

CoServ Resolution

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SUSPENDING THE EFFECTIVE DATE OF COSERV GAS LTD.'S REQUESTED RATE CHANGES TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE COSERV SYSTEM TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; AUTHORIZING INTERVENTION IN THE PROCEEDING AT THE RAILROAD COMMISSION; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY.**

**WHEREAS**, on or about December 18, 2008, CoServ Gas Ltd. ("CoServ"), filed with the City of Allen a Statement of Intent to change gas rates in all municipalities within the CoServ System; and,

**WHEREAS**, it is reasonable for the City of Allen to cooperate with other cities in a review of the Company's Statement of Intent and to coordinate the hiring and direction of legal counsel and consultants and to negotiate with the Company and direct any necessary litigation; and,

**WHEREAS**, Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and,

**WHEREAS**, Gas Utility Regulatory Act § 103.022 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

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

**SECTION 1.** The January 23, 2009, effective date of the rate request submitted by CoServ be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

**SECTION 2.** The City is authorized to cooperate with other cities in the CoServ service area to hire and direct legal counsel and consultants, negotiate with the Company, and to intervene and participate in any necessary administrative proceedings or court litigation associated with an appeal of city action.

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

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

**SECTION 5.** A copy of this Resolution shall be sent to Charles D. Harrell, Chief Financial Officer, CoServ Gas Ltd., 7701 South Stemmons, Corinth, Texas 76210-1842 and to Kristen Doyle, counsel for Cities Served by CoServ at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Ste. 1900, Austin, Texas 78701.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 27TH DAY OF JANUARY, 2009.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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**Shelley B. George, CITY SECRETARY**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	Tuesday, January 27, 2009
<b>SUBJECT:</b>	Adopt a Resolution Authorizing the City's Bond Counsel, the City's Financial Advisor, City Manager and Staff to Proceed with Arrangements for the Sale of Water and Sewer System Revenue Refunding Bonds, Series 2009
<b>STAFF RESOURCE:</b>	Kevin Hammeke, Director of Finance Joanne Stoehr, Assistant Director of Finance
<b>PREVIOUS COUNCIL ACTION:</b>	None
<b>ACTION PROPOSED:</b>	Adopt Resolution

### **BACKGROUND**

Attached is a resolution prepared by the City's bond counsel, Fulbright & Jaworski L.L.P., that authorizes the City staff, financial advisor, and bond counsel to proceed with all necessary arrangements related to the sale of Water and Sewer Revenue Refunding Bonds, Series 2009.

This new bond issue is for the purpose of providing funds to refund the remaining portion of the outstanding 1999 Water and Sewer System Revenue Bonds in accordance with the legal documents authorizing their issuance. The existing bonds with maturity dates each year from 2010 through 2019 and interest rates ranging from 4.4% to 4.9%, will be called at a price equal to 100% of the remaining par value totaling \$5,695,000.

The Series 2009 Water and Sewer Revenue Refunding Bonds par amount is estimated at \$5,775,000 with interest rates ranging from 3% to 4%. The proposed issue keeps the same maturity dates. Based on current insured, non-bank qualified rates, the estimated refunding as of Monday, January 19 produces a net present value savings of approximately \$318,125 or about 5.6% of the refunded bonds. The net present value takes into consideration the time value of money and the structuring or timing of the future debt service.

The bonds are expected to be sold at a premium. The premium and cash contribution will cover expenses related to issuance costs for ratings, printing, bond counsel fees, underwriter's fees, financial advisory fees, and bond insurance.

The City will apply to Moody's Investors Service, Inc. and Standard & Poor's Corporation for ratings on the bond issue. Bond insurance will also be considered for its financial feasibility.

The bond sale information and ordinance authorizing the issuance of the bonds will be presented to the City Council at the February 24 Council meeting.

### **BUDGETARY IMPACT**

Depending upon the final interest rates, the Water and Sewer Fund debt payments associated with the issuance of \$5,775,000 in refunding bonds are expected to decrease between \$15,680 to \$37,473 annually during 2009 through 2019 resulting in a net present value savings of approximately \$318,125.

### **STAFF RECOMMENDATION**

Staff recommends adopting the resolution authorizing the City's Bond Counsel, the City's Financial Advisor, City Manager and Staff to proceed with arrangements for the sale of Water and Sewer System Revenue Refunding Bonds, Series 2009.

### **MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_ authorizing the City's Bond Counsel, the City's Financial Advisor, City Manager and Staff to proceed with arrangements for the sale of Water and Sewer System Revenue Refunding Bonds, Series 2009.*

### **ATTACHMENT**

Resolution Water/Sewer Refunding Bonds

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING A DATE FOR THE SALE OF REVENUE REFUNDING BONDS; AUTHORIZING APPROPRIATE PERSONNEL AND CONSULTANTS TO PROCEED WITH ARRANGEMENTS AND THE PREPARATION OF DOCUMENTS FOR THE ISSUANCE AND SALE OF SUCH BONDS AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.**

**WHEREAS**, the City Council has been presented with information demonstrating that in today's market the refunding of certain outstanding revenue bonds of the City will result in a net present value savings of not less than 3% and staff of the City has requested approval and authorization to proceed with the issuance and sale of revenue refunding bonds; and,

**WHEREAS**, the City Council hereby finds and determines such approval and authorization to proceed with the sale of such revenue bonds to refinance certain outstanding bonds of the City should be given;

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

**SECTION 1.** The City Manager and staff for the City, together with the City's financial advisor, Estrada, Hinojosa & Company, Inc. and bond counsel, Fulbright and Jaworski L.L.P., are hereby authorized and directed to proceed on behalf of the City with the preparation of the documents and make the appropriate arrangements for the offering and sale of revenue refunding bonds in the approximate amount of \$5,775,000, and the City Manager and staff of the City are hereby authorized and directed to assist and furnish said consultants with information and data, including the amount of bonds ultimately to be offered for sale, necessary for the preparation of an official statement and other documents for a sale of such bonds to occur and be approved by the City Council at a meeting to be held on or about February 24, 2009.

**SECTION 2.** It is officially found, determined and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business considered at said meeting, including this Resolution, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 3.** This Resolution shall be in force and effect from and after its passage on the date shown below.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 27TH DAY OF JANUARY, 2009.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Shelley B. George, CITY SECRETARY**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Tensile Fabric Sail Repair and Replacement at Celebration Park

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

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Authorize the City Manager to execute a Contract with Soper Fabric Products, Ltd. in the amount of \$64,300 to repair and replace the tensile fabric for the sails at Celebration Park

**BACKGROUND**

The tensile fabric sail structures at Celebration Park were heavily damaged during the tornado event of April of 2008. One sail at the concessions pavilion was torn in several locations and one sail at the lake pavilion was torn beyond repair. Recognizing the product as specialized in nature, and wanting to get as close a match as possible to the original fabric, Staff arranged for Soper, the manufacturer of the original sails installed in 2003, to visit the park and assess the damage and initiate repairs and replacement.

Upon completing the assessment Soper informed staff that the concession pavilion fabric needed to be repaired as quickly as possible to avoid further tearing and loss of the entire member. The total amount of the repair was \$22,000. Being an emergency repair, the City Manager authorized the wiring of \$15,000 of the funds needed for the repair in order to initiate the repair.

Upon completion of the repair, staff expressed concern about the appearance of the work and informed Soper that the remainder of the payment would be held until the company agreed to re-work the patching to staff's satisfaction upon installation of the lake pavilion fabric. Soper agreed to re-work the repairs to staff's satisfaction in exchange for the remainder of the repair charge (\$7,000) and has submitted a proposal that provides for the final payment of the repairs upon satisfactory completion, and for the replacement of the destroyed sail at the lake pavilion (\$57,300).

**BUDGETARY IMPACT**

Funds for the repair and replacement of the sails at Celebration Park are identified in the Strategic Planning Fund. Except for a small percentage, the cost of this work will be reimbursed by the Texas Municipal League which is the City's insurance carrier for property and casualty exposures.

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to enter into a sole source contract with Soper Fabric Products, Ltd. for the repair and replacement of tensile fabric sails at Celebration Park. The recommended contract amount is \$64,300 of which \$7,000 is a retainer for completing initial repair work at the concessions pavilion, and \$57,300 for the installation of a complete sail at the lake pavilion.

**MOTION**


*I make a motion to authorize the City Manager to execute a contract with Soper Fabric Products, Ltd. in the amount of \$64,300 to repair and replace the tensile fabric for the sails at Celebration Park.*

**ATTACHMENT**

Quote

Sopers Standard Agreement



<b>SOPER FABRIC PRODUCTS LTD.</b>			
<b>Mail:</b> PO Box 277 Hamilton, Ontario L8N 3E8 <a href="http://www.sfpstructures.com">www.sfpstructures.com</a>	<b>Delivery:</b> 144 Chatham Street Hamilton, Ontario L8P 2B6 <a href="mailto:jwg@sfpstructures.com">jwg@sfpstructures.com</a>	Toll Free: (800) 263-8334 Phone: (905) 528-7936 Fax: (905) 631-2143	
			<b>Quotation #: 4629_RV2</b>

**Date:** 01/16/09

**# of Pages:** 2

**Recipient:** Brian Bristow  
**Company:** City of Allen, Parks & Recreation  
**Address:** 305 Century Parkway  
 Allen, TX 75013

**Phone:** 214 509 4700  
**Fax:** 214 509 4710  
**Email:** [bbristow@cityofallen.org](mailto:bbristow@cityofallen.org)

**Customer #:**

**From:** Jamie Gallagher, ext. 228  
[jgallagher@sopers.com](mailto:jgallagher@sopers.com)

**Outside Sales:**  
 Jamie Gallagher

**Re:** Replacement sail panels

Qty	Product #	Description	Price
		To supply and install of; Item# 1: 1 only replacement Lake Pavilion-Sail "B" panel based on use of PTFE SF-II fabric and 2 new replacement edge catenary cables, and use of existing structural components. <b>Price is \$ \$57,300 USD</b> (Breakdown -Supply @ \$37,500, and install @ \$19,800)  Item#2: Complete repair of Soccer Pavilion-Sail "D", by means of replacing the tail of membrane below horizontal seam above cable edge repair. Price is no charge for the work (acknowledging that previously invoice will be paid in full upon completion. \$7,000 outstanding)	See body of quote

Note. Shop drawing drawings will be submitted upon receipt of order.

Installation: Included

Installation prices based on continuous, free and clear access to site throughout duration of install period. **Lift rental accounted for.**

Delivery: 8-10 weeks after design drawings are approved by customer (subject to roll goods availability at time of order).

Quotation valid for 30 days

U.S. Terms:

Applicable State Taxes: Extra

F.O.B. Point: Destination

Terms: 50% deposit, balance Net 30 days

## TERMS AND CONDITIONS

1. All prices are F.O.B. Soper's plant, Hamilton, Ontario. All transportation and rigging charges to be paid by the Purchaser, unless otherwise specified.
2. Title to all the goods or equipment pursuant to this quotation is to remain in Soper's until the full purchase price is paid. Failure to pay the purchase price of the goods or equipment when due, shall give Soper's the right, without liability, to repossess the equipment with or without notice. This agreement shall be considered a conditional sales contract between the parties and Soper's shall possess all the rights of a conditional vendor.
3. Commencing upon the delivery of the goods or equipment to a common carrier for delivery to the Purchaser, all the responsibility for the loss or damage of the goods or equipment shall be at the risk of the Purchaser.
4. Delivery of the goods or equipment on a specified date is contingent upon Soper's having promptly received all specifications, final approved prints and any other details deemed by Soper's to be essential to the proper execution of the order. Soper's will not be liable for any delay in the delivery caused directly or indirectly by fire, accidents, labour disputes, or any other conditions beyond Soper's control.
5. Prices of the goods or equipment stated herein are based on the cost of material, labour and transportation existing as of the date of this quotation. The prices quoted herein shall be amended to reflect any variation in said costs between the date hereof and the date of shipment by Soper's to the purchaser. Contracts or orders are not subject to cancellation, change, reduction in amount or suspensions of deliveries except with Soper's consent and upon terms which reimburse Soper's for all expenses and overhead incurred to date.
6. Soper's warrants its products against defects in materials and workmanship for sixty days from delivery to Purchaser. Soper's agrees to repair or replace as Soper's so decides any defective parts or to make up any short count, F.O.B. Soper's Hamilton plant, provided that the Purchaser's claim is made in writing and received by Soper's within thirty days of the shipping date. The foregoing warranty is in lieu of all other warranties and conditions expressed or implied and of all obligations and liabilities on the part of Soper's for damages arising out of Soper's negligence or in connection with the use or performance of the goods and equipment, including any implied warranties or conditions of merchantable quality or fitness for any particular purpose. All of Soper's warranty obligations herein are subject to the Purchaser using or operating the goods or equipment supplied under this contract in a reasonable and proper manner at all times and the purchaser promptly notifying Soper's in writing as aforesaid of any defect or claim under this warranty.
7. Where applicable, prior to delivery, the Purchaser is to clear a site acceptable to Soper's for installing the equipment, and to maintain the site free from any debris, water, obstructions and hazards which Soper's may deem to hinder the safe and expeditious installation of the equipment. The Purchaser is to provide safe and convenient storage space, watchman service and/or theft protection deemed necessary by Soper's for Soper's tools, material and equipment and to also provide adequate bench and working space for Soper's installation crew.
8. There shall be added to the prices shown herein amount equal to any taxes, however designated, levied or based on such prices or on the equipment, and any taxes or amounts in lieu thereof paid or payable by Soper's in respect of the foregoing.
9. Goods or equipment returned to Soper's plant, Hamilton, Ontario shall not be accepted by Soper's unless:
  - a) Soper's has issued a written authorization permitting the return of said goods or equipment; and
  - b) the goods or equipment is shipped prepaid-unless otherwise specified in letter of authorization; and
  - c) the goods or equipment is properly wrapped and packaged prior to shipping and/or delivery; and,
  - d) an advise note accompanies the shipment showing:
    - i) details of contents
    - ii) Soper's order of invoice number
    - iii) copy of Soper's written authorization in 9 (a) and detailed reason for return.
10. Soper's reserves the right to modify the specifications of the goods or equipment providing that the modifications will not materially affect the performance required by the Purchaser.
11. This quotation is valid for the time period set out on the reverse of this quotation and if accepted by the Purchaser within the aforesaid time period shall become a binding contract of purchase and sale between the parties.
12. This agreement constitutes the entire contract between the parties and there are no collateral agreements, representations, warranties contained, expressed or implied, statutory or otherwise, other than as contained herein. Stenographic and clerical errors are subject to correction.
13. This agreement shall be governed by the laws of the Province of Ontario.

State of Texas           §  
                                  §  
                                  §                   **Construction Services Agreement**  
County of Collin       §

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Soper Fabric Products, Ltd. (the “Contractor”) acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City desires to engage the services of Contractor as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Contractor desires to render services for the City in accordance with the terms and conditions set forth in this Agreement in connection with the repair and replacement of tensile fabric sails at Celebration Park, more specifically described and outlined in Contractor’s proposal attached as set forth in Exhibit “A.” (the “Project”);

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

**Article I**  
**Term**

1.1 The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the services are completed unless sooner terminated as provided herein.

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event of such termination the Contractor shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

**Article II**  
**Scope of Services**

2.1 The Contractor agrees to provide the services for the Project as set forth in the Contractor’s proposal attached. Deviations from the scope may be authorized in writing from time to time by the City.

2.2 The parties acknowledge and agree that any and all opinions and cost estimates provided by the Contractor represent professional opinions consistent with the level of care and skill ordinarily exercised by other members of Contractor’s profession currently practicing in the same locality under similar conditions.

2.3 All materials and reports prepared by the Contractor in connection with this Agreement are “works for hire” and shall be the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports; however, any reuse of materials and reports shall be without risk or liability to Contractor.

### **Article III Schedule of Work**

The Contractor agrees to commence services upon written direction from the City and to satisfactorily perform the required services in accordance with a work schedule mutually established by the City and the Contractor, as best suited to allow the maximum continued use of the facility during the course of the work.

### **Article IV Compensation and Method of Payment**

4.1 The City shall compensate the Contractor for the services by payment of a fee of ***\$64,300.00 (sixty-four thousand three-hundred dollars and no/100 cents)***. Unless otherwise provided herein, payment to the Contractor shall be monthly based on the Contractor’s monthly progress report and detailed monthly itemized statement for services that shows the names of the Contractor’s employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The monthly invoices shall be submitted on or before the fifteenth (15<sup>th</sup>) day of each calendar month. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein. The final payment of the fee shall be made after satisfactory completion of the services and City acceptance of the design, and the submittal of “as built drawings,” or record drawings as applicable.

4.2 The Contractor shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

### **Article V Devotion of Time; Personnel; and Equipment**

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

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

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

5.4 The City agrees to provide the information set forth in Exhibit "D" prior to commencement of work by the Contractor.

5.5 The Contractor shall submit monthly progress reports to the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article VI Miscellaneous**

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

6.2 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

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

6.4 **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.5 **Governing Law.** The laws of the State of Texas shall govern this Agreement; 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 personal and subject matter jurisdiction of said court.

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

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

6.8 **Independent Contractor.** It is understood and agreed by and between the parties that in satisfying the conditions of this Agreement, the Contractor is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. As such, the City shall not: train the Contractor, require the Contractor to complete regular oral or written reports, require that Contractor devote his full-time services to the City, or dictate the Contractor's sequence of work or location at which the Contractor performs his work.

6.9 **Right-Of-Access.** The City will furnish right-of-access on the land for the Contractor to perform the required surveys, or other necessary investigations. The Contractor will take reasonable precautions to minimize damage to the land in the performance of such surveys and investigations. The City will explain to landowners that some damage to vegetation may be unavoidable when obtaining access to the site, and in performance of the survey activities.

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

If intended for City:

City of Allen  
Parks & Recreation Dept.  
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

If intended for Contractor:

Soper Fabric Products, Ltd.  
144 Chatham St.  
Hamilton, Ontario, L8P 2B6

6.11 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such



counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

6.12 **Exhibits.** The Exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 **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.

6.14 **INDEMNIFICATION.** CONTRACTOR SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY CONTRACTOR TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL 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").

6.15 **Audits and Records.** The Contractor agrees that during the term hereof the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

6.16 **Insurance.**

- (a) Contractor shall during the term hereof maintain in full force and effect the following insurance: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Contractor's employees involved in the provision of services under this Agreement.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers

Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and be rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**City of Allen, Texas**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Soper Fabric Products, Ltd.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	Tuesday, January 27, 2009
<b>SUBJECT:</b>	Hillside Ball Fields Ground Lease to Blue Sky Sports Center
<b>STAFF RESOURCE:</b>	Tim Dentler, Director of Parks and Recreation Pete Smith, City Attorney
<b>PREVIOUS COUNCIL ACTION:</b>	None
<b>ACTION PROPOSED:</b>	Execute a Ground Lease Agreement between the City of Allen and Blue Sky Sports Center of Allen, L.P. for the lease of property at 900 East Main Street for the development of an indoor soccer facility and supporting infrastructure

### **BACKGROUND**

A final agreement has been developed for the Ground Lease between the City of Allen and Blue Sky Sports Center of Allen, LP. The agreement provides for a twenty-five year term, renewable for another twenty-five years following the initial term, for the lease of property located at 900 East Main Street, also know as the Hillside Ball field property.

The lease requires Blue Sky Sports Center of Allen to construct a facility which meets all requirements of the Allen Land Development Code. More specifically it requires the construction of the building, which will house a full-size indoor soccer field and a smaller youth indoor soccer field. Restrooms, office space, a pro-shop, a sport court, and a concession area will also be included in this facility which will occupy approximately 50,000 square feet of the site.

Additional requirements for the development of this facility include the construction of the supporting parking facilities (a minimum of 150 spaces), along with required landscaping. At the option of Blue Sky, there may be additional outdoor spaces constructed adjacent to the indoor facility for the use of Blue Sky. All of the above amenities will be developed at the cost of Blue Sky. The City of Allen has agreed to prepare a site concept plan in addition to constructing other recreational infrastructure that will be available to the public.

Blue Sky's schedule of compensation to the City of Allen is identified in the Budgetary Impact portion of the communication.

**BUDGETARY IMPACT**

With the Execution of this agreement, Blue Sky will be obligated to pay an annual lease amount of \$12,000 for the first three years and the greater of the annual lease amount of \$12,000 or 1% of the gross revenue up to year 9. Following year 9 the lease payments will increase based upon the following schedule or 1% of gross revenue, the greater of the two.

Lease Year 1 through Lease Year 9      \$12,000

Lease Year 10 through Lease Year 19    \$16,000

Lease Year 20 through Lease Year 29    \$20,000

Lease Year 30 through Lease Year 39    \$23,500

Lease Year 40 through Lease Year 50    \$26,750

**STAFF RECOMMENDATION**

Authorize the City Manager to Execute a Ground Lease Agreement between the City of Allen and Blue Sky Sports Center of Allen, L.P.

**MOTION**

*I make a motion to authorize the City Manager to Execute a Ground Lease Agreement between the City of Allen and Blue Sky Sports Center of Allen, L.P. for the lease of property at 900 East Main Street for the development of an indoor soccer facility and supporting infrastructure.*

**ATTACHMENT**

Blue Sky Agreement with Legal Description and Concept Plan

## ALLEN GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Lease") is made and entered by and between the City of Allen, Texas, a Texas municipal corporation (the "Lessor" or "City") and Blue Sky Sports Center of Allen, LP, a Texas limited partnership, (the "Lessee") acting by and through their respective authorized representatives.

### RECITALS

**WHEREAS**, the City is the owner of the fee simple title in that certain tract of land described in Exhibit "A" (the "Land") located in Allen Collin County, Texas; and

**WHEREAS**, the Lessee desires to lease the Land from the Lessor upon the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows.

### Article I Definitions

For purposes of this Lease, the following terms shall have the meanings indicated unless the context clearly indicates otherwise:

**"Commencement Date"** means the last date of execution hereof.

**"Commencement of Construction"** means that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Facilities; (ii) all necessary permits for the construction of the Facilities, on the Land pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Facilities, has commenced.

**"Completion of Construction"** means that: (i) the construction of the Facilities, on the Land has been substantially completed; (ii) a final, permanent certificate(s) of occupancy for the occupancy of the Facilities has been issued by the City.

**"Concept Plan"** means the preliminary conceptual plan for the development of the Facility on the Leased Premises as depicted on Exhibit "B". The Concept Plan shall be replaced and superseded by the Site Plan as provided in Article VI.

**"Days"** means calendar days. In computing any period of time described in this Lease, the last day of a designated period of time shall be included in the time period, unless it is a Saturday, Sunday or legal holiday, in which event the period of time runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

**"Expiration Date"** means the last day of the twenty-five (25) full calendar years after the Commencement Date, unless the Lessee exercises the option to extend the Lease Term for the Renewal Term.

**"Facilities"** means an indoor soccer facility containing approximately 50,000 to 55,000 square feet of space under roof including concession areas, retail/pro shop area, up to four lease spaces for retail uses, party room, restrooms, locker rooms, arcade, lobby area, spectator seating, at least two outdoor sport courts for basketball and/or volleyball, one large full size outdoor soccer field, one junior size outdoor soccer field together with 150 parking spaces and landscaping as generally depicted in the Concept Plan, including parking areas, paving, landscaping and other improvements to be constructed on the Land more fully described in a submittal filed with the Lessor for approval (the "Facilities Plan") which contains the details of the Facilities to be constructed on the Land.

**"Gross Revenue"** means all money received by Lessee subsequent to the Rent Commencement Date as a result of the sale of goods or the provision of services, (including fees charged for lessons and instruction except as defined herein), on or from the Leased Premises, but shall not include:

- (1) Cash refunds or credits allowed on returns by customers;
- (2) Sales taxes, excise taxes, gross receipts taxes, admission taxes, occupancy taxes, use taxes and other similar taxes now or later imposed upon the sale of food, beverages, merchandise or services and paid by Lessee to the appropriate taxing authority, whether added to or included in the selling price;
- (3) Any portion of fees charged for lessons and instruction (e.g., soccer, volleyball or square dancing) to the extent that such fees or any portion thereof are retained by the individuals giving lessons or instruction and are not paid, in whole or in part, to Lessee (including both instances where the fees, or portions thereof, are paid directly to the instructing professionals and where the instructing professionals receive bonuses or commissions based on the fees received from lessons or instruction);
- (4) The actual uncollectible amount of any check or bank draft received by Lessee as payment for goods or services and returned to Lessee from a customer's bank as being uncollectible (commonly "non-sufficient funds" or "stop-payment" checks);
- (5) The actual uncollectible amount of any charge or credit account (commonly "bad debts ") incurred by Lessee for the sale of merchandise or services;
- (6) The actual uncollectible amount of any sale of merchandise or services for which Lessee accepted a credit card or debit card;
- (7) Sales or trade-ins of machinery, vehicles, trade fixtures or personal property used in connection with Lessee's operation of the Leased Premises;

- (8) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of Lessee's business where such exchange or transfer is not made for the purpose of avoiding a sale which would otherwise be made from or at the Leased Premises;
- (9) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- (10) The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;
- (11) The amount of any gratuities paid or given by customers to or for employees or independent contractors of Lessee;
- (12) Amounts attributed to meals served or provided to employees or independent contractors of Lessee;
- (13) The amount of any sales of merchandise discounted to employees or independent contractors;
- (14) Receipts from the sale of waste or scrap materials resulting from Lessee's operations; and
- (15) The proceeds of any casualty insurance paid for damages to or destruction of the Leased Premises or any improvements or equipment thereon, actually used for Restoration (as defined in Section 10.02).
- (16) The proceeds of any business interruption insurance.

**"Impositions"** means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Leased Premises or any portion thereof or with respect to any property located thereon or any business conducted thereon.

**"Initial Term"** means a period beginning on the Commencement Date and ending twenty-five calendar years thereafter.

**"Land"** means the real property described in Exhibit A.

**"Lease Term" or "Term"** shall commence on the Commencement Date and continue through until the Expiration Date, subject to early termination as expressly provided in this Lease. Lease Term shall also include and refer to the Renewal Term following its commencement.

**"Lessor"** means the City of Allen, Texas acting by and through its city manager or designated representative.

**"Maximum Rate"** means the greatest of the rates of interest from time to time permitted under applicable federal and state law. To the extent of the applicability of Chapter 303, Finance Code, Texas Revised Civil Statutes, the Maximum Rate shall be the highest permitted rate based upon the "indicated rate ceiling", but to the extent now or hereafter permitted by Texas law, Lessor may from time to time implement, withdraw and reinstate any ceiling as an alternative to the indicated rate ceiling, including the right to reinstate the indicated rate ceiling. Wherever it is provided herein that a monetary sum shall be due to Lessor together with interest at the Maximum Rate and at such time there is no Maximum Rate, interest shall be due at the rate of eighteen percent (18%) per annum.

**"Lease Year"** means during the Term of this Lease, each twelve-month period commencing on the 1st day of January next following the Rent Commencement Date and ending on the next following 31st day of December, and each successive twelve-month calendar period thereafter.

**"Permitted Use"** means use of the Land for the Facilities, open to the public and serving the adjacent business community and citizens of the City of Allen, Texas.

**"Premises"** or **"Leased Premises"** means the Land and the Facilities following Completion of Construction thereof.

**"Renewal Term"** means the extension of the Initial Term for one period of twenty-five (25) years after written notice as provided herein.

**"Rent"** means Minimum Rent and Percentage Rent as defined in Article III.

**"Rent Commencement Date"** means the date on which Lessee shall open the Facility or any other substantial part of the Facilities for general use by the public, which date shall not be later than the date the first Certificate of Occupancy is issued by the City for the Facilities.

**"Site Plan"** means a site plan for the development of the Leased Premises for the Facilities as approved by the Lessor as provided in Article VI. The Site Plan is not a site plan or other development plan that must be approved by the City pursuant to the Allen Land Development Code but rather is a separate final plan substantially similar to the Concept Plan for the development of the Leased Premises for the Facilities.

Each of the foregoing definitions and basic provisions shall be construed in conjunction with the references thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the foregoing definitions and basic provisions shall be construed to incorporate each defined term set forth above under such definition or provision.

## **Article II**

### **Demise of Leased Premises; Option to Purchase Facilities**

2.01 **Lease of Land.** The Lessor, in consideration of the covenants, agreements and undertakings of Lessee as herein set forth, does hereby lease, let and demise unto Lessee, and Lessee does hereby lease from Lessor, the Land, to have and to hold for the Lease Term, all upon and subject to the terms and conditions set forth in this Lease.

2.02 **Lease Term.** The Lease Term shall be twenty-five calendar years (plus, if the Commencement Date is on a day other than the first day of a calendar month, the period of time from the Commencement Date to the first day of the next calendar month), beginning on the Commencement Date and ending on the Expiration Date (the "Initial Term"). This Lease will terminate without further notice when the Lease Term expires and any holding over by Lessee after the Lease Term expires, will not constitute a renewal of this Lease or give Lessee any rights under this Lease or to the Land.

2.03 **Renewal Term.** The Lease Term may, upon written notice by the Lessee to the Lessor at least ninety (90) days but not more than one hundred eighty (180) days, prior to the expiration of the Lease Term, be extended for one additional term of twenty-five (25) years (the "Renewal Term") under the same terms and conditions set forth herein. The Lease Term may be extended by the mutual agreement of the parties executed at least ninety (90) days but not more than one hundred and eighty (180) days prior to the expiration of the Renewal Term.

2.04 **"As Is" Condition.** The Premises being leased "AS IS" "and "WITH ALL FAULTS," and Lessor makes no warranty of any kind, express or implied, with respect to the Land. Without limiting the generality of the preceding sentence, it is expressly agreed that Lessor makes no warranty as to the marketability, habitability or fitness for any particular purpose of the Land. Notwithstanding the foregoing, Lessor hereby agrees to remove from the Land, at City's expense, the light poles and backstops prior to the Commencement Date.

2.05 **Memorandum of Lease.** The parties agree to execute, acknowledge and deliver a mutually acceptable form of Memorandum of Lease (which shall, among other things, memorialize the Lease Commencement Date), contemporaneously with the execution and delivery of this Lease, and such Memorandum of Lease shall be recorded in the real property records of Collin County, Texas.

2.06 **Ownership of Facilities upon Lease termination.** Upon expiration of the Lease Term the Facilities shall become the property of the City.

## **Article III**

### **Rent**

3.01 **Rents.** During the Term of this Lease, Lessee shall pay rent to Lessor, without offset or deduction as follows:

- (a) **Minimum Rent.** Lessee agrees to pay to Lessor as fixed Minimum



Rent (herein so called), the following sums:

i.	Lease Year 1 through Lease Year 9:	\$12,000.00
ii.	Lease Year 10 through Lease Year 19:	\$16,000.00
iii.	Lease Year 20 through Lease Year 29:	\$20,000.00
iv.	Lease Year 30 through Lease Year 39:	\$23,500.00
v.	Lease Year 40 through Lease Year 50:	\$26,750.00

The Minimum Rent shall be per Lease Year for each Lease Year commencing with the 1<sup>st</sup> Lease Year and continuing thereafter through the Expiration Date or early termination of this Lease, which amount shall be payable in equal quarterly payments, payable on or before the first day of each calendar quarter (January 1, April 1, July 1, October 1) of each Lease Year, but in any event, shall be considered late after the fifteenth (15th) day of any due date. In the event that the Rent Commencement Date precedes the first day of the first Lease Year, Lessee shall pay to Lessor as rent for the period of time from and including the Rent Commencement Date through the December 31 prior to the first Lease Year (the said period of time being called herein (the "Pre-Commencement Period") a proratable portion of \$12,000.00 calculated pursuant to the following formula; (365 minus the number of days in the Pre-Commencement Period) divided by 365 and multiplied by \$12,000.00. Example: The Rent Commencement Date is June 1; the number of days in the Pre-Commencement Period total 214 (June 1 through December 31); 214/365 times \$12,000.00 equals \$7,923.29 as the rent owed for the Pre-Commencement Period. Rent for the Pre-Commencement Period shall be due and payable in equal installments equal to the number of calendar quarters or partial calendar quarters remaining in the year. As such, the first installment is due on or before the Rent Commencement Date, and the remaining installments are due on or before the first day of each calendar quarter remaining in the year (April 1, July 1, October 1), but in any event, shall be considered late after the fifteenth (15th) day of any due date.

(b) **Percentage Rent**

- (i) During Lease Year three (3) through the Expiration Date of this Lease (whether through the expiration or early termination of this Lease), Lessee shall pay to Lessor an amount of rent equal to the greater of (i) the annual Minimum Rent as provided for above, or (ii) annual Percentage Rent (herein so called) equal to one percent (1%) of Gross Revenue per Lease Year.
- (ii) Payment of Percentage Rent shall be made not later than 120 days following the end of each Lease Year wherein Percentage Rent is applicable, beginning with the third Lease Year and continuing thereafter for each Lease Year during the remainder of this Lease. Payment shall be in an amount equal to the difference between the Percentage Rent as calculated above and the Minimum Rent paid by Lessee for the year for which the Percentage Rent was calculated. Example: Lease Year 9; Minimum Rent of \$12,000.00 due in accordance with Article 4.0 I (1) in Lease Year 9;



Percentage Rent (1% of Gross Revenue) calculated during 120 day period following end of Lease Year 9, and determined to equal \$15,000.00; Lessee pays to Lessor \$3,000.00 (\$15,000.00 - \$12,000.00) as Percentage Rent on or before 120 days following end of Lease Year 9.

3.02 **Late Charge.** If Lessee shall fail to pay any installment of Rent within fifteen (15) days after the same becomes due, Lessee shall pay to Lessor on demand a late charge (the "Late Charge") equal to five percent (5%) of such installment. It is understood and agreed that the Late Charge is for the purpose of reimbursing Lessor for the extra costs and expenses incurred in connection with the handling and processing of late installments of Rent. In addition to the Late Charge, all amounts of Rent or other payment to be made by Lessee to Lessor hereunder shall bear interest at the Maximum Rate. In no event, however, shall the charges permitted under this Section or elsewhere in this Lease, to the extent the same are considered to be interest under applicable law, exceed the maximum rate of interest permitted by applicable law.

3.03 **Place of Payment.** All installments of rent hereunder, when and as the same becomes due and payable, shall be paid in lawful money of the United States at the time to Lessor at the office of the City Manager for the City of Allen, Texas.

3.04 **All Charges Deemed Rent.** Annual Rent and all other amounts becoming payable by Lessee under this Lease shall constitute rent payable hereunder, and in the event Lessee fails to pay any such amount when due according to the terms of this Lease, Lessor shall have all remedies available hereunder or at law or in equity for failure to pay rent. No happening, event, occurrence or situation during the term of this Lease, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay Annual Rent and other charges payable by Lessee under this Lease or relieve Lessee from any of its other obligations under this Lease.

3.05 **Lien for Rent.** In consideration of the mutual benefits arising under this Lease, Lessee hereby grants to Lessor a lien and security interest in all property of Lessee (including all fixtures, machinery, equipment, furnishings, and other articles of personal property now or hereafter placed in or on the Leased Premises by Lessee and owned by Lessee, together with the proceeds from the disposition of those items) (the "Collateral"), now or hereafter placed in or upon the Leased Premises, as security for payment of all rent and other sums agreed to be paid by Lessee herein. The provisions of this Section 3.05 constitute a security agreement under the Texas Uniform Commercial Code, and Lessor has and may enforce a security interest in the Collateral. Except on account of replacement, removal or substitution in the ordinary course of business, the Collateral shall not be removed without the consent of Lessor until all arrearages in rent and other sums of money then due to Lessor hereunder have been paid and discharged. On or before the Rent Commencement Date, Lessee shall execute, as Debtor, two or more Financing Statements, to perfect this security interest pursuant to the Texas Uniform Commercial Code. Lessor may at its election at any time file a copy of this Lease as a Financing Statement. Lessor, as Secured Party, has all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code in addition to and cumulative of the Lessor's liens and rights

provided by law or by the other terms and provisions of this Lease. Notwithstanding the foregoing, Lessor's lien shall be subordinate to (i) any purchase money lien, (ii) any line-of-credit lien secured by the assets, inventory or accounts receivable of Lessee's business, or (iii) any small business administration note, conventional bank note and related security agreements.

**3.06 Books and Records.**

- (a) Lessee agrees to maintain a complete set of books and records in connection with all aspects of and specific to this Lease relating to Gross Revenue, kept and maintained in accordance with generally accepted accounting practices and procedures. Said books and records shall at all reasonable times be available for inspection, copying, audit and examination by Lessor or by properly designated employees or agents of Lessor. Lessor may require the keeping of additional records or accounts relating to Gross Revenue which are customary for the businesses conducted on the Leased Premises and which are reasonably necessary for purposes of identifying, accounting for, and reporting Gross Revenue.
- (b) In order to determine the Gross Revenue received by Lessee, Lessee agrees that, within sixty (60) days following the end of Lease Year 3 and each Lease Year thereafter, it will deliver to the City Secretary a report certified by Lessor's general partner as being true and correct and in a form to be prescribed by and acceptable to the City with sufficient detail to itemize all Gross Revenue received from the Leased Premises including revenue from each of the categories identified in the definition of Gross Revenue.
- (c) Lessor shall have the right, beginning at the end of Lease Year 3, such right not to be exercised more frequently than once every other Lease Year, to audit the books and records of Lessee for the previous two-year period, excluding Lease Year 1, Lease Year 2 and Lease Year 3, which are exempt from such audit pertaining only to the calculation of Gross Revenue produced on and from the Leased Premises so as to confirm the accuracy of the annual report of Gross Revenue described herein. Such audit, if any, shall be undertaken by a nationally recognized firm or independent certified public accountants engaged by Lessor and Lessee, the expense of which is to be paid one-half by Lessor and one-half by Lessee. Lessee shall cooperate by all reasonable means in order to facilitate a timely and accurate completion of such audit. A copy of the report of such audit shall be addressed to each of Lessor and Lessee and shall be delivered to each of Lessor and Lessee at substantially the same time. If such audit reveals that Lessee has understated Gross Revenues, as defined herein, by five percent (5%) or more, then, within thirty (30) days following receipt of such audit report, Lessee shall pay to Lessor the amount of any percentage rent deficiency based on such understated Gross Revenue (with such penalties for late payment as may be applicable

pursuant to other provisions of this Lease). If such audit shall indicate an understatement of Gross Revenue of less than five percent (5%), Lessee, in the manner provided herein, shall pay any Percentage Rent deficiency. If such audit indicates an overstatement of Gross Revenue and, if on account of such overstatement, Percentage Rent in excess of amounts due have been paid by Lessee to Lessor, then such overpayment (less any amounts other than Minimum Rent which shall then be due and owing to Lessor) shall be credited against the next due installment of Minimum Rent. Nothing herein is intended to require Lessee to provide to Lessor, or to allow Lessor to obtain from Lessee, confidential financial and tax return information concerning Lessee and its investors. Lessor cannot require Lessee to provide complete financial statements or documents to Lessor.

- (d) Lessor may, at any time, make inquiries pertaining to the operation of the Leased Premises and the improvements thereon, and Lessee shall respond to such inquiries on a timely basis.

#### **Article IV Utilities and Impositions**

4.01 **Payment of Utilities.** In addition to the payment of Rent, the Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises throughout the Lease Term, including any connection fee or impact fee.

4.02 **Impositions.** Lessee shall pay and discharge all Impositions, taxes, general and special assessments and other similar charges which, during the Term, may be levied on or assessed against the Leased Premises, Facilities, Lessee's Leasehold Interest or Lessee's Tangible Personal Property (including Lessee's leasehold estate therein) and all interests therein and all improvements and other property, including personal property thereon, owned by Lessee. Lessee shall pay all such taxes, charges and assessments to the public officer charged with the collection thereof not less than fifteen (15) days before the same shall become delinquent, and Lessee agrees to indemnify and save harmless Lessor from all such taxes, charges and assessments. Lessee shall have the right in good faith and at its sole cost and expense to contest any such taxes, charges and assessments and shall be obligated to pay the contested amount only if and when such amount is finally determined to be due. Lessee shall give notice to Lessor of its intent to contest any such taxes, charges or assessments, the amount thereof and the entity to which such taxes, charges or assessments are purportedly owed.

4.03 **Payment by Lessor.** Subject to the right of the Lessee to contest taxes, assessments and governmental charges as hereinabove provided, Lessor may, at any time that the payment of any item of taxes, special assessments or governmental charges which Lessee is obligated to pay under the provisions of Section 5.02 remains unpaid, give written notice to Lessee of its default and if Lessee continues to fail to pay such item of taxes, special assessments or governmental charges or to contest the same in good faith, then at any time after fifteen (15) days from the date of such written notice Lessor may pay the items specified in the notice and

Lessee covenants thereupon on demand to reimburse Lessor any amount so paid or expended in the payment of the items specified in the notice, with interest thereon at the Floating Rate (as hereinafter defined) from the date of such payment by Lessor until repaid by Lessee; provided however, if Lessor, without giving the fifteen (15) days notice provided for above, pays any such item which has not been paid by Lessee within the time required in Section 4.02, or which has not then or thereafter been successfully contested by Lessee, Lessee shall nevertheless reimburse Lessor for such item, but without interest. The term "Floating Rate" shall mean the annual rate of interest from time to time published or announced by The Wall Street Journal. as the prime rate or base commercial lending rate, or if The Wall Street Journal (or any other money center bank selected pursuant to this sentence) shall ever cease to exist or cease to announce a prime rate or base commercial lending rate, then 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 Lessor) as its prime rate or base commercial lending rate.

4.04 **Changes in Taxation Method.** If at any time during the Lease Term there shall be levied or assessed in substitution of property taxes, in whole or in part, a tax, assessment or governmental imposition on the rents received from the Premises or the rents reserved herein, and said tax, assessment or governmental imposition shall be imposed upon Lessor, Lessee shall pay same as hereinabove provided.

4.05 **Ownership by Lessor.** Lessor and Lessee understand that the Land is owned by Lessor, and should be exempt from ad valorem taxation. Lessee agrees that Lessor shall at all times during the Lease Term own and hold title to the Land (except otherwise provided herein). Lessor and Lessee understand that the Facilities and any Tangible Personal Property located therein shall during the term of this Lease shall be owned by Lessee, Lessee agrees that Lessee shall at all times during the term of this Lease be responsible for payment of ad valorem taxes assessed against the Premises, the Facilities, the Tangible Personal Property and Lessee's Leasehold Interest created hereby. If for any reason during the Lease Term all or any part of the Premises, the Facilities, the Tangible Personal Property, and/or the Leasehold Interest become subject to ad valorem taxes or any other Impositions, payment of same shall in all events be the exclusive liability of Lessee.

4.06 **Failure to Pay Impositions.** If Lessee fails to pay any Impositions for which it is liable before the same becomes delinquent, or fails to notify Lessor of its intention to contest the same prior to such delinquency, or fails to pay any contested Impositions before the property is threatened with foreclosure or similar proceedings, Lessor, at Lessor's election, may (but shall not be obligated to) pay such Impositions with any interest and penalties due thereon, and the amount paid by Lessor shall be repayable by Lessee on demand, together with interest thereon at the Maximum Rate from the date of such payment until repaid. Thereafter, in addition to all other remedies of Lessor, Lessor may require that Lessee pay to Lessor, on an annual basis the Impositions, as estimated by Lessor, becoming due during each calendar year. Any such additional payment shall be due monthly and in advance on the same day that Annual Rent is due and shall be held in escrow by Lessor.

## **Article V**

### **Use of Leased Premises**



5.01 **General.** Lessee shall use the Leased Premises solely for the Permitted Use for the purpose of constructing, maintaining, and operating the Facilities. The Facilities shall be open to the public during reasonable times as is customary for Lessee's type of business and nothing in this Lease shall prevent Lessee from charging fees for use of the Facilities. In the use of the Leased Premises and in addition to all of the terms, conditions and obligations of this Lease, Lessee shall comply with and be subject to the laws, regulations and ordinances of the State of Texas and the City of Allen, Texas.

5.02 **Compliance with Restrictions and Laws.** Lessee shall, at Lessee's sole expense, (a) comply with all laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities having jurisdiction over the Premises, (b) comply with any directive, order or citation made pursuant to law by any public officer requiring abatement of any nuisance or which imposes upon Lessor or Lessee any duty or obligation arising from Lessee's occupancy or use of the Premises, or required by reason of a breach of any of Lessee's obligations hereunder or by or through other fault of Lessee, (c) comply with all insurance requirements applicable to the Premises, and (d) indemnify and hold Lessor harmless from any loss, cost, claim or expense which Lessor incurs or suffers by reason of Lessee's failure to comply with its obligations under clauses (a), (b), (c) or (d) above. If Lessee receives notice of any such directive, order citation or of any violation of any law, order, ordinance, regulation or any insurance requirements, Lessee shall promptly notify Lessor in writing of such alleged violation and furnish Lessor with a copy of such notice.

5.03 **Specific Covenants Regarding Environmental Matters.**

- (a) Lessee covenants that (a) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls (except such substances as are used in accordance with law), shall be generated, treated, stored or disposed of, or otherwise deposited in or located on, or released on or to the Leased Premises, including, without limitation, the surface and the subsurface waters of the Leased Premises, (b) Lessee will not engage in and will not permit any other party to engage in any activity on the Leased Premises which would cause (i) the Leased Premises to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Leased Premises within the ambit of, the Resource Conservation and Recovery Act of 1975 ("RCRA"), 42 V.S.C. 6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (ii) a release or threatened release of a hazardous substance from or to the Leased Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 V.S.C. 9601 9657, as amended, or any similar state law or local ordinance or any other environmental law, or (iii) the discharge (except in accordance with applicable law) of pollutants or effluents into any water source or system, or the discharge (except in accordance with applicable law) into the air of any emissions, which

would require a permit under the Federal Water Pollution control Act, 33 V.S.C. 1251, et seq., or the Clean Air Act, 42 V.S.C. 7401, et seq., or any similar state law or local ordinance or any other environmental law, (c) Lessee will not permit any substance or conditions in or on the Leased Premises which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and (d) no other ground storage tank will be located on or under the Leased Premises, except as presently exists or is approved per this Lease. As used herein, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, 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, provided, further, to the extent that the laws of the State of Texas establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

- (b) In the event Lessee or Lessor is obligated by any applicable federal, state or local law, ordinance or regulation or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos from the Leased Premises, the Lessee hereby guarantees to Lessor that the Lessee (i) shall promptly undertake to arrange for such clean-up, removal and disposal in accordance with all governmental regulations, (ii) shall exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) hereby assumes the costs and expense, including any fines, of such clean up and removal unless such condition is determined to have existed on the Leased Premises prior to Lessee's execution and acceptance of this Lease in which case, Lessor shall be responsible for, and shall assume the cost and expense of, such cleanup.
- (c) In the event that any lien is recorded or filed against the Leased Premises pursuant to any governmental regulations regarding Hazardous Materials, Hazardous Wastes, or Asbestos, Lessee hereby guarantees to Lessor that Lessee shall, not later than thirty (30) days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record (whether by payment, bonding or as otherwise provided by Section 7.2. hereof), unless such condition is determined to have existed on the Leased Premises prior to Lessee's execution and acceptance of this Lease in which case, Lessor shall be responsible for, and shall assume the cost and expense of, satisfying the claim or causing the lien to be discharged.

- (d) In addition to the foregoing, Lessee shall protect, defend, indemnify and save harmless Lessor, and Lessor's officers, elected and appointed officials, agents, employees and representatives from and against all loss (including diminution in the value of the Leased Premises), cost, damage, liability, obligation, causes of action, fine, penalty or expense (including attorney's fees and expenses for investigation, inspection, removal, clean up, and remedial costs incurred to permit continued or resume normal operation of the Leased Premises), imposed upon or incurred by or asserted against Lessor, its officers, officials, employees or agents by reason of: (i) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials and/or Hazardous Wastes on, from, or affecting the Leased Premises or any other property or the presence of Asbestos on the Leased Premises; (ii) any personal injury (including wrongful death) or property damage or destruction (real or personal) arising out of or related to such hazardous Wastes, Hazardous Materials or Asbestos; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Wastes, Hazardous Materials or Asbestos; or (iv) any violation of laws, orders, regulations, requirements, or demands of governmental authorities, which are based upon or in any way related to such Hazardous Wastes, Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. The above and foregoing obligation contained in this Section 18.04 shall only apply to any act or omission of Lessee or of Lessee's officers, principals, employees, agents, contractors, or subcontractors in connection with any loss (including diminution in the value of the Leased Premises), cost, damage, liability, obligation, causes of action, fine, penalty or expense (including attorney's fees and expenses for investigation, inspection, removal, clean up, and remedial costs incurred to permit continued or resume normal operation of the Leased Premises), imposed upon or incurred by or asserted against Lessor, its officers, officials, agents or employees by reason of subparts (i) through (iv) of this Section 18.04 and for which such condition was not a pre-existing condition of the Leased Premises prior to Lessee's execution and acceptance of the Lease.
- (e) Lessor hereby warrants that Lessor has no knowledge of the existence of Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos on the property, nor any other condition, the discovery of which would likely subject Lessee to civil, criminal or administrative liability. Lessor further covenants, warrants and promises that, to the greatest extent allowed under law, Lessee shall not be held liable by the City of Allen, for any condition existing prior to Lessee's execution and acceptance of this Lease.

5.04 **Natural Resources.** Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises, except as may be authorized by Lessor or as may be required by the construction and subsequent improvements of the Facilities in accordance with plans and specifications approved by Lessor.

5.05 **Access to Property.** Lessee agrees that access to the Leased Premises shall be designated and shown on the Concept Plan, and as amended. The City shall be entitled public access from the Facilities parking lot on the Leased Premises to the City public area as depicted on the Concept Plan. Lessee, through its employees, shall have sole responsibility for allowing access to the Leased Premises by unlocking access gates each morning (if applicable) and shall further have sole responsibility for securing the Leased Premises by locking any access gate each evening (if applicable) during any period of time when Leased Premises are not open and available to the public or when the Leased Premises are not regularly patrolled by local police or private security guards. Lessee further agrees that Lessor's police department and fire department shall be provided with duplicate keys to the access gates for use in obtaining access to the Leased Premises for security patrols and in emergency situations. The City and its designated representatives shall have the right to enter upon the Leased Premises for the purpose of inspection of the Facilities.

5.06 **Historic Preservation.** Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, Lessee shall immediately notify Lessor and protect the site and the material from further disturbance until the Lessor gives clearance to proceed, which clearance shall not be unreasonably withheld or delayed.

5.07 **Operation and Use Restrictions for the Facilities.**

- (a) Lessee shall, during the Term, manage and operate the Facilities in a first class manner consistent with industry standards for the operation of similar types of facilities.
- (b) The Lessee shall operate or cause to be operated the Facilities to be open to the public seven (7) days per calendar week between the approximate hours of 6:00 a.m. and 1:30 a.m., (except for children "lock-ins" conducted within the main building on the Leased Premises between the hours of approximate 2:00 a.m. and 6:00 a.m.) provided however no activities shall be allowed outdoors or outside of any buildings on the Leased Premises between the hours of 10:00 p.m. and 7:00 a.m. on any day.
- (c) No alcoholic beverages shall be sold, served, or stored (and no alcoholic beverages may be given away) on the Leased Premises at any time.
- (d) Lessee shall maintain the buildings, the outdoor areas and the grounds surrounding the buildings on the Leased Premises to the same level and



standard of maintenance and landscape as the City requires for City park facilities and park grounds.

- (e) At no time shall any outdoor storage be permitted on the Leased Premises except for the customary soccer, athletic field and lawn and landscaping items that are normally stored outside.

5.08 **Interruption in Utilities.** Lessor is not during the Term liable for any interruption whatsoever (unless directly caused by the actions of Lessor) in utility services to the Facilities, and in no event shall any payments required under this Lease be modified, adjusted, reduced or abated as a result of the interruption of utility services.

5.09 **Sub-Lease.** The Lessee may sub-lease or rent office space within the main building of the Facilities to tenants. At no time may the Lessee lease any space within any building or elsewhere on the Leased Premises to an organization, entity or person that competes with the Allen Sports Association as determined by the Lessor in its sole discretion.

5.10 **City Trail.** The Lessor hereby reserves the right and Lessee hereby grants the right to Lessee to construct and maintain a hike and bike trail on the Leased Premises to the rear adjacent to the residential areas as depicted on the Concept Plan. The Lessor agrees to construct screening walls adjacent to the residential areas abutting the City water tower site as generally depicted on the Concept Plan.

5.11 **Permitted Use Upon Default by Lessee.** Lessee shall be entitled to assign its interest in the leasehold as security or collateral for any lender if required by lender to do so as a condition of its note. If such assignment has been executed by Lessee and Lessee subsequently defaults on its payment or other obligations to such lender, such lender shall be entitled, but only upon default by Lessee, to make any reasonable lawful use of the Facilities so long as such lender seeks and obtains prior written approval by the City.

## **Article VI Construction and Alterations**

### **6.01 Construction of Improvements.**

- (a) Lessee shall, subject to events of Force Majeure, cause Commencement of Construction of the Facilities in accordance with the Concept Plan to occur on or before 120 calendar days after the Commencement Date, and subject to events of Force Majeure to cause Completion of Construction to occur within twelve (12) calendar months thereafter. If Lessee fails to cause Commencement or Completion of Construction of the Facilities within the time periods provided herein, then Lessor may, in addition to any other remedies it may have, terminate this Lease upon written notice to Lessee.
- (b) The Lessee shall submit the Facilities Plan and a Site Plan for the development of the Leased Premises for the Facilities for review and approval by the Lessor

within thirty (30) calendar days after the Commencement Date. The Site Plan shall be substantially similar to the Concept Plan. The Lessor shall approve or deny the Site Plan within thirty (30) calendar days following Lessor receipt thereof (the "Plan Review Period"). The Lessor is deemed to approve the Site Plan unless it has provided written notice to the Lessee to the contrary prior to the expiration of the Plan Review Period. If the Lessor has objections to the Site Plan as submitted, the Lessor shall note such objections in writing and the Lessee shall cause the Site Plan to be revised to address such objections and re-submit the revised Site Plan to the Lessor for approval subject to the same Plan Review Period. This process shall continue until the Lessor has approved the Site Plan or has determined that the Lessor's objections can not be addressed, in which case this Lease shall terminate without further notice. The Company shall obtain approval of the Site Plan by the Lessor prior to the submission of any construction plans for the Facilities. The Site Plan as approved by the City shall be deemed a part of this Lease without the necessity of further amendment.

- (c) The exterior construction materials for the Facilities shall be approved by the Lessor in accordance with its normal policies for the construction of new facilities.
- (d) The Lessee concurrent with Commencement of Construction of the Facilities shall, at Lessee's costs and expense, construct a solid masonry screening wall on the Leased Premises on the two back sides of the Leased Premises adjacent to the abutting residential areas as depicted in the Concept Plan.

6.02 **Development of Premises.** In order to provide for the more orderly development of the Premises, it may be necessary, and desirable, or required that street, water, sewer, drainage, gas, power lines and other easements, and dedications, and similar rights be granted or dedicated over or within portions of said Premises. Provided that, in the judgment of Lessor, the request is reasonable and not unduly burdensome to the Premise, Lessor shall, upon request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Lease Term, as Lessor deems appropriate, reasonable, and as may be required by other governmental agencies, public utilities, and companies for the purpose of granting such easements and dedications. Lessor agrees to reasonably co-operate with Lessee, at no material cost or expense to Lessor, for zoning on the Premises to conform to the Permitted Use.

6.03 **Alterations.**

- (a) Except as expressly provided in Section 6.03(b) below, Lessee shall not make any alterations to the Premises without the prior written consent of Lessor. If Lessee desires to make any alteration to the Premises, Lessee shall, prior to commencing same, submit plans and specifications therefore to Lessor. Lessor will, within thirty (30) days after receipt of such plans and specifications, promptly review and approve the plans and specifications or note in writing any required changes or corrections that must be made to the plans and specifications. If Lessor fails to object to

the plans and specifications within thirty (30) days after submission thereof, Lessor shall be deemed to have approved such plans and specifications. If Lessor timely objects to the plans and specifications, Lessee shall make the required changes or corrections and resubmit the plans and specifications to Lessor within thirty (30) days after receiving notice of the required corrections or changes. The failure of Lessor to object to the resubmitted plans and specifications within thirty (30) days shall constitute Lessor's approval of such resubmitted plans. Minor changes in work or materials not affecting the general character of the building project may be made at any time without Lessor's approval, but a copy of the altered plans and specifications must be furnished to Lessor. Lessor's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises, and Lessor may not unreasonably withhold approval of plans and specifications. Lessor's approval does not constitute approval of the architectural or engineering design, and Lessor, by approving the plans and specifications, assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications, and Lessee, to the extent allowed by law, shall indemnify and hold Lessor harmless from all such liability and responsibility.

- (b) Notwithstanding the provisions of Section 6.03(a) above, Lessee need not obtain Lessor's consent to perform (i) repairs necessary to maintain existing structures and improvements in a useful state of repair and operation, provided such repairs do not affect the general quality or character of the Facilities, (ii) changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements, to comply with legal requirements, (iii) any alteration which does not materially effect the external look of the building, (iv) replacement or repair of the turf, dasher boards, wood floors, tile, carpet, paint, wallpaper, color scheme, equipment and furniture, design layout, arcade games, (v) any alteration, repair, improvement or change the value of which does not exceed \$150,000 and which does not materially affect the external look of the building.
- (c) Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the Lease Term shall be considered part of the real property of the Premises and will be the property of Lessor and remain on the Premises if the Lease is terminated for an uncured event of default under this Lease, except as otherwise provided herein. So long as no Event of Default exists, Lessee may, at any time while it occupies the Premises, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Lessee in, under, or on the Premises or acquired by Lessee, whether before or during the Lease Term. Lessee shall be responsible for

repairing any damage to any buildings or improvements on the Premises resulting from the removal. Any such items not removed upon the termination of this Lease will become Lessor's property on that date.

## **Article VII**

### **Repairs**

7.01 **Triple Net Lease.** This Lease shall be deemed and construed to be a "triple net lease," and Lessee shall pay to Lessor, net throughout the Lease Term, the Rent and other payments hereunder free of any costs or expenses associated with the Leased Premises and without abatement, deduction or set off. Under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the contemplation of the parties, shall Lessor be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder in respect of the Premises, except as herein otherwise expressly set forth.

7.02 **Lessee to Make Repairs.** The Lessee, at Lessee's own cost and expense, at all times during the Term, agrees to keep and maintain, or cause to be kept and maintained, the Facilities, all buildings and improvements included on the Premises in a good state of appearance and repair, reasonable wear and tear excepted. The Lessee shall perform such maintenance and repair as necessary to operate the Premises as a first-class facility. Without limiting the generality of the foregoing provisions of this Section 7.02, it is understood that Lessee's obligations with respect to the maintenance and repair of the Premises include the repair and replacement of all structural items, including the walls, roof and foundation, lighting, heating, air conditioning, plumbing and other electrical and mechanical equipment, fixtures and systems, and also include all utility repairs in ducts, conduits, pipes and wiring located in, under and above the Premises, and all paving, driveways, sidewalks and parking areas. Lessor shall have no duty, obligation or liability to make any repairs, replacements, or alterations to the Premises, or any portion thereof, at any time during the term of this Lease. Without limiting the generality of the foregoing provisions of this Section 7.02, Lessee shall: (a) conduct regular inspections of the Facilities for compliance with health and safety standards and building codes and for cleanliness, good order, condition, and repair; (b) buy, clean, and repair all furnishings and equipment in the Facilities; (c) periodically paint the Facilities; (d) hire and maintain a staff or third party contractor to clean the Facilities; and (e) cause all equipment and fixtures in the Facilities to be repaired and maintained in good condition, including, but not limited to, furnaces, air conditioners, lights, wiring, plumbing, and other equipment.

7.03 **Mechanic's Liens.** Lessee shall not suffer or permit any mechanics' liens or other liens to be filed against the Premises or against Lessee's leasehold interest in the Premises. If any lien is filed for such labor or materials, such lien shall encumber only Lessee's leasehold interest in the Premises. If any such mechanics' liens shall be recorded against the Premises, Lessee shall cause the same to be removed within thirty (30) days after obtaining knowledge thereof; or, in the alternative, if Lessee desires in good faith to contest the same, Lessee shall be privileged to do so, but in such case Lessee shall indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.





## Article VIII Casualty

8.01 **Damage to Premises.** If, during the term of this Lease, the Facilities, any buildings or other improvements situated on the Premises are wholly or partially destroyed or damaged by fire, or any other casualty whatsoever (collectively called a "Casualty"), Lessee shall promptly repair, replace, restore and reconstruct such improvements in a good and workmanlike manner.

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

- (a) Prior to the commencement of such Restoration, the plans and specifications for the Restoration must be approved by Lessor (such approval not to be unreasonably withheld or delayed).
- (b) If, in the reasonable judgment of Lessor, the costs of the Restoration will exceed the amount of the Insurance Proceeds, Lessee will, upon demand by Lessor, give satisfactory proof or assurances to Lessor that the funds required to meet such deficiency (such funds to be provided by Lessee) are or will be available for such purpose;
- (c) If at the time of the occurrence of the Casualty, or at any time thereafter during Restoration, there exists a default by Lessee, or any circumstance which, with the giving of notice or the passage of time, or both, would constitute such a default, then Lessee shall, if demanded by Lessor, deliver the Insurance Proceeds to a third party escrow agent designated by Lessor. In such event, the Insurance Proceeds will be advanced by the Escrow Agent in installments during the period of the Restoration, except for a final installment to be advanced following the period of the Restoration. Each installment (except the final installment) is to be advanced by the Escrow Agent in an amount not to exceed ninety percent (90%) of the value of the work completed since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by an independent supervising architect selected and paid by Lessor, together with a reasonable showing of bills for labor and material, and evidence satisfactory to Lessor that no lien affidavit has been filed in the records where the filing of liens for any labor or material in connection with such work are to be filed. The final payment or disbursement of the Insurance Proceeds deposited shall be in an amount sufficient to make the total advance equal to the entire cost of any Restoration, and shall be made upon a proper certificate of completion by an independent architect, but in no event shall the Escrow Agent be required to advance more than the balance of the Insurance Proceeds on deposit. It is expressly agreed that if this Lease shall be terminated for Lessee's default at any time prior to

release or payment to Lessee of any of the Insurance Proceeds as provided in this Section 12.2(c), all of the Insurance Proceeds not therefore paid to Lessee shall be the sole property of Lessor and shall be delivered by the Escrow Agent to Lessor.

8.03 **No Rent Abatement.** Notwithstanding the occurrence of a Casualty which disrupts the operation of the Premises, Lessee shall remain obligated to pay Annual Rent in accordance with the terms of this Lease.

## **Article IX Insurance and Indemnification**

9.01 **Required Insurance.** Throughout the Lease Term, Lessee shall, at Lessee's expense, maintain the following insurance policies:

- (a) Commercial general liability insurance for bodily injury, death or property damage, insuring Lessee and naming Lessor as an additional insured, against all claims, demands, or actions relating to the Premises on an occurrence basis, issued by and binding upon a solvent insurance company licensed to do business in Texas, with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage or destruction, including loss of use.
- (b) Commercial General Liability insurance insuring operations hazard, independent contractor hazard, contractual liability and completed operations liability, in limits not less than \$1,000,000 combined single limit for each occurrence for bodily injury, personal injury and property damage liability.
- (c) Insurance covering all buildings and other improvements located or being constructed on the Premises against loss or damage from perils covered by an all risk or special form policy in amounts not less than eighty (80%) percent of the full insurable value of the buildings and other improvements included in the Premises.
- (d) Lessee shall also provide construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Premises with limits of not less than \$100,000 for property damage and \$300,000 for one person and \$1,000,000 for one accident for personal injury and must protect Lessee and Lessor, as well as any other person or persons Lessee may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the Premises.

9.02 **Evidence of Insurance.** Prior to the Commencement Date, Lessee shall furnish to Lessor a certificate of insurance evidence evidencing the required insurance and indicating the exclusions from coverage, if any.

9.03 All insurance and certificates of insurance required hereunder shall contain the following provisions: (i) name the Lessor, its officers, employees and agents as additional insureds as to all applicable insurance coverage with the exception of workers compensation insurance; (ii) provide at least thirty (30) days prior written notice to Lessor for cancellation, non-renewal or material change in any such insurance; (iii) provide for a waiver of subrogation against the Lessor's injuries, damages, including death, property damages, or any other loss to the extent the same is covered by the proceeds of insurance. Any such insurance required by this Section shall be primary and noncontributing with any insurance that may be carried by Lessor. Lessor reserves the right, from time to time throughout the Lease Term, to increase the minimum insurance limits set out above to ensure that adequate insurance is being maintained.

9.04 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

9.05 In addition to other remedies provided in this Lease, if Lessee fails to maintain the insurance required by this Section, Lessor may, but is not obligated to, obtain such insurance and Lessee shall pay to Lessor upon demand as additional rental the premium cost thereof plus interest at the Maximum Rate from the date of payment by Lessor until repaid by Lessee.

9.06 Without limiting any of the other obligations or liabilities of lessee, the lessee shall require its contractors, at the contractor's expense, to maintain during the term of this Lease, the required insurance including the certificate and policy conditions as stated herein.

9.07 **Indemnification.** LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY OCCURRENCE ON THE PREMISES. LESSEE HEREBY WAIVES ALL CLAIMS AGAINST LESSOR FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON IN, UPON, OR ABOUT THE PREMISES ARISING AT ANY TIME AND FROM ANY CAUSE (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, THE NEGLIGENCE OF LESSOR) OTHER THAN SOLELY BY REASON OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR. LESSEE, FOR ITSELF AND ITS AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, LICENSEES, CONCESSIONAIRES, INVITEES, SUCCESSORS AND ASSIGNS, EXPRESSLY ASSUMES ALL RISKS OF INJURY OR DAMAGE TO PERSON OR PROPERTY, EITHER PROXIMATE OR REMOTE, RESULTING FROM THE CONDITION OF THE PREMISES OR ANY PART THEREOF. LESSEE AGREES TO INDEMNIFY AND SAVE HARMLESS LESSOR AND ITS AGENTS, OFFICERS, AND EMPLOYEES (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND ARISING OR ALLEGED TO ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY



OCCURRING ON, IN OR ABOUT THE PREMISES OR BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED BY ANY ACT OR OMISSION ON THE PART OF LESSEE OR ANY OFFICER, DIRECTOR, SERVANT, AGENT, EMPLOYEE, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, CONCESSIONAIRE, INVITEE, SUCCESSOR OR ASSIGN, OR BY ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY COVENANT OF LESSEE UNDER THIS LEASE, WHETHER SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ANY INDEMNITEE IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, LESSEE, ON NOTICE FROM LESSOR, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT LESSEE'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SELECTED BY LESSEE TO LESSOR. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL ACTIVITIES OF LESSEE WITH RESPECT TO THE PREMISES, WHETHER OCCURRING BEFORE OR AFTER EXECUTION OF THIS LEASE. LESSEE OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY LESSEE UNDER THIS LEASE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

#### **Article X** **Assignment and Sublease**

10.01 **Consent of Lessor Required.** Subject to Section 10.04 below, neither Lessee nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease or any part hereof, or the interest of Lessee under this Lease, or in any sublease or the rent there under without obtaining the prior written consent of Lessor, which may be given or withheld in the sole discretion of Lessor. An assignment of this Lease shall be deemed to have occurred if in a single transaction or in a series of related transactions more than fifty percent (50%) of the ownership interests in Lessee (whether stock, partnership interest or otherwise) is transferred, diluted, reduced, or otherwise affected with the result that the person or entity who is in lawful and effective control of the Lessee shall be changed. Notwithstanding the foregoing the Lessee shall have the right during the term of this Lease to sublease space within the Facilities provided such subleases are subordinate to this Lease and provide that such sub lease shall automatically terminates on the Expiration Date of this Lease and terminates in the event this Lease is terminated for any reason by either party.

10.02 **Assignments Void.** Any attempted assignment or sublease by Lessee in violation of the terms and provisions of this Article X shall be void and shall constitute a material breach of this Lease. In no event shall any assignment, subletting or transfer, whether or not with Lessor's consent, relieve Lessee of its primary liability under this Lease for the entire term hereof, and Lessee shall in no way be released from the full and complete performance of all the terms hereof.

10.03 **Obligations to Remain in Effect.** If Lessor expressly consents to an assignment

or subletting, Lessee and any guarantor of Lessee's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rentals herein specified and for compliance with all of the other obligations under this Lease (even if future assignments and sub-lettings occur subsequent to the assignment or subletting by Lessee).

10.04 **Mortgage of Leasehold.** The Lessee may from time to time encumber the Lessee's interest in the leasehold estate by one or more deeds of trust, mortgages or other security instruments; provided, that the Lessee has first obtained the written approval from Lessor, which approval shall not be unreasonably withheld or delayed, but no such encumbrance shall constitute a lien on the fee title to the Leased Premises, and the indebtedness secured thereby shall at all times be and remain inferior and subordinate to all the conditions, covenants and obligations of this Lease and to all of the rights of Lessor hereunder.

10.05 **Asset-Based Lending.** Lessee shall have the right, at any time, to encumber all or any part of its interest in the inventory or trade fixtures on the Leased Premises with a lien to secure financing, and Lessor agrees to execute, subject to other provisions of this Lease, such waiver, subordination, or other agreements as any such asset-based lender may reasonably request in connection with such financing. Lessee agrees that any such Lessor's waiver shall include a provision reasonably acceptable to Lessor to the effect that (i) such asset based lender shall have the right to remove such financed items from the Leased Premises only during the term of this Lease and for a period of sixty (60) days after Lessor has given written notice to such lender that the Lease has been terminated, for any reason; (ii) if such lender undertakes such removal, such lender shall be obligated to repair, at such lender's expense, any damage to the Leased Premises or the improvements thereon caused by the removal of any such financed items; and (iii) if such lender fails to remove such financed items during the term of this Lease, or within sixty (60) days after receiving written notice from Lessor of the termination of this Lease, such financed items shall be deemed to have been abandoned by such lender to Lessor.

10.06 **Right of Lessor.** All mortgages, deeds of trust or other instruments (the "Mortgages") whereby Lessee mortgages the leasehold estate of Lessee created hereby or any improvements on the Leased Premises, or encumbers inventory or trade fixtures, shall contain provisions, (i) requiring the lien holder to give Lessor not less than fifteen (15) days written notice prior to accelerating the debt of lessee to such Mortgages and/or initiating foreclosure proceedings under said Mortgages, and (ii) allowing Lessor during such fifteen (15) day notice period to cure. Lessee's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Lessor's option to assume Lessee's position under said mortgages. In the event Lessor exercises such option to cure, Lessee shall thereafter immediately reimburse Lessor for all fees, costs, and charges incurred by Lessor in exercising such option and shall pay all fees, costs, and charges which Lessor may incur as a result of its assumption of Lessee's position.

10.7 **Assignment by Lessor.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have an absolute, unequivocal right to assign or transfer its interest in this Lease, whether as collateral or absolutely, to any party whatsoever whether or not such party is related to the Lessor, and the Lessee covenants and agrees that this Lease shall remain in full force and unaffected by such transfer or assignment. In the event of the transfer or assignment by Lessor of its interest in this Lease to any party expressly assuming Lessor's obligations under this

Lease, Lessor shall thereby be released from any further obligations hereunder, and Lessee agrees to look solely to such successor in interest of Lessor for the performance of such obligations. Any security given by Lessee to secure performance of Lessee's obligations hereunder may be assigned and transferred by Lessor to such successor in interest and Lessor shall thereby be discharged of any further obligations relating thereto.

## **Article XI**

### **Default and Remedies**

11.01 **Default.** The occurrence of anyone or more of the following events shall constitute an Event of Default (herein so called) of Lessee under this Lease:

- (a) if Lessee fails to pay Annual Rent or any other amount payable by Lessee hereunder as and when same becomes due and such failure shall continue for more than fifteen (15) days after Lessor gives Lessee notice of past due rent;
- (b) if Lessee attempts to make an un-permitted assignment or sublease of this Lease;
- (c) if Lessee fails to maintain in force all policies of insurance required by this Lease and such failure shall continue for more than thirty (30) days after Lessor gives Lessee notice of such failure;
- (d) if any petition is filed by or against Lessee or any guarantor of this Lease under any present or future section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States or any state thereof (which, in the case of an involuntary proceeding, is not permanently discharged, dismissed, stayed, or vacated, as the case may be, within ninety (90) days of commencement), or if any order for relief shall be entered against Lessee or any guarantor of this Lease in any such proceedings;
- (e) if Lessee becomes insolvent or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;
- (f) if a receiver, custodian, or trustee is appointed for the Premises or for all or substantially all of the assets of Lessee or of any guarantor of this Lease, which appointment is not vacated within ninety (90) days following the date of such appointment;
- (g) if Lessee fails to perform or observe any term of this Lease and such failure shall continue for more than thirty (30) days after Lessor gives Lessee notice of such failure, or, if such failure cannot be corrected within such thirty (30) day period, if Lessee does not commence to correct such

default within said thirty (30) day period and thereafter diligently prosecute the correction of same to completion within ninety (90) days after notice is sent by Lessor;

- (h) if Lessee fails to pay any Impositions;
- (i) if a final judgment for the payment of money in any material amount in excess of One Million Dollars (\$1,000,000.00) and which is not covered by any insurance insuring the interest of Lessee shall be rendered against Lessee, and within sixty (60) days after the entry thereof such judgment shall not have been discharged or execution thereof stayed pending appeal or if within sixty (60) days after the expiration of such stay, such judgment shall not have been discharged; or
- (j) following commencement of use and operation of the Leased Premises, abandon the Leased Premises (failure to occupy and operate the Leased Premises for ten (10) consecutive days, for reasons other than because of adverse weather conditions, construction or maintenance operations being performed at the Leased Premises not to exceed ninety (90) calendar days) natural disaster, acts of war or terrorism or other force majeure reasons, shall be deemed an abandonment).

11.02 **Remedies.** Upon the occurrence of any Event of Default, which default remains uncured after the respective notice period set forth above, Lessor shall have the right, at Lessor's option, to elect to do anyone or more of the following without further notice or demand to Lessee.

- (a) terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, and, if Lessee fails to so surrender, Lessor shall have the right, without notice and without resorting to legal process, to enter upon and take possession of the Premises and to expel or remove Lessee and its effects without being liable for prosecution or any claim for damages therefore; and Lessee shall, and hereby agrees to indemnify Lessor for all loss and damage which Lessor suffers by reason of such termination, including without limitation, damages in an amount equal to the total of (i) the costs of recovering the Premises and all other expenses incurred by Lessor in connection with Lessee's default; (ii) the unpaid Annual Rent, plus interest at the Maximum Rate; and (iii) any amounts unpaid under the Related Agreements.
- (b) enter upon and take possession of the Premises without terminating this Lease and without being liable for prosecution of any claim for damages therefore, and, if Lessor elects, relet the Premises on such terms as Lessor deems advisable, in which event Lessee shall pay to Lessor on demand the cost of repossession, repairing, and altering the Premises for a new Lessee or Lessees and any deficiency between the rent payable hereunder and the



rent- paid under such reletting; provided, however, that Lessee shall not be entitled to any excess payments received by Lessor from such reletting. Lessor's failure to relet the Premises shall not release or affect Lessee's liability for rent or for damages; or

- (c) enter the Premises without terminating this Lease and without being liable for prosecution of any claim for damages therefore and maintain the Premises and repair or replace any damage thereto or do anything for which Lessee is responsible hereunder. Lessee shall reimburse Lessor immediately upon demand for any expenses which Lessor incurs in thus effecting Lessee's compliance under this Lease, and Lessor shall not be liable to Lessee for any damages with respect thereto.

11.03 **No Acceptance of Surrender.** No agreement to accept a surrender of the Premises and no act or omission by Lessor or Lessor's agents during the Term shall constitute an acceptance or surrender of the Premises unless made in writing and signed by Lessor. No reentry or taking possession of the Premises by Lessor shall constitute an election by Lessor to terminate this Lease unless a written notice of such intention is given to Lessee.

11.04 **Contractual Lien.** In addition to the statutory Lessor's lien, Lessor shall have at all times a valid security interest to secure payment of all rentals and other sums of money becoming due hereunder from Lessee, and to secure payment of any damages or loss which Lessor may suffer by reason of the breach by Lessee of any covenant, agreement or condition contained herein, and Lessee hereby grants to Lessor a security interest in all goods, wares, equipment, machinery, fixtures, furniture, improvements and other personal property of Lessee presently, or which may hereafter be, situated on the Premises, and all proceeds there from. Upon request by Lessor, Lessee agrees to execute and deliver to Lessor a financing statement in form sufficient to perfect the security interest of Lessor in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code (or corresponding state statute or statutes) in force in the State of Texas, as well as any other state the laws of which Lessor may at any time consider to be applicable. This Lease, at the election of Lessor, may be filed and used as a non-standard financing statement. If requested to do so by Lessee, Lessor will not unreasonably withhold or delay its consent to a subordination of its lien to a purchase money lien or security interest in favor of a third party providing financing for Lessee's fixtures, furniture, equipment and used used in the Leased Premises.

11.05 **No Waiver.** No provision of this Lease shall be deemed to have been waived by Lessor unless such waiver is in writing and signed by Lessor. Lessor's acceptance of rent following an Event of Default hereunder shall not be construed as a waiver of such Event of Default. No custom or practice which may occur or develop between the parties in connection with the terms of this Lease shall be construed to waive or lessen Lessor's right to insist upon strict performance of the terms of this Lease, without a written notice thereof to Lessee from Lessor.

11.06 **Rights Cumulative.** The rights granted to Lessor in this Article shall be cumulative of every other right. or remedy provided in this Lease or which Lessor may otherwise

have at law or in equity or by statute, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies or constitute a forfeiture or waiver of rent or damages accruing to Lessor by reason of any Event of Default under this Lease. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including all attorneys' fees incurred in connection with the collection of any sums due hereunder or the enforcement of any right or remedy of Lessor.

11.07 **Dispute Resolution.** If a dispute arises with respect to this Lease, the parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them demanding mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified, but limited, discovery about the dispute. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation. Any nonbinding dispute resolution process conducted under this Article shall be confidential within the meaning of Sections 154.053 and 154.073 of the Texas Civil Practice and Remedies Code and any successor statute thereto. If neither a negotiated settlement nor mediated resolution is obtained within the time periods provided by this Article, the parties may pursue any available legal or equitable remedy; provided, however, that this Article shall not preclude either party from exercising any remedy available to them under this Lease.

## **Article XII Warranties**

12.01 **Lessor's Title.** Lessor hereby represents and warrants that it is the owner in fee simple absolute of the Land, subject to covenants, conditions, restrictions, leases, easements, and other matters of record.

12.02 **Quiet Enjoyment.** Lessor covenants and agrees that Lessee, on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Premises during the term of this Lease without hindrance of Lessor or any person claiming under Lessor.

## **Article XIII Eminent Domain**

13.01 **Total Taking.** If all or substantially all of the Premises is taken under power of eminent domain (which term as used in this Lease shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Lease shall terminate as of the date of taking of possession by the condemning authority.

13.02 **Partial Taking.** Lessor and Lessee agree that if less than all or substantially all of the Premises is taken under power of eminent domain or other similar proceeding, then this Lease shall nevertheless continue in effect as to the remainder of the Premises at a rate equitably

adjusted by the parties if the Premises is susceptible to efficient and economic occupation and operation by Lessee. If the Premises is not susceptible to efficient and economic occupation and operation by Lessee or if the Lessor and Lessee mutually agree within a reasonable time period following the taking that so much of the Premises has been taken or condemned such that the Premises is not susceptible to efficient and economic occupation and operation by Lessee, then in both instances set forth above, this Lease shall terminate upon possession of such portion of the Premises by the condemning authority.

13.03 **Award.** If this Lease is not terminated pursuant to section 13.01 or 13.02 above, Lessee shall promptly upon receipt of the proceeds of the condemnation award restore the improvements on the Leased Premises, and the condemnation proceeds to which Lessee are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Leased Premises to a condition susceptible to efficient and economic occupation and operation by Lessee, and any remaining proceeds to which Lessee is entitled shall be awarded and paid to Lessee, as their interest may appear. Lessee may, but shall not be required to, expend funds in excess of the amount of any award it receives in order to restore the remaining portion of the Leased Premises to operation. The City shall have the right to terminate the Lease if the Lessee fails to restore the Leased Premises. If this Lease is terminated pursuant to Section 13.01 or 13.02 above, condemnation proceeds to which Lessor and Lessee are entitled shall be awarded and paid to Lessor and Lessee as their interests may appear.

#### **Article XIV Lessor's Right of Access**

Lessor (and its agents, employees and contractors) shall have the right to enter the Premises during normal business hours in order (a) to inspect the Premises and the improvements thereon, and (b) to confirm that Lessee is complying with all of Lessee's covenants and obligations under this Lease. Lessor shall not be liable to Lessee for the exercise of Lessor's rights under this Section, and Lessee hereby waives any claims for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.

#### **Article XV Advertising**

In connection with any advertising or promotional material relative to the Facilities, Lessee shall use reasonable good faith efforts to include therein the use of the words "Allen, Texas". In connection therewith, Lessor does hereby grant to Lessee the personal and nontransferable right and license to use the service mark of the City of Allen in the development and promotion of the Leased Premises. The right granted to Lessee herein shall not be assigned, transferred or otherwise conveyed without Lessor's prior written consent. Lessee acknowledges Lessor's exclusive right, title, and interest in and to the service mark and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. In connection with the use of the service mark, Lessee shall not in any manner represent that it has any ownership in the service mark or registration thereof, and Lessee acknowledges that use of the service mark shall not create in Lessee's favor any right,

title, or interest in or to the service mark, but all uses of the service mark by Lessee shall inure to the benefit of Lessor. Upon termination of this Lease in any manner provided herein, Lessee will cease and desist from all use of the service mark in any way (and will at Lessor's request deliver up to Lessor, or its duly authorized representatives, all material and papers upon which the service mark appears), and Lessee shall at no time adopt or use, without Lessor's prior written consent, any word or mark which is likely to be similar to or confusing with the service mark.

## **Article XVI**

### **Miscellaneous**

16.01 **Estoppel Certificate.** Upon the written request of either party to this Lease, the other shall execute, acknowledge and deliver to the requesting party, a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of Minimum Rent, Percentage Rent and other charges, and the time period covered by such payment; and (iv) that the other party is not in default under this Lease (or, if the other party is claimed to be in default, stating why). Such party shall deliver such statement to the party requesting the same within ten (10) days after the requesting party's request.

16.02 **Independent Covenant.** Lessee shall not for any reason withhold or reduce Lessee's required payments of rental and other charges provided in this Lease, it being agreed that the obligations of Lessor under this Lease are independent of Lessee's obligations except as may be otherwise expressly provided. The immediately preceding sentence shall not be deemed to deny Lessee the ability of pursuing all rights granted it under this Lease or at law; however, at the direction of Lessor, Lessee's claims in this regard shall be litigated in proceedings separate from any litigation involving rental claims or other claims by Lessor against Lessee (i.e., each party may proceed to a separate judgment without consolidation, counterclaim or offset as to the claims asserted by the other party).

16.03 **Lessor's Liability.** Anything contained in this Lease to the contrary notwithstanding, Lessee agrees that Lessee shall look solely to the estate and property of Lessor in the Premises for the collection of any judgment or other judicial process requiring the payment of money by Lessor for any default or breach by Lessor under this Lease. No other assets of Lessor or officers, agents and employees shall be subject to levy, execution or other judicial process for the satisfaction of Lessee's claim.

16.04 **No Joint Venture.** The relationship between Lessor and Lessee at all times shall remain solely that of Lessor and Lessee and not be deemed a partnership or joint venture.

16.05 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Lessor or Lessee (other than payment by Lessee of amounts due under this Lease), Lessor or Lessee shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to force majeure, which term shall include strikes, riots, acts of God, shortages of labor or materials, war, acts of terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind



whatsoever which is beyond the reasonable control of Lessor or Lessee.

16.06 **Notice.** All rents or other sums, notices, demands, or requests from one party to another shall be personally delivered or sent by United States mail certified, or registered, return receipt requested, postage prepaid, to the addresses stated in this Section.

If to Lessor:

City of Allen, Texas  
Attn: City Manager  
Allen City Hall  
305 Century Parkway  
Allen Texas 75013  
Telephone: 214-509-4100  
Facsimile: 214-509-4118

With a copy to:  
(which will not constitute notice)

Mr. Peter G. Smith, Esq.  
Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201  
Telephone: (214) 965-9900  
Facsimile: (214) 965-0010

If to Lessee:

Blue Sky Sports Center of Allen, LP  
Attn: Mr. Peter Brody, President  
Blue Sky Allen Management, Inc.,  
its General Partner  
7801 Main Street  
The Colony, Texas 75056  
Telephone: (469) 384-3400  
Facsimile: (469) 384-3057

With a copy to:  
(which will not constitute notice)

Mr. Greg Bertrand, Esq.  
Bertrand Law Firm, P.C.  
1278 FM 407, Suite 109  
Lewisville, Texas 75077  
Telephone: (972) 317-9999  
Facsimile: (972) 317-9595  
Blue Sky Sports Allen Center, LP

Notice shall be deemed to have been given (i) if by hand delivery, at the time of delivery, or (ii) if mailed, seventy-two (72) hours after the deposit of same in any United States mail post office box in the state to which the notice is addressed or ninety-six (96) hours after the deposit in any post office in the state other than the state to which the notice is addressed, postage paid, addressed as set forth above. The addresses and addressees for the purpose of this section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

16.07 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Lease. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Lease on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

16.08 **Brokerage Fee.** Lessee and Lessor each represent and warrant to the other that it has not entered into any agreement with, or otherwise had any dealings with, any broker or agent in connection with the negotiation or execution of this Lease which could form the basis of any claim by any such broker or agent for a brokerage fee or commission, finder's fee, or any other compensation of any kind or nature in connection herewith, and each party shall, and hereby agrees to, indemnify and hold the other harmless from all costs (including, but not limited to, court costs, investigation costs, and attorneys' fees), expenses or liability for commissions or other compensation claimed by any broker or agent with respect to this Lease which arise out of any agreement or dealings, or alleged agreement or dealings, between the indemnify party and any such agent or broker. This provision shall survive the expiration or earlier termination of this Lease.

16.09 **Time of Essence.** Time is of the essence of this Lease.

16.10 **Governing Law.** This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, 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.

16.11 **Severability**. In case of any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16.12 **Amendment**. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

16.13 **Prior Agreements Superseded**. This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

16.14 **No Waiver**. No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, conditions, or stipulation hereof.

16.15 **Use Clause**. Lessee agrees not to use the Leased Premises or any building or improvement situated upon said Leased Premises, or any part thereof for any use or purpose in violation of any applicable law, regulation, or ordinance of the United States, the State of Texas or the City of Allen, Texas, or other lawful authority having jurisdiction over the Leased Premises.

16.16 **Compliance with Laws**. Lessee covenants and agrees that it shall comply with all laws, ordinances, rules and regulations of municipal, state, federal and other agencies or bodies, including, but not being limited to, environmental laws, having jurisdiction thereof relating to the Leased Premises and the construction, use, condition or occupancy of any improvements on the Leased Premises and the use of all personal property used on the Leased Premises or in or related to the operation of any improvements thereon. Without limiting the foregoing, Lessee expressly covenants and agrees that all buildings and other improvements constructed on the Leased Premises shall be constructed in accordance with the building codes and regulations and inspection procedures imposed by Lessor on similar construction within Lessor's municipal boundaries.

16.17 **Attorney's Fees**. In the event Lessor or Lessee breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney fees so incurred by such other party. Lessee shall reimburse Lessor on demand for all reasonable fees and expenses (including attorneys' fees) which it incurs in connection with the seeking and obtaining of permits and approvals required of Lessor hereunder. Lessor or its attorney shall advise Lessee in advance of incurring such fees or expenses, of the approximate amount of said fees or expenses and shall obtain Lessee's approval for said expenditures before incurring same.

16.18 **Further Documents.** Lessor agrees that it will from time to time and at any reasonable time execute and deliver to Lessee such other and further instruments and assurances as Lessee may reasonably request approving, ratifying, and confirming this Lease and the leasehold estate created hereby and certifying that the same is in full force and effect and that no default on the part of Lessee exists, or if any such default does exist, Lessor shall specify in said certificate each such default. Without limiting the generality of the foregoing, Lessor acknowledges that Lessee intends to obtain third party financing with respect to the construction, operation and maintenance of improvements on the Leased Premises and, in connection therewith, Lessor agrees with Lessee to in good faith consider amendments to, or modifications of, this Lease as may reasonably be required in order to facilitate all such third-party financing.

16.19 **Exhibits and Recitals.** The exhibits and recitals to this Lease are incorporated herein.

16.20 **Lessee Representations.** The Lessee represents and covenants that: (i) Lessee is a duly organized and validly existing limited partnership under the laws of the State of Texas and has the power and authority to transact the business in which it is now engaged or proposed to engage; (iii) Lessee has the power and authority to execute, deliver and carry out the terms and provisions of this Lease and all other instruments to be executed and delivered by the Lessee in connection with its obligations hereunder; (iv) the execution, delivery, and performance by the Lessee of this Agreement have been duly authorized by all requisite action by the Lessee, and this Agreement is a valid and binding obligation of the Lessee enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally; (v) the Lessee is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of the Lessee or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered; (vi) neither the execution and delivery of this Lease, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of or default under (1) any terms, conditions or provisions of any agreement or instrument (A) to which the Lessee is now a party or is otherwise bound, or (B) to which any of its properties or other assets is subject; (2) any order or decree of any court or governmental instrumentality; or (3) any arbitration award, franchise, or permit; and (vi) the Lessee is not a party to any litigation or threatened litigation or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Lessee's ability to perform its obligations under this Agreement.

**(Signature Page to Follow)**

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

Approved As To Form:

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Lessee:

Blue Sky Sports Allen Center, LP

By: Blue Sky Allen Management, Inc.,  
its General Partner

By: \_\_\_\_\_  
Peter Brody, President

**Exhibit "A"**  
**Legal Description of the Land**

CITY OF ALLEN, TEXAS, in Collin County, Texas, herein called  
of the County of Collin State of Texas Grantee,  
lot, tract or parcel of land lying and being situated in Collin County,  
Texas, described as follows, to-wit: all that certain

BEING a tract of land situated in the David Wetsel Survey, Abstract #977,  
Collin County, Texas, and also being a part of a 148.801 acre tract  
conveyed to Allen Land Company, recorded in Vol. 683, on page 787, of the  
Deed Records of Collin County, Texas, and being more particularly  
described as follows:

BEGINNING at a point in the East line of the said David Wetsel Survey,  
Abstract #977, at its' intersection with the cutback widening for Farm-  
to-Market Road No. 2170, ( a 90' R.O.W.) an iron stake for corner;

THENCE, S.  $0^{\circ} 14'$  E, a distance of 389.44 feet to an iron stake for  
corner;

THENCE, N.  $89^{\circ} 26'$  W, a distance of 940.00 feet to an iron stake for  
corner;

THENCE, N.  $51^{\circ} 58'$  W, a distance of 23.80 feet to an iron stake for  
corner;

THENCE, N.  $14^{\circ} 30'$  W, a distance of 111.75 feet to an iron stake for  
corner;

THENCE, N.  $6^{\circ} 50' 15''$  W, a distance of 29.74 feet to an iron stake for  
corner;

THENCE, N.  $0^{\circ} 49' 30''$  E, a distance of 314.50 feet to a point on the South  
line of said Farm-to-Market Road No. 2170, an iron stake for  
corner;

THENCE, along the said Farm-to-Market Road No. 2170 South line, the  
following:

S.  $89^{\circ} 10' 30''$  E, a distance of 342.33 feet to the beginning of  
a curve to the Right having a central angle of  $2^{\circ} 20' 30''$  and a  
radius of 5,219.26 feet, an iron stake for corner;

Along said curve to the Right, a distance of 213.31 feet to the  
end of said curve, an iron stake for corner;

S.  $86^{\circ} 50'$  E, a distance of 352.74 feet to a concrete R.O.W.  
marker for corner;

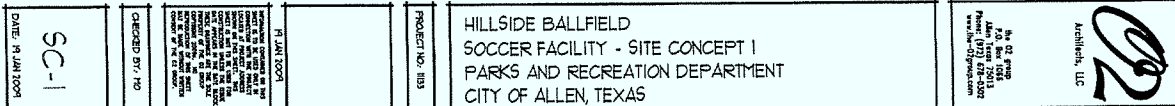
S.  $41^{\circ} 35'$  E, a distance of 69.96 feet to a concrete R.O.W.  
marker for corner;

S.  $85^{\circ} 21'$  E, a distance of 30.11 feet to the PLACE OF BEGINNING

AND CONTAINING 10.269 acres, of which 0.269 acres is in a County Road,  
LEAVING a net area of 10.00 acres.

**Exhibit “B”  
Concept Plan**





<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Authorize the City Manager to Execute a Professional Services Agreement with Solutions for Local Control, LLC in the Amount of \$3,000 per Month for Legislative Consulting Services

**STAFF RESOURCE:** Peter H. Vargas, City Manager

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Authorize Execution of a Professional Services Agreement

**BACKGROUND**

Former Representative Fred Hill was elected to serve as a member of the Texas House of Representatives beginning with the 71st Session in 1989 through the 80th Session ending in 2008. During his tenure, Representative Hill received many awards relating to local governments including being named *Legislator of the Year* six different times.

Mr. Hill has set up a corporation entitled Solutions for Local Control, LLC. He is limiting his services to local government issues and issues of transportation and taxation. These are the areas that he focused upon during his twenty years in the legislature.

Each legislative session, hundreds of bills are introduced that affect cities. Most of them restrict the operations of cities in one way or another. Our citizens have been very fortunate to have had Mr. Hill represent the interests of Texas Cities in the State Legislature. The City of Allen needs someone with legislative history to serve as an advocate representing our best interests. Someone with Mr. Hill's experience will be very advantageous for our community.

**BUDGETARY IMPACT**

The Consultant will receive \$3,000 monthly for the duration of the one-year agreement unless cancelled by either party. In addition to the professional fee, the City agrees to reimburse Consultant for necessary and reasonable, itemized out-of-pocket expenses requested and approved in advance by the City.

**STAFF RECOMMENDATION**

Staff recommends approval of the agreement.

**MOTION**

*I make a motion to authorize the City Manager to execute a one-year professional services agreement with Solutions for Local Control, LLC in the amount of \$3,000 per month for legislative consulting services.*

**ATTACHMENT**

Awards and Legislative Assignments  
Introduction Letter  
Agreement

## **Representative Fred Hill**

### **Awards relating to local governments**

#### **Texas Municipal League**

**Texas Municipal League Hall of Fame**  
(Awarded only four times in its history)

**Legislator of the Year 2003**  
**Legislator of the Year 1997**  
**Outstanding Legislator 1995**  
**Outstanding Legislator 1993**

**Texas Association of Counties**  
**Watch Dog Award 2005**  
(Awarded only 3 times in its history)  
**Friend of County Government 2005**  
**Legislator of the Year 2007**

**Texas Police Chiefs Association**  
**Legislator of the Year 1995**

**Most Valuable Player of 79<sup>th</sup>**  
**Legislative Session-Capitol Insider**  
**Top Ten Best Legislators of 79<sup>th</sup>**  
**Legislative Session-Texas Monthly**

### **Elective Offices Held**

#### **Texas House of Representatives**

80<sup>th</sup> session 2006-2008  
79<sup>th</sup> session 2005-2006  
78<sup>th</sup> session 2003-2005  
77<sup>th</sup> session 2001-2003  
76<sup>th</sup> session 1999-2001  
75<sup>th</sup> session 1997-1999  
74<sup>th</sup> session 1995-1997  
73<sup>rd</sup> session 1993-1995  
72<sup>nd</sup> session 1991-1993  
71<sup>st</sup> session 1989-1991

**Richardson Independent School**  
**District Board of Trustees**  
1983-1989

### **Legislative Committee Assignments**

**80<sup>th</sup> session: Chairman**, Committee on  
Local Government Ways and Means  
Member, Committee on Transportation  
Member, Legislative Budget Board

**79<sup>th</sup> session: Chairman**, Committee on  
Local Government Ways and Means  
Member, Committee on Transportation  
Member, Legislative Budget Board

**78<sup>th</sup> session: Chairman**, Committee on  
Local Government Ways and Means  
Member, Committee on Transportation  
Member, Legislative Budget Board

**77<sup>th</sup> session: Member**, Committee on  
Urban Affairs  
Member, Committee on Transportation

**76<sup>th</sup> session: Chairman**, Committee on  
Urban Affairs  
Member, Committee on Transportation

**75<sup>th</sup> session: Chairman**, Committee on  
Urban Affairs  
Member, Committee on Transportation

**74<sup>th</sup> session: Chairman**, Committee on  
Urban Affairs  
Member, Committee on Transportation

**73<sup>rd</sup> session: Chairman**, Committee on  
Urban Affairs

**72<sup>nd</sup> session: Member**, Higher Education

**71<sup>st</sup> session: Member**, Judicial Affairs  
Member, State & Cultural Resources

## **Solutions for Local Control, LLC**

January 3, 2009

City of Allen  
305 Century Parkway  
Allen, Texas 75013

Attn: Mr. Peter Vargas  
City Manager

Dear Peter,

Thank you for allowing me to submit this agreement for your consideration as your legislative consultant. This letter to you and accompanying agreement, upon your acceptance, will set forth our mutual understanding regarding the terms of engagement for the performance of legislative consulting for the City of Allen.

You will notice that I have set up a limited liability corporation entitled Solutions for Local Control, LLC. I think this entity will best describe the goal of what I hope to accomplish. I am limiting my services to local government issues and issues of transportation and taxation. These are the areas that I have focused upon during my twenty years in the legislature and am known for among my legislative colleagues.

I have carefully considered my fee, the term of the agreement and the termination clause. I realize that most who offer similar services demand an amount that is considerably higher. It is not my intention to denigrate the value of my services but, I think I can give you the type of representation that you desire for a relatively modest fee. I am requesting that the agreement we have be based upon a two year period. The reason for this is that even though the legislature is in session only 140 days during the odd numbered years, the activities of state government go forward twelve months out of the year. There will be decisions taking place in state agencies that you will want to be alerted to as well as interim committees of the legislature that will meet periodically through out the months following the regular session. There is always also the possibility that there will be special sessions of the legislature. I will provide you representation throughout all of these times.

**Solutions for Local Control, LLC**

**Page 2**

As to the term of the agreement as stated above, it is written as a two year commitment but, I want to assure you that if my services are not up to the standards that you require or that your circumstances change I am quite willing to void our agreement with sixty days written notice by either party. I want to be a valuable member of your team and if at any time you do not share that feeling it would be inappropriate for us to continue under this agreement.

Over my years in the legislature I have developed an admiration for the work done by our local governments and appreciate the skills needed by you to do a difficult but, necessary job for your community. It is an honor for me to represent the City of Allen. I look forward to beginning our relationship as soon as possible. I pledge to you my best efforts.

Thank you for giving me this extraordinary opportunity.

Sincerely,

Fred Hill

## **AGREEMENT**

This Agreement is made on this the 1st day of February, 2009, by and between Solutions for Local Control, LLC ("Consultant") and the City of Allen ("City"). The two parties agree as follows:

### **TERMS**

This Agreement is effective from February 1, 2009, through January 31, 2010.

### **SERVICES**

The parties agree that the Consultant shall perform the following services:

1. Assist the City in developing political and legislative strategies to achieve its goals;
2. Assist in communicating the position of the City to the legislative and executive branches of Texas government, interested parties and the public;
3. Represent the City during meetings, hearings and negotiating sessions involving the executive or legislative branches of Texas government regarding issues of importance to the City;
4. Assist the City in working with elected officials and members and staff persons of the Texas House of Representatives and Texas Senate in passing or amending legislation favorable to the City or in defeating legislation deemed harmful to the goals of the City;
5. Monitor and represent the City during interim legislative studies or interim committee meetings; and
6. Provide routine status reports to the City regarding the items outlined above.

### **FEES**

For services rendered under this Agreement, the City agrees to pay Consultant the sum of \$3,000 monthly for the duration of this agreement unless cancelled by either party, and payable on the 3rd day of each calendar month beginning February 1, 2009. The fee shall be made to Fred Hill, 909 N. Waterview Drive, Richardson, Texas, 75080, and deposited electronically to the account of the Consultant on or about the first of each month.

For purposes of reporting as defined by the rules of the Texas Ethics Commission the amount of the monthly retainer paid to Consultant that is being paid for *lobby activities*, the Consultant believes 35% (thirty-five percent) will be a reasonable estimate of the monthly retainer attributable to “*lobby activities*. ”

#### **EXPENSES**

In addition to the professional fee, the City agrees to reimburse Consultant for necessary and reasonable, itemized out-of-pocket expenses requested and approved in advance by City. Expenses may include travel, lodging and business meals ***incurred on behalf of the City and at its request.*** Such itemized expenses, with corresponding paid receipts, shall be paid separately and shall be reviewed and approved by the City, prior to payment. ***Such expenses do not include the normal office functions or daily expenses of the Consultant in the course of his functions in Austin representing the interests of the City.***

#### **CONFLICTS OF INTEREST**

Consultant will comply with all relevant state laws regarding ethics and lobbying, including immediately notifying the City in the event a conflict of interest arises and resolving any conflict.

#### **REGISTRATION REQUIREMENTS**

Texas ethic laws require Consultant to disclose his representation of the City and to report certain monies paid for some of the activities to be conducted under this contract. Consultant will comply with all rules regarding such disclosure and shall communicate with the City prior to filing such disclosures. In addition, if the Consultant performs any lobbying for the City with any local jurisdiction, it is the responsibility of the Consultant to properly register and comply with all local lobbying ordinances.

Consultant agrees not to engage in any activity on behalf of the City, which is contrary to any federal, state, or local law or regulation. Furthermore, Consultant agrees not to make or offer any gifts or gratuities to any public official on behalf of the City.

#### **INDEPENDENT CONTRACTOR RELATIONSHIP**

It is understood by the parties that Consultant is an independent contractor for the purposes of any federal and/or state laws including tax laws, and that Consultant is not in any way an employee, full- or part-time, of the City.



## **TERMINATION**

It is agreed and fully understood that the City may, at its option and without prejudice to any other remedy it may be entitled to at law or in equity, cancel or terminate this agreement upon sixty (60) days written notice to Consultant. Consultant shall be compensated in accordance with the terms of this contract for all services that City shall be obligated to pay for any work performed in accordance with this agreement. City shall not be obligated to pay for any work which is not submitted in compliance with the terms of this agreement. Consultant shall deliver all original source documents belonging to City immediately after notice of termination of this agreement has been received by Consultant. The City may also terminate this contract with thirty (30) days notice if termination is caused due to a conflict of interest that cannot be resolved to the City's satisfaction.

It is agreed and fully understood that the Consultant may, at its option and without prejudice to any other remedy it may be entitled to at law or in equity, cancel or terminate this agreement upon sixty (60) days written notice to City.

**City of Allen**

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**Peter H. Vargas**  
**City Manager**

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**Date**

**Consultant**

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**Fred Hill**  
**On behalf of Solutions for**  
**Local Control, LLC**

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**Date**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** HVAC Replacement at Chase Oaks Golf Course Club House

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

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Award bid and authorize the City Manager to execute a contract with Criterion Contractors, Inc. for replacing the HVAC units at the Chase Oaks Golf Course Club House and establish a project budget of \$69,438

**BACKGROUND**

In the Fall of 2007, two HVAC units failed at the Chase Oaks Course Club House. In order to repair these units, the condenser coils would need to be replaced. The cost of replacing the coils would exceed the cost of new units because of the age of the existing units (25+years). The justification of full replacement of the units is supported by the fact that the units are at the end of their life span and replacement parts are increasingly difficult to obtain. The units are being replaced with "13 SEER" (an energy efficiency rating) units which are more energy efficient, and should reduce the energy consumption.

Staff hired engineer Joe Hill, P.E. to assist in preparing bid documents and plans to assure that the equipment would meet the needs of the building and that the weight of the new equipment would not be a concern on the building.

On January 8, 2009, three bids were received for the replacement of the HVAC units.

Contractor	Warranty period	Bid
Criterion Contractors, Inc.	One Year	\$57,865.00
HVAC Building Services, Inc.	One Year	\$72,116.98
Berger Engineering	One Year	\$73,859.00

## **Project Budget**

Based on the lowest qualified bid received and a contingency fund to cover minor costs that may arise during the progress of the work, staff recommends the following project construction budget:

Criterion Contractors, Inc.

Base bid Construction:	\$ 57,865.00
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Contingency (+/- 20% of Base Bid)	\$ <u>11,573.00</u>
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TOTAL Proposed Budget	\$ 69,438.00
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## **BUDGETARY IMPACT**

Funds in the amount of \$69,438 are identified in the Golf Course Fund for the proposed budget as outlined.

## **STAFF RECOMMENDATION**

Staff recommends approval of a contract with Criterion Contractors Inc. for the replacement of HVAC units at chase Oaks Golf Course Club House.

## **MOTION**

*I make a motion to award bid and authorize the City Manager to execute a contract with Criterion Contractors, Inc. for replacing the HVAC units at the Chase Oaks Golf Course Club House and Establish a Project Budget of \$69,438.00.*

## **ATTACHMENT**

HVAC Contract

# **CITY OF ALLEN, TEXAS**

# **STANDARD FIXED PRICE AGREEMENT**

**City of Allen**  
**Parks and Recreation Department**  
301 Century Parkway  
One Allen Civic Plaza  
Allen, Texas 75013

## City of Allen, Texas

This Agreement is made by and between the **City of Allen, Texas**, a home-rule municipality (hereinafter referred to as the "Owner") and **Criterion Contractors, Inc.** hereinafter referred to as the "Contractor") for the construction of **HVAC System Replacement at Chase Oaks Golf Course Club House** (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

### ARTICLE I

#### THE CONTRACT AND THE CONTRACT DOCUMENTS

##### 1.1 THE CONTRACT

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

##### 1.2. THE CONTRACT DOCUMENTS

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

**Addenda No. 1 – 12/16/08**  
**Addenda No. 2 – 12/17/08**  
**Addenda No. 3 – 12/19/08**  
**Addenda No. 4 – 12/22/08**  
**Addenda No. 5 – 01/06/09**

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

##### 1.3 ENTIRE AGREEMENT

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

##### 1.4 NO PRIVITY WITH OTHERS

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

##### 1.5 INTENT AND INTERPRETATION

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

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

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

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

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

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

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

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

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 OWNERSHIP OF CONTRACT DOCUMENTS**

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set

of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

## **ARTICLE II**

### **THE WORK**

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

### **2.2 WORK**

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

**Replacement of rooftop HVAC units at the Chase Oaks Golf Course Club House (City of Allen Bid No. 2009-11-49).**

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

## **ARTICLE III**

### **CONTRACT TIME**

### **3.1 TIME AND LIQUIDATED DAMAGES**

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **20 calendar days** from the date specified in the Notice to Proceed. The parties

acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of **\$240** for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

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

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

### **3.2 SUBSTANTIAL COMPLETION**

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

### **3.3 TIME IS OF THE ESSENCE**

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

## **ARTICLE IV**

### **CONTRACT PRICE**

#### **4.1 THE CONTRACT PRICE**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

**\$57,865.00 (Fifty-seven thousand eight hundred sixty-five dollars and no/100 cents).**

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

## **ARTICLE V**

### **PAYMENT OF THE CONTRACT PRICE**

#### **5.1 SCHEDULE OF VALUES**

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values

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

## **5.2 PAYMENT PROCEDURE**

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

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

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt and approval of each

Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

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

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

## **5.3 WITHHELD PAYMENT**

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

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;



- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

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

#### **5.4 UNEXCUSED FAILURE TO PAY**

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

#### **5.5 SUBSTANTIAL COMPLETION**

5.5.1 The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials, and free from overgrown ground vegetation (grass, shrubs, trees). After completing the work and before final inspection, the Contractor shall:

- (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials), that are not the property of the City of Allen and all rubbish caused by its work;

- (2) mow the grass, trim all ground vegetation, reseed and/or resod all areas where ground cover and/or existing vegetation was damaged or destroyed by the work performed and leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer;
- (3) perform all specified tests; and,
- (4) deliver the installation in complete and operating condition.

5.5.2 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

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

#### **5.6 COMPLETION AND FINAL PAYMENT**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the

unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

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

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

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

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor,

pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

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

## **ARTICLE VI**

### **THE OWNER**

#### **6.1 INFORMATION, SERVICES AND THINGS**

##### **REQUIRED FROM OWNER**

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

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

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

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

#### **6.2 RIGHT TO STOP WORK**

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

Work be resumed. In such event, the Contractor shall immediately obey such order.

### 6.3 OWNER'S RIGHT TO PERFORM WORK

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

## ARTICLE VII

### THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

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

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

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

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and

secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

### 7.4 WARRANTY

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

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

### 7.6 SUPERVISION

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

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

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

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

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

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

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

## **7.9 SHOP DRAWINGS, PRODUCT**

### **DATA AND SAMPLES**

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

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

7.9.3 Shop Drawings are drawings, diagrams,

schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

7.9.4 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

7.9.5 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

7.9.6 Submittals which are not required by the Contract Documents may be returned by the Architect without action.

7.9.7 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect; Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp with, "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED". Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

7.9.8 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor and Subcontractor represents that the Contractor and Subcontractor has reviewed for compliance with the Contract Documents, and has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

7.9.9 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or

omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

7.9.10 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

7.9.11 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy. Pursuant to this Subparagraph, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

7.9.12 Submittals: See Division 1 for additional requirements.

## **7.10 CLEANING THE SITE**

### **AND THE PROJECT**

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

## **7.11 ACCESS TO WORK AND INSPECTIONS**

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

## **7.12 INDEMNITY AND DISCLAIMER**

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE

PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

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

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

7.12.4 To the fullest extent permitted by law, the

Contractor shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

7.12.5 Contractor agrees to indemnify and hold Owner, Architect and Architect's consultants harmless from any and all loss or damages arising out of jurisdictional labor disputes or other labor troubles of any kind that may occur during performance of the Contract.

#### **7.13 NONDISCRIMINATION**

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

#### **7.14 PREVAILING WAGE RATES**

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Allen has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of Allen of a sum of not less than Sixty Dollars (\$60.00) for each person per

day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.14.2 A schedule of the prevailing wage rates applicable to this Contract is attached.

#### **7.15 JOB SITE SAFETY PRECAUTIONS**

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

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

#### **7.16 WARNING DEVICES AND BARRICADES**

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

#### **7.17 PROTECTION OF UTILITIES**

##### **AND OTHER CONTRACTORS**

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

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

### **ARTICLE VIII**

#### **CONTRACT ADMINISTRATION**

##### **8.1 THE ARCHITECT**

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

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

## **8.2 ARCHITECT'S ADMINISTRATION**

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

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

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

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

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

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

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

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to

determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

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

8.2.10 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by Owner and Architect, and as Architect deems necessary (1) to become generally familiar with and to keep the Owner informed about the progress and aesthetic quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in general accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site evaluations or inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety or health precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

8.2.11 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents or failure to complete Work on schedule. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

8.2.12 Neither the authority of the Architect to reject Work 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. All costs made necessary by such failure, including those of repeated procedures, shall be at Contractor's sole expense, including compensation for Architect's services and expenses.



8.2.13 Review of submittals and action on the part of the Architect is limited to only those submittals required by the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review by the Architect, Architect's consultants, and Owner, if needed. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement. The Architect's review shall not constitute approval of safety or health precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

8.2.14 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

8.2.15 The Architect will not undertake to settle differences between the Contractor, Subcontractors or suppliers or act as arbiter as to which Subcontractor, trade or supplier is to furnish or install various items indicated or required.

8.2.16 The Architect's response to a request for information (RFI), or issuance of a clarification or interpretation shall be considered an interpretation, clarification, supplemental information or a order for a minor change in the Work not involving an adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents (Field Order), and shall be binding, unless indicated otherwise in the Architect's response to the RFI.

### 8.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

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

**8.3.5 CLAIMS FOR ADDITIONAL TIME** - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this

Subparagraph, any claim for an extension of time shall be waived.

#### **8.4 FIELD ORDERS**

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

#### **8.5 MEDIATION**

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

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

### **ARTICLE IX**

#### **SUBCONTRACTORS**

##### **9.1 DEFINITION**

**9.1.1** A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

##### **9.2 AWARD OF SUBCONTRACTS**

**9.2.1** Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to

such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

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

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

## **ARTICLE X**

### **CHANGES IN THE WORK**

#### **10.1 CHANGES PERMITTED**

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

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

#### **10.2 CHANGE ORDER DEFINED**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

#### **10.3 CHANGES IN THE CONTRACT PRICE**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner

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

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

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

#### **10.4 MINOR CHANGES**

10.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the

Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

**10.5 EFFECT OF EXECUTED  
CHANGE ORDER**

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

**10.6 NOTICE TO SURETY; CONSENT**

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

**ARTICLE XI**

**UNCOVERING AND CORRECTING WORK**

**11.1 UNCOVERING WORK**

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

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

shall pay the costs of uncovering and proper replacement.

**11.2 CORRECTING WORK**

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

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

**11.3 OWNER MAY ACCEPT DEFECTIVE**

**OR NONCONFORMING WORK**

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

## ARTICLE XII

### CONTRACT TERMINATION

#### 12.1 TERMINATION BY THE CONTRACTOR

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

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

#### 12.2 TERMINATION BY THE OWNER

##### 12.2.1 *FOR CONVENIENCE*

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

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

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

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

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

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

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

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

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

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

#### **12.2.2 FOR CAUSE**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

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

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

### **ARTICLE XIII INSURANCE**

#### **13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of

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

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

#### **13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE**

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

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation	as set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.
Automobile Liability	\$1,000,000 Combined single limit per occurrence.

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an "All Risks" of Physical Loss form, insuring all work in place and/or materials stored at the building site, including foundations and building

equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may appear and each shall be named in the policy or policies as an "Insured." Policies shall furnish coverage at all times for the full cash value of all construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by City of Allen. If the Contractor is installing equipment supplied by City of Allen, it shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by City of Allen. As respects buildings, the Contractor shall not terminate this insurance until they are occupied by City of Allen.

### **13.3 ADDITIONAL INSURED**

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

### **13.4 WRITTEN NOTIFICATION**

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given by certified mail to the Parks and Recreation Department, City of Allen, 305 Century Parkway, Allen, Texas, 75013.

### **13.5 PREMIUMS AND ASSESSMENTS**

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

### **13.6 CERTIFICATE OF INSURANCE**

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

### **13.7 PRIMARY COVERAGE**

The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City of Allen, Texas, for its benefit, including self insurance.

### **13.8 WORKER'S COMPENSATION INSURANCE COVERAGE**

13.8.1 The Contractor shall:

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

or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

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

#### *REQUIRED WORKERS' COMPENSATION COVERAGE*

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

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

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
  - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

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



## ARTICLE XIV

### MISCELLANEOUS

#### 14.1 LAWS AND ORDINANCES

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

#### 14.2 GOVERNING LAW

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

#### 14.3 SUCCESSORS AND ASSIGNS

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

#### 14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and

shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor. **A maintenance bond shall be furnished for a period of one (1) year form the date of final acceptance of the project.**

#### 14.5 SEVERABILITY

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

#### 14.6 AMENDMENTS

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

#### 14.7 NOTICES

14.7.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.

**EXECUTED** in single or multiple originals, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF ALLEN**

**CONTRACTOR:**

**APPROVED:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type/Print Name and Title)

**ATTEST:**

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
(City/State/Zip)

## CORPORATE ACKNOWLEDGMENT

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Print Title)

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

\_\_\_\_\_  
Notary Public In and For  
\_\_\_\_\_  
County, \_\_\_\_\_

My Commission expires: \_\_\_\_\_

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Roof Replacement at Chase Oaks Golf Course Club House

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

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Award bid and authorize the City Manager to execute a contract with Progressive Services dba Progressive Roofing for replacing roofing at the Chase Oaks Golf Course Club House in the amount of \$60,600 and establish a budget of \$72,720

**BACKGROUND**

Over the past four years, there have been numerous patch repairs made to the roof at the Chase Oaks Course Club House. The existing roof is at the end of its life span and is in need of replacement to keep water from seeping into the roof substructure, thereby causing costly damage.

Staff hired engineer Joe Hill, P.E. to assist in preparing bid documents, assure that the roof replacement would meet the needs of the building, and to evaluate the structural integrity of the roof structure. Mr. Hill's evaluation indicated that the roof should be replaced to prevent future compromise of the structural integrity of the roof.

On January 8, 2009, three bids were received for the replacement of the roof system.

<b>Contractor</b>	<b>Warranty Period</b>	<b>TOTAL Bid</b>
<b>Progressive Services dba Progressive Roofing</b>	<b>One Year</b>	<b>60,600.00</b>
<b>Rooftex</b>	<b>One Year</b>	<b>69,685.00</b>
<b>Criterion Contractors, Inc.</b>	<b>One Year</b>	<b>75,016.08</b>

## **Proposed Project Budget**

Based on the lowest bid received and additional construction funding needs, staff recommends the following project construction budget:

### **Progressive Roofing**

Base bid Construction:	\$ 60,600.00
Contingency (20% of Base Bid)	\$ <u>12,120.00</u>
TOTAL Proposed Budget	\$ 72,720.00

## **BUDGETARY IMPACT**

Funds in the amount of \$72,720 are identified in the Golf Course Fund for the proposed budget as outlined.

## **STAFF RECOMMENDATION**

Staff recommends approval of a contract with Progressive Services dba Progressive Roofing for the replacement of roofing at the Chase Oaks Golf Course Club House.

## **MOTION**

*I make a motion to award bid and authorize the City Manager to execute a contract with Progressive Services dba Progressive Roofing for replacing roofing at the Chase Oaks Golf Course Club House in the amount of \$60,600 and establish a budget of \$72,720.*

## **ATTACHMENT**

Roof Contract

# **CITY OF ALLEN, TEXAS**

# **STANDARD FIXED PRICE AGREEMENT**

**City of Allen**  
**Parks and Recreation Department**  
301 Century Parkway  
One Allen Civic Plaza  
Allen, Texas 75013

## City of Allen, Texas

This Agreement is made by and between the **City of Allen, Texas**, a home-rule municipality (hereinafter referred to as the "Owner") and **Progressive Services, dba Progressive Roofing** hereinafter referred to as the "Contractor") for the construction **Roof Replacement at the Chase Oaks Golf Course Club House** (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

### ARTICLE I

#### THE CONTRACT AND THE CONTRACT DOCUMENTS

##### 1.1 THE CONTRACT

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

##### 1.2. THE CONTRACT DOCUMENTS

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

**Addenda No. 1 – 12/18/08**

**Addenda No. 2 – 12/19/08**

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

##### 1.3 ENTIRE AGREEMENT

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

##### 1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other

contractual agreement between the Owner and any person or entity other than the Contractor.

##### 1.5 INTENT AND INTERPRETATION

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

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

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

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

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

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

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor

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

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

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 OWNERSHIP OF**

### **CONTRACT DOCUMENTS**

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

## **ARTICLE II**

### **THE WORK**

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

#### **2.2 WORK**

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

**Roof replacement at the Chase Oaks Golf Course Club House (City of Allen Bid No. 2009-11-47).**

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

## **ARTICLE III**

### **CONTRACT TIME**

#### **3.1 TIME AND LIQUIDATED DAMAGES**

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **20 calendar days** from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond



the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of **\$240 per day** for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

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

3.1.4 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the

proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

### 3.2 SUBSTANTIAL COMPLETION

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

### 3.3 TIME IS OF THE ESSENCE

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

## ARTICLE IV

### CONTRACT PRICE

#### 4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

**\$60,600.00 (Sixty thousand six hundred dollars and no/100 cents).**

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

## ARTICLE V

### PAYMENT OF THE CONTRACT PRICE

#### 5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner

may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Architect and the Owner.

## **5.2 PAYMENT PROCEDURE**

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

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

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the

Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

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

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

## **5.3 WITHHELD PAYMENT**

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

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;

- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

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

#### **5.4 UNEXCUSED FAILURE TO PAY**

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

#### **5.5 SUBSTANTIAL COMPLETION**

5.5.1 The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials, and free from overgrown ground vegetation (grass, shrubs, trees). After completing the work and before final inspection, the Contractor shall:

- (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials), that are not the property of the City of Allen and all rubbish caused by its work;
- (2) mow the grass, trim all ground vegetation, reseed and/or resod all areas where ground cover and/or existing vegetation was damaged or destroyed by the work performed

and leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer;

- (3) perform all specified tests; and,
- (4) deliver the installation in complete and operating condition.

5.5.2 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

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

#### **5.6 COMPLETION AND FINAL PAYMENT**

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

inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

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

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

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

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

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

## **ARTICLE VI**

### **THE OWNER**

#### **6.1 INFORMATION, SERVICES AND THINGS**

##### **REQUIRED FROM OWNER**

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

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

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

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

#### **6.2 RIGHT TO STOP WORK**

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

### **6.3 OWNER'S RIGHT TO PERFORM WORK**

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

## **ARTICLE VII**

### **THE CONTRACTOR**

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

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

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

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

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

### **7.4 WARRANTY**

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

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

### **7.6 SUPERVISION**

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

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

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

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

7.6.3. The Contractor's authorized superintendent

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

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

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

## 7.9 SHOP DRAWINGS, PRODUCT

### DATA AND SAMPLES

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

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

7.9.3 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-

subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

7.9.4 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

7.9.5 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

7.9.6 Submittals which are not required by the Contract Documents may be returned by the Architect without action.

7.9.7 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect; Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp with, "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED". Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

7.9.8 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor and Subcontractor represents that the Contractor and Subcontractor has reviewed for compliance with the Contract Documents, and has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

7.9.9 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples

or similar submittals by the Architect's approval thereof.

7.9.10 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

7.9.11 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy. Pursuant to this Subparagraph, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

7.9.12 Submittals: See Division 1 for additional requirements.

## **7.10 CLEANING THE SITE**

### **AND THE PROJECT**

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

## **7.11 ACCESS TO WORK AND INSPECTIONS**

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

## **7.12 INDEMNITY AND DISCLAIMER**

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE

PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

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

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

7.12.4 To the fullest extent permitted by law, the

Contractor shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

7.12.5 Contractor agrees to indemnify and hold Owner, Architect and Architect's consultants harmless from any and all loss or damages arising out of jurisdictional labor disputes or other labor troubles of any kind that may occur during performance of the Contract.

#### **7.13 NONDISCRIMINATION**

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

#### **7.14 PREVAILING WAGE RATES**

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Allen has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of Allen of a sum of not less than Sixty Dollars (\$60.00) for each person per



day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.14.2 A schedule of the prevailing wage rates applicable to this Contract is attached.

#### **7.15 JOB SITE SAFETY PRECAUTIONS**

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

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

#### **7.16 WARNING DEVICES AND BARRICADES**

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

#### **7.17 PROTECTION OF UTILITIES**

##### **AND OTHER CONTRACTORS**

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

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

### **ARTICLE VIII**

#### **CONTRACT ADMINISTRATION**

##### **8.1 THE ARCHITECT**

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

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

## **8.2 ARCHITECT'S ADMINISTRATION**

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

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

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

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

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

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

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

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to

determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

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

8.2.10 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by Owner and Architect, and as Architect deems necessary (1) to become generally familiar with and to keep the Owner informed about the progress and aesthetic quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in general accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site evaluations or inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety or health precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

8.2.11 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents or failure to complete Work on schedule. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

8.2.12 Neither the authority of the Architect to reject Work 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. All costs made necessary by such failure, including those of repeated procedures, shall be at Contractor's sole expense, including compensation for Architect's services and expenses.

8.2.13 Review of submittals and action on the part of the Architect is limited to only those submittals required by the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review by the Architect, Architect's consultants, and Owner, if needed. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement. The Architect's review shall not constitute approval of safety or health precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

8.2.14 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

8.2.15 The Architect will not undertake to settle differences between the Contractor, Subcontractors or suppliers or act as arbiter as to which Subcontractor, trade or supplier is to furnish or install various items indicated or required.

8.2.16 The Architect's response to a request for information (RFI), or issuance of a clarification or interpretation shall be considered an interpretation, clarification, supplemental information or a order for a minor change in the Work not involving an adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents (Field Order), and shall be binding, unless indicated otherwise in the Architect's response to the RFI.

### 8.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

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

**8.3.5 CLAIMS FOR ADDITIONAL TIME** - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this

Subparagraph, any claim for an extension of time shall be waived.

#### **8.4 FIELD ORDERS**

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

#### **8.5 MEDIATION**

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

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

### **ARTICLE IX**

#### **SUBCONTRACTORS**

##### **9.1 DEFINITION**

**9.1.1** A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

##### **9.2 AWARD OF SUBCONTRACTS**

**9.2.1** Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to

such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

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

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

## **ARTICLE X**

### **CHANGES IN THE WORK**

#### **10.1 CHANGES PERMITTED**

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

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

#### **10.2 CHANGE ORDER DEFINED**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

#### **10.3 CHANGES IN THE CONTRACT PRICE**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner

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

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

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

#### **10.4 MINOR CHANGES**

10.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the

Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

**10.5 EFFECT OF EXECUTED  
CHANGE ORDER**

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

**10.6 NOTICE TO SURETY; CONSENT**

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

**ARTICLE XI**

**UNCOVERING AND CORRECTING WORK**

**11.1 UNCOVERING WORK**

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

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

shall pay the costs of uncovering and proper replacement.

**11.2 CORRECTING WORK**

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

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

**11.3 OWNER MAY ACCEPT DEFECTIVE**

**OR NONCONFORMING WORK**

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

## ARTICLE XII

### CONTRACT TERMINATION

#### 12.1 TERMINATION BY THE CONTRACTOR

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

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

#### 12.2 TERMINATION BY THE OWNER

##### 12.2.1 *FOR CONVENIENCE*

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

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

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

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

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

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

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

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

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

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

#### **12.2.2 FOR CAUSE**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

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

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

### **ARTICLE XIII INSURANCE**

#### **13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of

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

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

#### **13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE**

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

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation	as set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.
Automobile Liability	\$1,000,000 Combined single limit per occurrence.

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an "All Risks" of Physical Loss form, insuring all work in place and/or materials stored at the building site, including foundations and building



equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may appear and each shall be named in the policy or policies as an "Insured." Policies shall furnish coverage at all times for the full cash value of all construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by City of Allen. If the Contractor is installing equipment supplied by City of Allen, it shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by City of Allen. As respects buildings, the Contractor shall not terminate this insurance until they are occupied by City of Allen.

### **13.3 ADDITIONAL INSURED**

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

### **13.4 WRITTEN NOTIFICATION**

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Parks and Recreation Department, City of Allen, 305 Century Parkway, Allen, Texas, 75013.

### **13.5 PREMIUMS AND ASSESSMENTS**

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

### **13.6 CERTIFICATE OF INSURANCE**

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

### **13.7 PRIMARY COVERAGE**

The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City of Allen, Texas, for its benefit, including self insurance.

### **13.8 WORKER'S COMPENSATION INSURANCE COVERAGE**

13.8.1 The Contractor shall:

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

or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

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

**REQUIRED WORKERS' COMPENSATION  
COVERAGE**

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

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

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
  - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

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

## ARTICLE XIV

### MISCELLANEOUS

#### 14.1 LAWS AND ORDINANCES

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

#### 14.2 GOVERNING LAW

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

#### 14.3 SUCCESSORS AND ASSIGNS

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

#### 14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and

shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor. **A Maintenance bond shall be furnished for a period of one (1) year from the date of final acceptance of the project.**

#### 14.5 SEVERABILITY

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

#### 14.6 AMENDMENTS

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

#### 14.7 NOTICES

14.7.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.

**EXECUTED** in single or multiple originals, this \_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF ALLEN**

**CONTRACTOR:**

**APPROVED:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type/Print Name and Title)

**ATTEST:**

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
(City/State/Zip)

## CORPORATE ACKNOWLEDGMENT

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Title)

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009.

\_\_\_\_\_  
Notary Public In and For

\_\_\_\_\_ County, \_\_\_\_\_

My Commission expires: \_\_\_\_\_

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Bid Award for Fountain Gate Alley Drainage Project  
(CIP# DR0803)

**STAFF RESOURCE:** John Baumgartner, Director of Engineering

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Award Bid and Authorize the City Manager to Execute a Contract with Jim Bowman Construction, Inc. for the Construction of the Fountain Gate Drainage Project for an Amount Not to Exceed \$65,991.50 and Establish a Project Budget of \$98,000

**BACKGROUND**

Several residents of the Fountain Park Subdivision have been affected by flooding during periods of extended or intense rainfall. The existing system allows a portion of the run-off to flow down the alley, towards the tee-intersection which then overflows the alley. The installation of the proposed inlet will collect 70% of the flow from the alley and the remaining flow will be collected at the existing inlet. Installation of the drainage pipe will almost double the capacity of the existing system while widening and warping the alley pavement will help direct the flow to the proposed inlet.

We have received the following construction bids:

Contractor	Days	Bid Amount
Jim Bowman Construction Co., LP	30	\$65,991.50
Murray Construction Co., Inc.	30	\$90,747.00
Llano Utility Service, Inc.	84	\$96,994.00

### **BUDGETARY IMPACT**

Funds for the project will be transferred from DR0601 - Forest Grove, completed (\$23,004); DR0602 - Hawthorne Avenue Drainage Project (Bowling Alley) nearing completion with excess funds (\$49,716). The remaining \$25,280 will be funded as needed from the Drainage System Maintenance operation for a total budget of \$98,000.

Engineering	\$14,550.00
Construction	\$65,991.50
Contingency	\$17,458.50
<b>TOTAL</b>	<b>\$98,000.00</b>

### **STAFF RECOMMENDATION**

Staff recommends the City Council authorize the City Manager to execute a contract with Jim Bowman Construction, Inc. for the construction of the drainage project on Fountain Gate Alley, for an amount not to exceed \$65,991.50 and establish a project budget in the amount of \$98,000 for engineering, construction and contingency.

### **MOTION**

***I make a motion to authorize the City Manager to execute a contract with Jim Bowman Construction, Inc. for the construction of the Fountain Gate Drainage project, for an amount not to exceed \$65,991.50 and establish a project budget of \$98,000.***

### **ATTACHMENT**

Location Map  
Fountain Gate Standard Form Agreement



CREEKWOOD CT.

CRESTWOOD CT.

CHERRYWOOD CT.

CLEARWOOD CT.

ALLEN HEIGHTS DRIVE

MAIN STREET

FOUNTAIN GATE ALLEY  
DRAINAGE IMPROVEMENT  
PROJECT

WORCHESTER LANE

PERSHORE LANE

DRACOTT CT.

RICHARDSON CT.

SPRING FIELD LANE

STONE CREEK DRIVE

N FOUNTAIN GATE DRIVE

FOUNTAIN GATE CIR.

SYCAMORE CREEK DRIVE

WILLOW BROOK DRIVE



## STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between \_\_\_\_\_ The City of Allen, Texas \_\_\_\_\_, a municipal corporation, of the County of \_\_\_\_\_ Collin \_\_\_\_\_ and State of Texas, acting through \_\_\_\_\_ Its City Manager \_\_\_\_\_

Party of the First Part, hereinafter termed OWNER, and \_\_\_\_\_ thereunto duly authorized so to do,

\_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_, Party of the Second Part, hereinafter termed CONTRACTOR.

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

### Fountain Gate Alley Drainage Improvements Bid No. 2009-11-33

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by BW2 Engineers, Inc., herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within \_\_\_\_\_ calendar days (~~working days~~) after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

**CITY OF ALLEN, TEXAS**

Party of the First Part (OWNER)

By: \_\_\_\_\_

Peter H. Vargas, City Manager

Attest: \_\_\_\_\_

Shelley George, City Secretary

\_\_\_\_\_  
Party of the Second Part (CONTRACTOR)

By: \_\_\_\_\_

Attest: \_\_\_\_\_

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Investment Report for the Period Ending September 30, 2008

**STAFF RESOURCE:** Kevin Hammeke, Director of Finance  
Joanne Stoehr, Assistant Director of Finance

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** None – this is informational only

**BACKGROUND**

Under the Public Funds Investment Act (the Act) the investment officer of an entity must prepare and submit to the governing body a written report of investment transactions for all funds covered by this chapter for the preceding reporting period. The report must be submitted quarterly. The attached report, for the period ending September 30, 2008, meets that requirement of the Act.

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

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

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

**BUDGETARY IMPACT**

None

**STAFF RECOMMENDATION**

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

**MOTION**

*None*

**ATTACHMENT**

Certify-Investment Report

Investment Report for the period ending September 30, 2008

CITY OF ALLEN

Quarterly Investment Report

July 1, 2008 through September 30, 2008

We certify that the information presented in the attached quarterly investment report for the period ending September 30, 2008 is correct to the best of our knowledge. We further certify that the investments are in compliance with (a) the investment strategy contained in the City's investment policy and (b) the relevant provisions in the Public Funds Investment Act.

(signature on executed copy)  
Kevin Hammeke, Finance Director

(signature on executed copy)  
Joanne Stoehr, Assistant Finance Director

**CITY OF ALLEN**  
**Investment Report**  
**July 1, 2008 through Sept 30, 2008**

**Summary of Investments by Type**

Type	Value of all Investments 06/30/2008		Value of all Investments 09/30/08	
	Book	Market	Book	Market
Government Agencies	\$ 12,334,125	\$ 12,264,366	\$ 8,812,679	\$ 8,740,228
TexPool	\$ 96,657,073	96,657,073	72,191,348	72,191,348
Commercial Paper	\$ 1,986,363	1,934,739	2,954,773	2,923,530
Certificates of Deposit	\$ 36,380,195	36,121,322	41,570,043	41,201,358
<b>TOTAL</b>	<b>\$ 147,357,755</b>	<b>\$ 146,977,500</b>	<b>\$ 125,528,843</b>	<b>\$ 125,056,464</b>

**Summary of Total Investment Book Value by Fund Group**

	<b>6/30/08</b>	<b>9/30/08</b>
General Fund	\$ 23,901,558	\$ 15,174,127
Enterprise Funds	\$ 19,865,831	25,172,914
Capital Projects Funds	\$ 31,819,818	31,050,948
Debt Service Funds	\$ 8,283,370	1,645,991
Special Revenue Funds	\$ 52,458,943	41,182,222
Internal Service Funds	\$ 8,854,700	9,556,394
Trust and Agency Funds	\$ 2,173,534	1,746,248
<b>TOTAL</b>	<b>\$ 147,357,755</b>	<b>\$ 125,528,843</b>

Note: Addition differences due to rounding.

City of Allen  
Government Agencies, Commercial Paper, and Certificates of Deposit

Maturity Date	Purchase Date	Type	Broker	CUSIP	Value at 6/30/08		Value at 9/30/08	
					Book	Market	Book	Market
8/2/08	2/4/08	CD	ANB	9478272	\$ 5,058,806	\$ 5,000,000	\$ -	\$ -
8/6/08	2/6/08	CD	VP	200559154	\$ 2,023,360	\$ 2,000,000	\$ -	\$ -
8/11/08	12/6/07	Commercial Paper	ZB	98970JHB7	\$ 994,238	\$ 968,114	\$ -	\$ -
8/24/08	3/24/08	CD	VP	20560524	\$ 5,043,333	\$ 5,000,000	\$ -	\$ -
8/29/08	12/6/07	Commercial Paper	ZB	98970JHV3	\$ 992,125	\$ 966,625	\$ -	\$ -
9/30/08	9/1/08	CD	CB	791000086	\$ -	\$ -	\$ 5,021,973	\$ 5,012,574
12/20/08	2/20/08	CD	ANB	9479759	\$ 3,536,400	\$ 3,500,000	\$ 3,560,590	\$ 3,500,000
1/4/09	4/4/08	CD	VP	200560863	\$ 2,115,176	\$ 2,102,619	\$ 2,127,896	\$ 2,102,619
1/5/09	6/5/08	CD	VP	200562367	\$ 5,129,189	\$ 5,118,703	\$ 5,166,149	\$ 5,118,703
1/20/09	2/20/08	CD	ANB	9479767	\$ 5,456,160	\$ 5,400,000	\$ 5,493,482	\$ 5,400,000
4/3/09	7/9/08	Commercial Paper	CS	36959HR33	\$ -	\$ -	\$ 1,478,041	\$ 1,468,530
4/6/09	7/9/08	Commercial Paper	CS	02581RR62	\$ -	\$ -	\$ 1,476,732	\$ 1,455,000
5/26/09	9/26/08	FHLB	FES	3133X25B	\$ -	\$ -	\$ 1,017,610	\$ 1,005,000
6/5/09	6/5/08	CD	ANB	9493701	\$ 3,006,313	\$ 3,000,000	\$ 3,028,561	\$ 3,000,000
7/5/09	6/5/08	CD	VP	200562372	\$ 5,011,458	\$ 5,000,000	\$ 5,051,844	\$ 5,000,000
8/5/09	12/6/07	FHLB	CS	3133XLM3	\$ 2,077,760	\$ 2,047,500	\$ 2,037,401	\$ 2,032,500
8/6/09	8/6/08	CD	ANB	9509738	\$ -	\$ -	\$ 2,009,561	\$ 2,000,000
9/4/09	8/4/08	CD	VP	200563435	\$ -	\$ -	\$ 5,026,776	\$ 5,000,000
9/25/09	8/25/08	CD	VP	200564223	\$ -	\$ -	\$ 5,083,211	\$ 5,067,462
12/11/09	6/11/08	FHLB	CS	3133XREM8	\$ 706,100	\$ 704,781	\$ 711,310	\$ 703,238
12/16/09	6/16/08	FHLB - called	GS	3128X7-A9-5	\$ 1,502,095	\$ 1,501,170	\$ -	\$ -
2/19/10	2/20/08	FHLB	GS	3128X6X76	\$ 1,517,498	\$ 1,501,500	\$ 1,505,103	\$ 1,497,960
3/3/10	3/3/08	FHLB - called	CS	3133XPXL3	\$ 1,515,146	\$ 1,500,465	\$ -	\$ -
3/3/10	3/3/08	FHLB - called	WF	3133XPXL3	\$ 1,515,146	\$ 1,500,465	\$ -	\$ -
6/23/10	6/23/08	FHLB - called	GS	3128X7ZT4	\$ 2,000,380	\$ 2,003,580	\$ -	\$ -
6/30/10	6/30/08	FHLB	CS	3128X7F33	\$ 1,500,000	\$ 1,504,905	\$ 1,514,979	\$ 1,504,650
5/19/11	9/19/08	FHLB	GS	#REF!	\$ -	\$ -	\$ 2,026,275	\$ 1,996,880
					\$ 50,700,682	\$ 50,320,428	\$ 53,337,495	\$ 52,865,115

Commercial Paper	\$ 1,986,363	\$ 1,934,739	\$ 2,954,773	\$ 2,923,530
Agencies	\$ 12,334,125	\$ 12,264,366	\$ 8,812,679	\$ 8,740,228
Certificates of Deposit	\$ 36,380,185	\$ 36,121,322	\$ 41,570,043	\$ 41,201,358

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

Note: Addition differences due to rounding.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, January 27, 2009

**SUBJECT:** Receive Financial Report for the Period Ending September 30, 2008 (unaudited)

**STAFF RESOURCE:** Kevin Hammeke, Director of Finance  
Joanne Stoehr, Assistant Director of Finance

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** None – this is informational only

**BACKGROUND**

Financial reports are prepared each quarter for the General Fund, Water and Sewer Fund and other funds for which annual budgets are prepared. Attached are copies of the reports for the period ending September 30, 2008. Total revenues were \$123,386,494 or 103% and total expenditures were \$117,843,184 or 92%. This report covers the fourth quarter of fiscal year 2007-2008 and does not represent final audited amounts. The prior FY 2007 actual amounts have been added for comparison purposes.

**General Fund**

Overall revenues collected were \$53,796,603 or 101% of budget and expenditures were \$53,338,459 or 100% of budget resulting in an increase in General Fund balance by \$458,144. Total General Fund expenditures were 100% of budget and include \$2,433,919 transferred out of the fund. The transfer amount includes \$754,155 to the Golf Course Fund (\$300,000 for clubhouse repairs and \$454,155 for operations), \$284,504 to the Grant and Special Revenue Fund, \$187,260 to the Risk Management Fund, and \$1,208,000 to the Non-Bond Capital Fund which was allocated as follows: \$375,941 - IT Master Plan Capital project and \$832,059 for future miscellaneous capital projects.

**Debt Service Fund**

Revenue for the Debt Service Fund totaled \$8,989,494 or 103% of budget and expenditures were \$8,761,572 or 100% of budget. The ending fund balance was \$1,627,911 and is approximately the amount projected in the long-range financial plan.

## **Water & Sewer**

The Water & Sewer Fund had revenues of \$25,370,813 and operating expenditures of \$19,901,034 for a net operating gain of \$5,469,779. Miscellaneous revenue includes a water consumption rebate of \$334,077 from North Texas Municipal Water District. Non-operating expenses include \$2,774,195 for debt service and \$1,840,000 transferred to the Non-Bond Water and Sewer Capital Project Fund for water and sewer line replacements, pump station maintenance, sewer lift station maintenance, and future CIP funding as per the rate study. The North Texas Municipal Water District year final expenditure amounts for Allen were under the projected budget which resulted in savings of \$373,685. These savings were primarily due to less than expected power costs, chemical cost, and costs for special projects. Overall water and sewer revenues are 107% of budget and expenditures are 97% of the budgeted amount.

## **Solid Waste Fund**

Solid Waste revenues were \$5,044,712 or 103% of budget and operating expenditures were \$4,826,296 or 94% of budget. Non-operating revenues include \$35,000 received from CWD to assist in funding the Education Specialist, and compost rebates. Overall, revenue exceeded expenses by \$218,416.

## **Drainage Utility Fund**

Revenues were \$1,053,288 or 102% of budget. Expenditures were \$1,203,308 or 92% of budget. Expenses exceeded revenues by \$150,020, which was anticipated in the budget. Expenses include \$200,000 transferred to Non-Bond Capital Project fund for drainage improvement projects.

## **Golf Course Fund**

The Golf Course was purchased by the City in October 2004. This fiscal year concludes four full years of operations. Revenues were \$2,308,816 or 113% of budget and expenditures were \$1,964,366 or 95% of budget. Revenues include transfers in from the General Fund totaling \$754,155, which included \$300,000 for clubhouse repairs and \$454,155 for operations. Without the transfers, the net operating loss was \$409,705. According to figures released by the National Golf Foundation, there was very little growth in annual golf rounds across the country. In an effort to increase rounds, Chase Oaks will participate in the PGA Play Golf America programs. The Golf Course was able to increase the rounds of golf played by over 6,000 rounds from the previous year. Other areas of increased revenues were class fees at 124% and facility rental at 108% of budget. Like many golf facilities and businesses, the Golf Course continues to face many challenges with the current economic condition. The Golf Course will continue to focus their efforts on rounds/revenue generation and making sound business decisions regarding expenditures.

## **Economic Development Corporation**

Revenues were \$5,156,935, which is 97% of budget. Expenditures total \$5,590,723, which is 96% of budget and includes \$670,608 in grant payments to Chelsea. At year end, total expenditures exceeded revenues by \$433,788. The 2008 revised budget planned for a \$497,957 drawdown of fund balance for economic incentives.



## **Community Development Corporation**

Revenues were \$7,054,983, which is 127% of budget. Expenditures were \$7,013,258, or 54% of budget. Expenditures include \$1,624,748 associated with the Sales Tax Revenue Refunding Bonds, \$264,418 for machinery and equipment, \$670,608 for grant payments to Chelsea, \$2,778,062 for debt service, \$1,385,766 for capital projects, \$37,156 for miscellaneous operating expenses, and \$252,500 transferred out of the fund. The transfers included \$182,500 to the General Fund for project administration and other areas of administrative support, and \$70,000 to the Parks and Recreation Special Revenue Fund for Allen USA. The remaining unspent budget for approved capital projects will be spent in future years as those projects move forward.

## **Antenna Rental Fund**

Revenues were \$337,471 or 102% of budget. Expenditures were \$262,950 or 99% of budget. Expenditures include \$72,350 for Allen's share of the Arts of Collin County operational expenses, \$70,000 for Allen Arts Alliance, \$44,000 for the Philharmonic Symphony, \$20,000 for summer sounds, and \$55,000 for Allen USA.

## **Hotel Occupancy Tax Fund**

Revenues were \$738,718 or 105% of budget and expenditures were \$274,019 or 55% of budget. Hotel taxes are received one month after the month of sales.

## **Parks and Recreation Special Revenue Fund**

Revenues were \$2,703,328 or 103% of budget and expenditures were \$2,386,349 or 94% of budget resulting in a net gain of \$316,979. Revenue transferred into the fund totaled \$280,600. This includes \$190,600 from the Antenna Rental Fund, \$70,000 from the Community Development Corporation, and \$20,000 from the Non-Bond Capital Projects Fund to be used for Summer Sounds, Allen U.S.A., and Cultural Arts.

## **Tax Increment Financing**

Revenues were \$193,670 or 73% of budget. Expenditures were \$863 which consisted of legal fees.

## **Grants and Special Revenue Fund**

Revenues were \$1,162,217 or 78% of budget and expenditures were \$1,047,016 or 72% of budget. Each grant has specific financial reporting requirements that determine if the revenue must match the expenditures in the current reporting period. The majority of the grants are reimbursable grants that require the revenue to be recorded when received and expenditures when incurred. The remaining budgeted revenue and expense will be recorded in FY09 when funds are expended and reimbursement is received. The Library Grant revenue is received in the fiscal year it is awarded. However, if the funds are not expensed in the current fiscal year the funds are deferred until future years when the corresponding expenditures are made. The deferred revenue is reserved in the Grant fund balance. The Park and Recreation Grant revenue was less than anticipated due to the Six Cities Trail Connection Grant moving to FY09.

**Replacement Fund**

Revenues were \$1,582,840 or 102% of budget and expenditures were \$964,000 or 34% of budget. At the fiscal year end, outstanding purchase orders totaled \$1,829,783, which included the Mobile Command Center and three fire engines. The FY09 fiscal budget will be revised to cover these expenditures.

**Risk Management Fund**

Revenues were \$7,892,606 or 111% of budget due to stop loss reimbursements received and expenditures were \$7,009,776 or 107% of budget. This fund reports revenues and expenditures for all insurances paid by the City. Health and dental expenditures were \$555,694 more than budgeted, which was offset by the stop loss reimbursements. Overall, revenues exceeded expenditures by \$882,830.

**BUDGETARY IMPACT**

None

**STAFF RECOMMENDATION**

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

**MOTION**

*None*

**ATTACHMENT**

Unaudited Financial Report for fiscal year ending September 30, 2008

**CITY OF ALLEN**  
**FINANCIAL REPORT**  
**For the Period Ending**  
**September 30, 2008**  
(Unaudited)

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CITY OF ALLEN  
Revenues & Expenditures  
For the Period Ending  
September 30, 2008  
(Unaudited)

	Actual at 9/30/2008
General Fund	
Revenues	\$ 53,796,603
Expenditures	53,338,459
Revenues Over (Under) Expenditures	\$ 458,144
Debt Service Fund	
Revenues	\$ 8,989,494
Expenditures	8,761,572
Revenues Over (Under) Expenditures	\$ 227,922
Water & Sewer Fund	
Revenues	\$ 25,370,813
Expenses: Operating	19,901,034
Net Operating Gain (Loss)	\$ 5,469,779
Expenses: Capital Projects	525,000
Debt Service	2,774,195
Revenues Over (Under) Expenditures	\$ 2,170,584
Solid Waste	
Revenues	\$ 5,044,712
Expenses	4,826,296
Revenues Over (Under) Expenditures	\$ 218,416
Drainage Utility	
Revenues	\$ 1,053,288
Expenses	1,203,308
Revenues Over (Under) Expenditures	\$ (150,020)
Golf Course	
Revenues	\$ 2,308,816
Expenses	1,964,366
Revenues Over (Under) Expenditures	\$ 344,450
Economic Development Corporation Fund	
Revenues	\$ 5,156,935
Expenditures	5,590,723
Revenues Over (Under) Expenditures	\$ (433,788)
Community Development Corporation Fund	
Revenues	\$ 7,054,983
Expenditures	7,013,258
Revenues Over (Under) Expenditures	\$ 41,725
Antenna Rental Fund	
Revenues	\$ 337,471
Expenditures	262,950
Revenues Over (Under) Expenditures	\$ 74,521

CITY OF ALLEN  
Revenues & Expenditures  
For the Period Ending  
September 30, 2008  
(Unaudited)

	Actual at 9/30/2008
Hotel Occupancy Tax Fund	
Revenues	\$ 738,718
Expenditures	274,019
Revenues Over (Under) Expenditures	\$ 464,699
Parks & Recreation Special Revenue Fund	
Revenues	\$ 2,703,328
Expenditures	2,386,349
Revenues Over (Under) Expenditures	\$ 316,979
Tax Increment Financing	
Revenues	\$ 193,670
Expenditures	\$863
Revenues Over (Under) Expenditures	\$ 192,807
Grant & Special Revenue Fund	
Revenues	\$ 1,162,217
Expenditures	1,047,016
Revenues Over (Under) Expenditures	\$ 115,201
Replacement Fund	
Revenues	\$ 1,582,840
Expenditures	964,000
Revenues Over (Under) Expenditures	\$ 618,840
Risk Management Fund	
Revenues	\$ 7,892,606
Expenditures	7,009,776
Revenues Over (Under) Expenditures	\$ 882,830

CITY OF ALLEN  
General Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>					
Revenue Source	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Property Taxes	\$23,230,344	\$27,836,891	\$27,935,025	\$28,616,988	102%
Sales Tax	9,755,380	10,484,154	10,103,519	9,940,619	98%
Franchise Tax	4,866,243	5,068,750	5,372,079	5,458,370	102%
Permits & Licenses	1,637,557	1,605,000	2,200,645	1,736,906	79%
Charges for Services	1,404,375	1,308,596	1,534,401	1,653,712	108%
Fines	1,727,693	1,914,027	1,759,700	1,713,351	97%
Miscellaneous	1,059,001	850,000	842,572	807,771	96%
Reimbursements	134,359	131,365	196,906	167,471	85%
Other Financing Sources	2,828,173	3,460,551	3,546,294	3,701,415	104%
<b>TOTAL</b>	<b>\$46,643,125</b>	<b>\$52,659,334</b>	<b>\$53,491,141</b>	<b>\$53,796,603</b>	<b>101%</b>

Note: Sales Tax receipts are received two months after the month of sales.  
Sales Tax revenue also includes Mixed Drink Tax which is received quarterly.

<b>EXPENDITURES</b>					
Department	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
City Secretary	\$359,157	\$299,433	\$317,232	\$300,735	95%
Municipal Court	570,901	604,834	600,648	598,198	100%
City Administration	871,614	961,556	1,008,178	988,371	98%
Information Technology	1,311,927	2,360,695	2,478,288	2,000,324	81%
Human Resources	561,373	641,598	666,157	674,223	101%
Internal Services	5,654,275	6,375,950	6,195,369	7,428,719	120%
Police	11,561,086	12,967,756	13,371,989	13,363,269	100%
Parks & Recreation	6,591,857	8,254,931	8,443,727	8,044,648	95%
Library	2,180,642	2,273,127	2,347,615	2,333,545	99%
Fire	8,264,567	9,580,174	9,744,324	9,565,355	98%
Building & Code Compl.	1,111,173	1,358,368	1,372,678	1,342,004	98%
Planning	782,057	980,818	922,227	912,885	99%
Community Services	1,894,726	2,201,793	2,284,848	2,180,834	95%
Finance	1,068,945	1,278,043	1,341,325	1,306,400	97%
Engineering	2,024,021	2,315,738	2,347,164	2,298,949	98%
	<b>\$44,808,321</b>	<b>\$52,454,814</b>	<b>\$53,441,769</b>	<b>\$53,338,459</b>	<b>100%</b>

(Unaudited)

CITY OF ALLEN  
Debt Service Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Taxes	\$9,957,899	\$8,574,023	\$8,616,954	\$8,838,673	103%
Interest Earnings	299,807	280,000	140,000	150,821	108%
<b>TOTAL Revenues</b>	<b>\$10,257,706</b>	<b>\$8,854,023</b>	<b>\$8,756,954</b>	<b>\$8,989,494</b>	<b>103%</b>

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<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Principal	\$6,325,000	\$4,705,277	\$4,775,000	\$4,775,000	100%
Interest & Fees	3,843,462	4,099,731	4,027,714	3,986,572	99%
<b>TOTAL Expenditures</b>	<b>\$10,168,462</b>	<b>\$8,805,008</b>	<b>\$8,802,714</b>	<b>\$8,761,572</b>	<b>100%</b>

CITY OF ALLEN  
Water and Sewer Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Water Sales	\$10,992,395	\$15,000,000	\$14,000,000	\$14,458,505	103%
Sewer Charges	7,056,882	8,500,000	8,100,000	8,226,315	102%
Connections	201,735	180,000	180,000	224,610	125%
Service Charges	442,021	398,500	774,824	1,507,156	195%
Subtotal	\$18,693,033	\$24,078,500	\$23,054,824	\$24,416,586	106%
Interest	\$546,587	\$530,000	\$320,000	\$329,354	103%
Miscellaneous	674,068	103,614	150,944	464,396	308%
Operating Transfer In	22,145	160,477	160,477	160,477	100%
Subtotal	1,242,800	794,091	631,421	954,227	151%
TOTAL Revenues	\$19,935,833	\$24,872,591	\$23,686,245	\$25,370,813	107%

<b>EXPENSES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Department					
Debt Service	\$2,436,340	\$2,362,186	\$2,774,961	\$2,774,195	100%
Water & Sewer	18,826,628	21,053,385	20,506,010	19,866,105	97%
Utility Collections	535,216	597,386	600,214	559,929	93%
TOTAL Expenses	\$21,798,184	\$24,012,957	\$23,881,185	\$23,200,229	97%



CITY OF ALLEN  
Solid Waste  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Operating Revenues					
Garbage Fees	\$3,563,685	\$3,650,000	\$3,820,858	\$3,845,869	101%
Commercial Garbage	743,294	710,000	780,290	839,795	108%
Recycling Revenues	67,664	51,000	44,100	50,051	113%
Household Haz Waste	135,314	140,000	145,000	145,300	100%
Composting Revenue	42,439	28,000	31,500	50,543	160%
Subtotal	\$4,552,396	\$4,579,000	\$4,821,748	\$4,931,558	102%
Non-Operating Revenues					
Interest	\$80,586	\$60,000	\$51,000	\$69,118	136%
Miscellaneous	45,407	45,000	46,000	44,036	96%
Subtotal	\$125,993	\$105,000	\$97,000	\$113,154	117%
TOTAL Revenues	\$4,678,389	\$4,684,000	\$4,918,748	\$5,044,712	103%

<b>EXPENSES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
TOTAL Expenses	\$3,976,297	\$4,607,556	\$5,111,231	\$4,826,296	94%

CITY OF ALLEN  
Drainage Utility  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Operating Revenues					
Inspection Fees	\$66,573	\$40,000	\$70,000	\$66,258	95%
Drainage Fees	909,066	920,742	920,742	949,950	103%
Subtotal	\$975,639	\$960,742	\$990,742	\$1,016,208	103%
Non-Operating Revenues					
Interest	\$58,494	\$60,000	40,000	\$37,080	93%
Miscellaneous					
Subtotal	\$58,494	\$60,000	\$40,000	\$37,080	93%
TOTAL Revenues	\$1,034,133	\$1,020,742	\$1,030,742	\$1,053,288	102%

<b>EXPENSES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
TOTAL Expenses	\$828,752	\$1,316,770	\$1,312,987	\$1,203,308	92%

CITY OF ALLEN  
Golf Course Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Operating Revenues					
Retail Pro Shop	\$70,431	\$100,000	\$84,735	\$81,400	96%
Alcohol/Beer Sales	\$80,056	\$115,000	\$104,650	\$104,776	100%
Concession Sales	\$98,593	\$160,975	\$122,575	\$120,862	99%
Class Fees	\$22,876	\$20,000	17,500	\$21,621	124%
Facility Rental	\$850	\$26,000	\$20,000	\$21,659	108%
Green Fees	1,043,348	1,432,374	1,432,374	1,197,117	84%
Subtotal	\$1,316,154	\$1,854,349	\$1,781,834	\$1,547,435	87%
Non-Operating Revenues					
Other Reimbursements	\$235			\$2,172	
Miscellaneous	\$23,696	\$2,200	\$4,820	\$5,054	105%
Operating Transfer In	570,652	262,155	262,155	754,155	288%
Subtotal	\$594,583	\$264,355	\$266,975	\$761,381	285%
TOTAL Revenues	\$1,910,737	\$2,118,704	\$2,048,809	\$2,308,816	113%

<b>EXPENSES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
TOTAL Expenses	\$1,754,049	\$2,118,704	\$2,060,484	\$1,964,366	95%

CITY OF ALLEN  
Economic Development Corporation  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Sales Tax	\$4,837,072	\$5,198,627	\$5,098,394	\$4,968,133	97%
Interest on Investments	281,110	251,000	80,000	69,311	87%
Miscellaneous/Donations			2,000	2,000	100%
Other Reimbursements	22,115		87,469	87,491	100%
Loan Reimbursement			30,000	30,000	100%
<b>TOTAL Revenues</b>	<b>\$5,140,297</b>	<b>\$5,449,627</b>	<b>\$5,297,863</b>	<b>\$5,156,935</b>	<b>97%</b>

Note: Sales Tax receipts are received two months after the month of sales.

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
<b>TOTAL Expenditures</b>	<b>\$9,329,208</b>	<b>\$4,604,433</b>	<b>\$5,795,820</b>	<b>\$5,590,723</b>	<b>96%</b>

CITY OF ALLEN  
Community Development Corporation Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Sales Tax	\$4,837,072	\$5,198,627	\$5,098,394	\$4,968,133	96%
Interest on Investments	424,692	358,000	350,000	335,820	94%
Subtotal	\$5,261,764	\$5,556,627	\$5,448,394	\$5,303,953	95%
Bond Proceeds	-		1,615,000	1,615,000	
Loan Reimbursement			136,030	136,030	
<b>TOTAL Revenues</b>	<b>\$5,261,764</b>	<b>\$5,556,627</b>	<b>\$7,199,424</b>	<b>\$7,054,983</b>	<b>127%</b>

Note: Sales Tax receipts are received two months after the month of sales.

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Operating Expenditures	\$2,886,221	\$6,586,467	\$11,168,967	5,252,480	47%
Loan-Event Center Expenditures			136,030	136,030	100%
Bond Refunding Expenditures	-		1,624,748	1,624,748	100%
<b>TOTAL Expenditures</b>	<b>\$ 2,886,221</b>	<b>\$6,586,467</b>	<b>\$12,929,745</b>	<b>\$7,013,258</b>	<b>54%</b>

CITY OF ALLEN  
Antenna Rental Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Water Tower Rental Fees	\$402,922	\$280,350	\$322,296	\$326,741	101%
Interest on Investments	12,419	10,000	10,000	10,730	107%
<b>TOTAL Revenues</b>	<b>\$415,341</b>	<b>\$290,350</b>	<b>\$332,296</b>	<b>\$337,471</b>	<b>102%</b>

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
<b>TOTAL Expenditures</b>	<b>\$273,703</b>	<b>\$264,000</b>	<b>\$265,600</b>	<b>\$262,950</b>	<b>99%</b>

CITY OF ALLEN  
Hotel Occupancy Tax Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Hotel Occupancy Tax	\$673,383	\$602,545	\$690,450	\$719,039	104%
Interest on Investments	13,662	13,000	16,000	19,679	123%
<b>TOTAL Revenues</b>	<b>\$687,045</b>	<b>\$615,545</b>	<b>\$706,450</b>	<b>\$738,718</b>	<b>105%</b>

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
<b>TOTAL Expenditures</b>	<b>\$334,466</b>	<b>\$498,515</b>	<b>\$494,235</b>	<b>\$274,019</b>	<b>55%</b>

CITY OF ALLEN  
Parks and Recreation Special Revenue Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Concessions	\$91,123	\$71,299	\$91,299	\$92,159	101%
Special Events	118,342	217,355	218,555	102,144	47%
Ballfield Rentals	38,903	42,000	42,000	57,959	138%
Athletic Programs	269,032	291,842	291,842	292,868	100%
Pool/Facility Rental	170,681	137,660	149,660	175,973	118%
Pool Admissions	288,368	288,173	288,173	253,895	88%
Learn to Swim Fees	213,636	196,020	196,020	231,554	118%
Swim Team (COAST)	24,562	10,400	10,400	18,332	176%
Membership Fees	525,995	468,396	498,396	542,006	109%
Retail Sales	1,613	12,100	13,600	9,046	67%
Class Fees	448,532	463,730	463,730	479,505	103%
Subtotal	\$2,190,787	\$2,198,975	\$2,263,675	\$2,255,441	100%
Non-Operating Revenues					
Interest	\$19,592	\$16,000	\$15,000	\$17,345	116%
Donations/Other Reimb	122,541	73,166	73,200	149,942	205%
Operating Transfer In	235,000	195,000	280,600	280,600	100%
Subtotal	\$377,133	\$284,166	\$368,800	\$447,887	121%
TOTAL Revenues	\$2,567,920	\$2,483,141	\$2,632,475	\$2,703,328	103%

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget Expended
TOTAL Expenditures	\$2,526,853	\$2,435,988	\$2,537,307	\$2,386,349	94%



(Unaudited)

CITY OF ALLEN  
Tax Increment Financing  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
City Property Taxes	\$0	\$69,270	\$63,967	\$68,780	108%
Sales Tax	\$0	\$18,865	\$187,500	\$105,915	56%
County Property Taxes	\$0	\$0	\$15,403	\$18,385	119%
Interest on Investments	\$0	0	150	590	393%
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$88,135</b>	<b>267,020</b>	<b>\$193,670</b>	<b>73%</b>

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<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
<b>TOTAL Expenditures</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$863</b>	<b>0%</b>

CITY OF ALLEN  
Grant & Special Revenue Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Grant Revenue					
CDBG	\$207,846	\$251,415	\$277,219	\$234,977	85%
Police	\$124,867	\$187,067	179,814	\$132,872	74%
Parks	\$54,760	\$1,138,186	\$212,608	\$25,634	12%
Library	\$30,385	\$72,546	\$40,838	\$46,003	113%
Fire	\$213,791	\$89,060	\$85,334	\$77,647	91%
Solid Waste	\$16,411		\$45,467	\$18,487	41%
Engineering	\$117,532	\$65,000	\$65,000	\$71,904	111%
Subtotal	\$765,592	\$1,803,274	\$906,280	\$607,524	67%
Special Revenue					
Public Ed. Gov Access	\$66,502	\$68,000	\$68,000	\$72,362	106%
Court Technology	\$56,192	\$64,494	\$64,494	\$62,927	98%
Court Security	\$42,137	\$48,093	\$48,093	\$47,181	98%
Juvenile Case Mgr	\$67,808	\$76,929	\$76,929	\$76,622	100%
Photo Red Light Enforcement			\$34,500	\$396	1%
Subtotal	\$232,639	\$257,516	\$292,016	\$259,488	89%
Non-Operating Revenues					
Interest	\$8,353	\$8,000	\$9,000	\$10,585	118%
Other Reimbursements				\$116	
Operating Transfer In	195,183	284,504	\$284,504	284,504	100%
Subtotal	\$203,536	\$292,504	\$293,504	\$295,205	101%
TOTAL Revenues	\$1,201,767	\$2,353,294	\$1,491,800	\$1,162,217	78%

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget Expended
TOTAL Expenditures	\$1,106,808	2,316,911	\$1,456,879	\$1,047,016	72%

CITY OF ALLEN  
Replacement Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Charges for Services:					
General Fund	974,550	\$1,265,814	\$1,168,504	1,168,500	100%
Water & Sewer Fund	148,146	139,943	132,252	132,252	100%
Solid Waste Fund	22,095	19,137	19,137	19,140	100%
Drainage Fund	51,772	54,798	54,798	54,804	100%
Subtotal	\$1,196,563	\$1,479,692	\$1,374,691	\$1,374,696	100%
Non-Operating Revenues					
Interest	\$264,788	\$263,000	\$180,000	\$192,129	107%
Other Reimbursements				11,470	
Auction Revenue	49,706	50,000	4,545	4,545	100%
Subtotal	\$314,494	\$313,000	\$184,545	\$208,144	113%
TOTAL Revenues	\$1,511,057	\$1,792,692	\$1,559,236	\$1,582,840	102%

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<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
TOTAL Expenditures	\$1,037,386	\$1,135,430	\$2,824,199	\$964,000	34%

Charges for Services represent the amounts transferred into the Replacement Fund from the funds shown.

CITY OF ALLEN  
Risk Management Fund  
For the Period Ending  
September 30, 2008

<b>REVENUE</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Operating Revenues:					
Charges for:					
Medical & Dental	\$5,082,025	\$5,361,437	\$5,361,437	\$6,031,611	112%
Workers Comp.	\$534,084	\$394,350	\$354,350	\$367,846	104%
Property/Liability	\$488,442	\$566,386	\$446,300	\$566,386	127%
Post Emp Funding	\$40,068	\$40,068	\$40,068	\$40,068	100%
Subtotal	\$6,144,619	\$6,362,241	\$6,202,155	\$7,005,911	113%
Non-Operating Revenues					
Interest	\$121,831	\$100,000	\$80,000	\$85,784	107%
Other Reimbursements	\$67,396	\$57,194	\$591,561	\$590,573	100%
Operating Transfer In	\$208,665	\$210,338	\$210,338	\$210,338	100%
Subtotal	\$397,892	\$367,532	\$881,899	\$886,695	101%
TOTAL Revenues	\$6,542,511	\$6,729,773	\$7,084,054	\$7,892,606	111%

<b>EXPENDITURES</b>	FY2007 Actual	Original FY2008 Budget	Revised FY2008 Budget	YTD Actual as of 9/30/08	Percent of Budget
Administration	\$182,132	\$216,293	\$216,902	\$191,471	88%
Medical & Dental Insurance	5,203,151	5,056,607	5,504,185	6,059,879	110%
Workers Comp Insurance	327,690	394,350	354,350	324,853	92%
Property & Liability Insurance	500,696	566,386	446,294	433,573	97%
TOTAL Expenditures	\$6,213,669	\$6,233,636	\$6,521,731	\$7,009,776	107%

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

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Monthly Collection Status Report  
December 2008

City of Allen #06

	Collections Month of December	Cumulative Total 10/1/08 thru 12/31/08	% of Collections
Current Tax Year Collections			
Base M&O	\$14,571,466.39	15,496,748.67	52.80%
Base I&S	4,550,154.62	4,839,087.10	
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>\$19,121,621.01</u>	<u>\$20,335,835.77</u>	52.80%
Delinquent TaxYears Collections			
Base M&O	\$15,020.29	161,875.92	
Base I&S	4,564.99	50,934.22	
Base I&S Bond			
P&I M&O	3,909.43	19,568.36	
P&I I&S	1,235.60	6,477.92	
P&I I&S Bond			
Attorney Fee	5,410.94	27,682.00	
Other>	0.00	0.00	
Subtotal	<u>\$30,141.25</u>	<u>\$266,538.42</u>	0.69%
Combined Current & Delinquent:			
Base M&O	\$14,586,486.68	\$15,658,624.59	
Base I&S	\$4,554,719.61	\$4,890,021.32	
Base I&S Bond			
P&I M&O	3,909.43	19,568.36	
P&I I&S	1,235.60	6,477.92	
P&I I&S Bond			
Attorney Fee	5,410.94	27,682.00	
Other>	0.00	0.00	
Total Collections	<u><u>\$19,151,762.26</u></u>	<u><u>\$20,602,374.19</u></u>	53.49%
			100.00%
Original 2008 Tax Levy		<u><u>\$38,516,734.63</u></u>	

Kenneth L. Maun  
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McKinney Tx 75070

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Cumulative Comparative Collection Status Report  
December 2008

City of Allen #06

	Collections thru December 2008		% Collections		Collections thru December 2007		% Collections	
Current Tax Year Collections								
Base M&O + I&S	\$20,335,835.77		52.80%		\$19,283,700.73		52.25%	
P&I M&O + I&S	0.00				0.19			
Attorney Fee	0.00				0.00			
Subtotal	<u>\$20,335,835.77</u>		52.80%		<u>\$19,283,700.92</u>		52.25%	
Delinquent Tax Years Collections								
Base M&O + I&S	\$212,810.14				\$173,684.95			
P&I M&O + I&S	26,046.28				70,683.48			
Attorney Fee	27,682.00				41,156.01			
Other>	0.00				0.00			
Subtotal	<u>\$266,538.42</u>		0.69%		<u>\$285,524.44</u>		0.77%	
Combined Current & Delinquent:								
Base M&O + I&S	\$20,548,645.91				\$19,457,385.68			
P&I M&O + I&S	26,046.28				70,683.67			
Attorney Fee	27,682.00				41,156.01			
Other	0.00				0.00			
Total Collections	<u>\$20,602,374.19</u>		53.49%		<u>\$19,569,225.36</u>		53.02%	
Adjusted 2007 Tax Levy					<u>\$36,905,892.90</u>		100.00%	
Original 2008 Tax Levy	<u>\$38,516,734.63</u>		100.00%					

Kenneth L Maun  
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McKinney Tx 75070

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Levy Outstanding Status Report  
December 2008

City of Allen #06

	Current Tax Year	Delinquent Tax Years
Current Month:		
Tax Levy Remaining as of 11/30/08	\$37,981,965.73	\$371,561.69
Base M&O Collections	19,121,621.01	19,585.28
Supplement/Adjustments	-20,143.51	26,970.45
Write-off	0.00	0.00
Remaining Levy as of 12/31/08	<u>\$18,840,201.21</u>	<u>\$378,946.86</u>
Cumulative (From 10/01/08 thru 12/31/08)		
Original 2008 Tax Levy (as of 10/01/08)	\$38,516,734.63	\$466,141.10
Base M&O + I&S Collections	20,335,835.77	212,810.14
Supplement/Adjustments	659,302.35	125,615.90
Write-off	0.00	0.00
Remaining Levy as of 12/31/08	<u>\$18,840,201.21</u>	<u>\$378,946.86</u>

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Monthly Distribution Report  
December 2008

City of Allen #06

	Distribution Month of December	Distribution 10/1/08 thru 12/31/08
Weekly Remittances:		
Week Ending 12/5/08	\$638,832.43	\$880,980.52
Week Ending 12/12/08	560,413.75	\$853,802.27
Week Ending 12/19/08	7,611,073.88	\$7,909,162.30
Week Ending 12/24/08	\$4,641,953.99	\$4,936,150.53
Week Ending 12/31/08	5,693,940.22	\$5,994,405.14
Total Weekly Remittances	<u>\$19,146,214.27</u>	<u>\$20,574,500.76</u>
Overpayment from Prior Month	\$0.00	\$0.00
Manual Adjustment Refund	\$0.00	\$0.00
Commission Paid Delinquent Attorney	\$5,410.94	\$27,682.00
Entity Collection Fee	\$0.00	\$0.00
Judgement Interest	0.00	\$0.00
5% CAD Rendition Penalty	137.05	\$191.43
Total Disbursements	<u><u>\$19,151,762.26</u></u>	<u><u>\$20,602,374.19</u></u>
Carryover to Next Month	\$0.00	\$0.00





## CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Closed to Fixed Assets

Date: 1/19/2009

Project Number	Fixed Assets #	Project Description	Completion Date	Project Estimate	Project Total Costs
CD0102	88	FIRE & WEATHER SAFETY TRL	9/30/2001	\$39,722	\$39,722
CD0401	628	HISTORICAL VLG LAND	9/30/2004	\$126,549	\$126,549
DR0311	742	TWIN CREEKS DRAINAGE	9/30/2005	\$703,849	\$703,847
DR0401	703	DRAINAGE REPLACEMENTS	9/30/2005	\$72,991	\$72,991
DR0601	1096	FOREST GROVE	9/12/2008	\$18,993	\$18,992
DR0701	1100	ROWLETT CREEK FLOODPLAIN	9/18/2008	\$30,133	\$30,132
DR9301	576	MUSTANG CREEK	9/30/2003	\$1,123,034	\$1,123,034
DR9905	445	HILLSIDE DRAINAGE	9/30/2004	\$252,944	\$252,944
DR9906	339	HISTORIC DAM	9/30/2003	\$333,226	\$333,226
ED0201	322	MILLENIUUM TECH	9/30/2002	\$963,788	\$963,588
ED0301	318	MILLENIUUM TECH, PH 2	6/7/2006	\$1,017,817	\$1,017,817
ED0302	628	CENTURY @ BUTLER LAND	6/7/2006	\$597,488	\$587,361
ED8900	862	RIDGEMONT	9/30/2006	\$547,613	\$547,613
ED8910	768	MILLENIUUM CORPORATE CNTR	6/7/2006	\$3,277,340	\$3,277,340
G05011	697	SW GRAPPLE TRUCK	9/30/2005	\$89,473	\$89,410
IS0305	313	IT CONDUIT/PHONE SYS,PH1	9/30/2005	\$80,240	\$80,240
IS0306	998	IT CONDUIT/PHONE SYS,PH2	12/20/2007	\$83,225	\$83,225
IS0406	388	CIVIC BLDGS IMPRV, PH3	9/30/2005	\$52,666	\$52,666
IS0501	866	SERVICE CTR LAND ACQUISIT	8/31/2006	\$2,451,091	\$2,451,091
IS0503	850	PUMP STATION PWR FACTOR C	9/7/2006	\$27,666	\$27,666
IS0504	313	CITY HALL BLDG IMPROVEMNT	2/28/2006	\$18,802	\$18,800
IS0505	545	NATATORIUM POWER FACTOR C	3/22/2006	\$30,000	\$30,000
IS0601	877	CITY HALL REMODEL 2006	6/20/2007	\$29,700	\$29,700
IS0602	387	CITY HALL ANNEX RMDL 2006	3/22/2007	\$19,722	\$19,720
IS0702	377	FIRE STATION #2 ROOF	9/21/2007	\$50,038	\$50,038
IS0703	1121	IT DATA CENTER @CITY HALL	9/30/2008	\$506,061	\$506,060
IS0704	984	FIRE STATION #1 CARPET	9/21/2007	\$14,535	\$14,534
IS0705	984	FIRE STATION #1 WRK ROOM	9/21/2007	\$2,301	\$2,301
LB0101	693	MAIN LIBRARY	8/31/2006	\$11,855,075	\$11,855,075
LB0401	848	LIBRARY-ADAPTIVE RE-USE	9/30/2007	\$1,162,673	\$1,162,672
LB0501	863	LIBRARY BOOKS	8/25/2006	\$100,000	\$99,999
LB0701	885	MAIN LIBRARY PHASE II	9/6/2007	\$7,533	\$7,532
PR0002	575	NATATORIUM	9/30/2003	\$9,983,369	\$9,983,369
PR0003	357	BETHANY LAKES AMEN.BLDG.	9/30/2003	\$355,158	\$355,146
PR0004	580	CELEBRATION PARK	9/30/2003	\$6,797,817	\$6,797,814
PR0005	743	TRAILS CONSTRUCTION	11/4/2005	\$606,464	\$606,464
PR0006	334	MEDIAN BEAUTIFICATION	9/30/2002	\$131,333	\$131,333
PR0007	561	ALLEN STA PRK PH.1B	9/30/2003	\$640,777	\$640,777
PR0008	420	GLNDVR,BETHNY,TWNCRK	9/30/2003	\$803,452	\$803,452

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## CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Closed to Fixed Assets

Date: 1/19/2009

Project Number	Fixed Assets #	Project Description	Completion Date	Project Estimate	Project Total Costs
PR0009	233	BOLIN/SUNCREEK PRK	9/30/2002	\$866,922	\$866,922
PR0011	227	CITY HALL LANDSCAPE PH2	9/30/2002	\$455,665	\$455,665
PR0101	233	BOLIN PARK FENCE	9/30/2002	\$85,408	\$85,408
PR0102	746	ALLEN STATION PARK, PH 2	6/4/2007	\$6,571,744	\$6,545,273
PR0103	456	HERITAGE HOUSE TRAINDEPOT	9/30/2003	\$605,706	\$605,706
PR0104	864	CIVIC CENTER PLAZA	8/18/2006	\$1,709,740	\$1,701,446
PR0105	987	SPRING MEADOWS PARK	1/2/2008	\$574,240	\$574,238
PR0106	764	COM. PARK ACQUISITION #1	3/30/2006	\$2,860,834	\$2,860,834
PR0107	368	LOST CREEK PARK	9/30/2003	\$310,140	\$310,140
PR0109	566	FORD EAST PARK RENOVATION	9/30/2005	\$232,147	\$232,147
PR0110	566	FORD WEST PLAYGROUND	9/30/2003	\$47,937	\$47,937
PR0111	570	CTTNWOOD BEND PLAYGROUND	9/30/2003	\$58,629	\$58,007
PR0112	432	REED PARK PLAYGROUND	9/30/2003	\$65,847	\$65,846
PR0113	369	CELEBRATION PLAYGROUND	9/30/2003	\$206,276	\$206,277
PR0114	391	PARK ACQUISITION #2	9/30/2003	\$587,080	\$587,080
PR0115	711	STACY RIDGE PARK	9/30/2005	\$557,444	\$557,444
PR0116	359	MAIN ST LANDSCAPING	9/30/2003	\$205,907	\$205,907
PR0117	577	VALCON SYSTEM	9/30/2003	\$130,207	\$130,207
PR0201	896	COLLIN SQUARE GREENBELT	12/14/2006	\$4,700	\$4,700
PR0203	716	STORY PARK	9/30/2005	\$609,312	\$609,312
PR0206	376	FIRE STA #1 REMODEL	9/30/2004	\$123,736	\$123,736
PR0207	336	SIX CITIES TRAIL	9/30/2002	\$7,500	\$7,500
PR0211	301	BLUFF @ LOST CREEK PH 2	9/30/2002	\$300,000	\$300,000
PR0303	1011	PARK SIGNAGE	1/15/2008	\$56,336	\$56,336
PR0304	696	WATTERS CREEK TRAIL	9/30/2005	\$231,979	\$231,979
PR0306	233	BOLIN/SUNCREEK PARK PH2	9/30/2003	\$3,927	\$3,927
PR0307	389	FORD POOL RENOVATION	9/30/2003	\$83,753	\$83,317
PR0308	840	SENIOR CITIZENS CENTER	9/7/2007	\$4,807,328	\$4,804,321
PR0309	660	TWN CRK 3, IRRIGATION	9/30/2004	\$39,723	\$39,723
PR0401	820	LOST CREEK, PH 3	12/30/2005	\$340,000	\$340,000
PR0403	865	CELEBRATION ADDITIONS #1	8/18/2006	\$483,282	\$400,404
PR0407	432	REED PARK, PH 2	9/30/2005	\$10,900	\$10,320
PR0409	904	NATATORIUM PH 1B	1/2/2007	\$5,000	\$4,850
PR0410	456	HERITAGE CNTR,PH1B	9/30/2004	\$21	\$21
PR0412	817	GLENDOVER NP, PH2	12/31/2005	\$277,024	\$277,024
PR0413	818	BETHANY RIDGE NP, PH2	12/31/2005	\$173,514	\$173,514
PR0414	819	DAYSRING NP (TWN CRK)	12/31/2005	\$39,208	\$39,208
PR0415	740	QUAIL RUN PARK	8/16/2006	\$403,664	\$403,664
PR0419	937	JUPITER RD STORAGE FAC	6/22/2007	\$36,331	\$36,331

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## CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

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Project Number	Fixed Assets #	Project Description	Completion Date	Project Estimate	Project Total Costs
PR0420	748	GOLF COURSE-TAX EXEMPT	7/3/2007	\$5,350,272	\$5,350,268
PR0422	765	GOLF COURSE-TAXABLE	9/30/2006	\$919,887	\$919,883
PR0503	821	BETHANY LAKES PLAYGROUND	12/31/2005	\$114,201	\$114,201
PR0505	911	HERITAGE PARK BRIDGE	3/14/2007	\$184,255	\$184,255
PR0507	1012	BRIDGEWATER CROSSING R.A.	1/17/2008	\$120,653	\$120,652
PR0511	390	FORD PARK EAST IMPRVMTS	9/30/2005	\$2,505	\$2,505
PR0512	383	J FARMER RCQTBL CT REPLCM	9/30/2005	\$51,899	\$51,899
PR0513	744	COTTONWOOD PARK PH 1B	9/30/2005	\$4,750	\$4,750
PR0602	1116	CMPTN CNTRL/IRRIG+LIGHTS	9/30/2008	\$143,995	\$143,995
PR0603	0	CELEBRATION #2 SPRAYGRD	12/11/2008	\$125,545	\$125,545
PR0605	870	BETHANY LAKES DISCGOLF EQ	9/7/2006	\$21,071	\$21,070
PR0607	849	CHASE OAKS CLUBHOUSE IMP	12/31/2007	\$175,619	\$175,618
PR0608	859	FORD PARK WEST-HOCKY WALL	8/30/2006	\$24,980	\$24,980
PR0610	1079	HOCKEY STORAGE FACILITY	8/19/2008	\$5,000	\$5,000
PR0612	871	RESERVATION MESSAGE BOARD	9/7/2006	\$4,880	\$4,880
PR0613	1003	CHASE OAKS PAVILION ENCLO	12/14/2007	\$210,800	\$210,799
PR0704	0	JFRC RENOVATION PHASE 1	12/17/2008	\$22,170	\$22,169
PR0708	989	EX EQUIPMENT @ JFRC & DRN	6/2/2008	\$275,790	\$275,790
PR0722	986	GOLF COURSE-TAXABLE PH 2	12/26/2007	\$19,811	\$19,811
PR0802	1077	FORD SOFTBALL IMPROVEMENT	8/12/2008	\$59,366	\$59,366
PR0803	1047	DRN UV H2O TREATMENT PKG	3/31/2008	\$60,650	\$60,650
PR0807	1076	TWIN CREEK NP	8/7/2008	\$485,000	\$465,190
PR0808	0	POLICE MONUMENT SIGN	12/11/2008	\$33,750	\$33,750
PR0811	1043	BOLIN PARK ACCESSIBILITY	3/25/2008	\$12,178	\$12,178
PR3S03	0	SUMMER SOUNDS CONCERT SER	9/22/2004	\$105,257	\$117,692
PS0001	388	POLICE BLDG EXPANSION	9/30/2003	\$4,628,393	\$4,628,393
PS0004	546	CENTRAL FIRE STATION	9/30/2003	\$4,300,041	\$4,300,041
PS0201	730	FIRE STA APPARATUS	9/30/2005	\$349,981	\$349,981
PS0301	629	EMERGENCY MGMT WARNG SYST	9/30/2005	\$294,713	\$294,713
PS0302	374	EXHST SYS STA3&4	9/30/2003	\$17,110	\$17,110
PS0304	546	CNTRL FIRE ST GARAGE	9/30/2004	\$143,452	\$143,452
PS0305	630	CNTRL FIRE STA RENOVATION	9/30/2004	\$31,902	\$31,902
PS0306	691	FIRE STA 2 3&4 RENOVATION	9/30/2005	\$37,700	\$36,975
PS0401	388	POLICE STA ADDITIONS	9/30/2004	\$60,867	\$60,867
PS0402	927	PARKING LOT EXPNSN-POLICE	4/16/2007	\$245,443	\$245,442
PS0403	546	FIRE STATION IMPRVMT	9/30/2005	\$11,980	\$11,980
ST0035	574	ANGEL PKWY & MALONE	9/30/2003	\$3,290,404	\$3,290,404
ST0036	574	ANGEL PKWY,BY DVLPR	9/30/2003	\$131,042	\$131,042
ST0101	728	ALLEN HTS,BTHNY-PRKMEDIAN	9/30/2005	\$345,000	\$333,385

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## CAPITAL IMPROVEMENT PROJECTS

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Project Number	Fixed Assets #	Project Description	Completion Date	Project Estimate	Project Total Costs
ST0111	761	FM2170E, ALLEN HTS-FM2551	9/12/2007	\$7,014,185	\$7,014,185
ST0113	854	BETHANY E, US75-ALLEN HTS	5/8/2006	\$3,915,419	\$3,915,419
ST0123	671	E EXCHANGE,SH5-1378	9/30/2004	\$3,014,641	\$3,014,641
ST0127	367	SGNL LT-CNTRY@MCDRM	9/30/2003	\$445,783	\$445,783
ST0136	672	ALMA DR,TATUM-BELAIR	9/30/2004	\$1,181,982	\$1,181,982
ST0137	330	WATTERS RD, PH I	9/30/2002	\$351,626	\$351,626
ST0141	395	ASPHALT PAVEMENT,PH I	9/30/2003	\$361,382	\$361,381
ST0142	556	CONCRETE ALLEY REPLCMNT	9/30/2003	\$672,824	\$672,823
ST0146	195	MAIN/MALONE INTERSECTION	9/30/2002	\$150,000	\$148,279
ST0148	231	101 S BUTLER,ASBSTS	9/30/2002	\$14,086	\$14,086
ST0201	396	SH 5 SIDEWALKS, PH2	9/30/2003	\$314,059	\$314,059
ST0202	876	ALLEN DRIVE	9/27/2006	\$3,036,182	\$3,036,182
ST0203	674	ST MARY'S DRIVE	9/30/2004	\$550,731	\$550,729
ST0204	360	STREET LIGHT INSTALLATION	9/30/2003	\$425,933	\$425,933
ST0205	361	ASH DRIVE	9/30/2003	\$320,736	\$320,735
ST0206	193	TEN OAKS	9/30/2002	\$58,880	\$58,880
ST0207	670	BETHANY SIGNAL	9/30/2004	\$151,140	\$151,140
ST0249	1089	ALLEN CENTRAL DRIVE	9/10/2008	\$48,116	\$48,116
ST0301	731	RIDGEMONT DRIVE	9/30/2005	\$824,510	\$824,510
ST0302	652	ASPHLT RPLCMNT PH2	9/30/2004	\$648,681	\$648,681
ST0304	364	RIDGEVIEW, US75-STACY RD	9/30/2004	\$228,000	\$227,250
ST0306	895	ANGEL PKWY, LANDSCAPE& LT	11/20/2006	\$418,831	\$418,830
ST0309	664	CONCRETE ALLEY PH 11	9/30/2004	\$476,646	\$476,035
ST0310	766	ALLEN DRIVE, PHASE 2	9/7/2006	\$674,124	\$674,124
ST0311	1058	INTERSECTION IMPROVEMENTS	4/30/2008	\$95,194	\$95,193
ST0313	628	BEL AIR DR ROW	9/30/2004	\$186,099	\$186,099
ST0315	767	BETHANY DRIVE EAST	12/8/2006	\$1,825,519	\$1,825,519
ST0318	351	BTHNY @AYLSBY SGNL	9/30/2004	\$74,840	\$74,840
ST0319	373	RDGVIEW/RWLT CR BRG	9/30/2003	\$74,376	\$74,375
ST0320	673	EXCHNGE PKWY@RVRCST	9/30/2004	\$92,298	\$92,298
ST0321	657	TRAFFIC SIGNALS	9/30/2004	\$130,700	\$130,700
ST0338	703	CONCRETE REPLACEMENTS	9/30/2005	\$835,525	\$835,525
ST0403	812	ST. MARY DRIVE, PH 2	2/10/2006	\$617,417	\$617,417
ST0404	853	HEDGCOXE RD,DCHSS-LNGWOOD	5/2/2006	\$144,283	\$144,282
ST0406	672	BEL AIR - ALMA SIGNAL	9/30/2005	\$106,916	\$106,916
ST0407	739	TWIN CREEKS 7A1 AND 7A2	9/30/2005	\$133,380	\$133,380
ST0415	720	WATTERS RD,TWN CRK-WTRAIL	9/30/2005	\$244,935	\$244,935
ST0416	940	HILLSIDE/WNDRDGE ST.LIGHT	7/5/2007	\$7,248	\$7,248
ST0504	855	LED SIGNAL LIGHTS	5/11/2006	\$42,027	\$42,026

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## CAPITAL IMPROVEMENT PROJECTS

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ST0505	979	RIDGEVIEW/CUSTER INTR SCTN	8/31/2007	\$153,014	\$153,014
ST0506	739	TEN OAKS LANDSCAPE	9/30/2005	\$25,000	\$24,210
ST0507	1090	ST. MARY DRIVE, PH 3	9/10/2008	\$2,007,891	\$2,007,890
ST0508	856	MCDERMOTT/75 INTERSECTION	5/11/2006	\$158,835	\$158,835
ST0509	822	McDRMTT@ALLEN DR INTR SCTN	2/20/2006	\$132,508	\$132,508
ST0601	1101	FIRE STA 2&3 EMERG SIGNAL	9/18/2008	\$130,870	\$130,871
ST0604	935	DUCHESS AND HEDGCOXE	6/21/2007	\$120,958	\$120,958
ST0606	941	CUMBERLAND CROSSING	7/5/2007	\$43,954	\$43,953
ST0607	939	SHALLOWATER BRIDGE	7/2/2007	\$180,000	\$180,000
ST0608	1117	STACY-WATTERS TRAFFIC SIG	9/30/2008	\$146,318	\$140,317
ST0697	892	SIDEWALK	9/30/2006	\$17,308	\$17,308
ST0701	1113	ALLEN DRIVE, PHASE 3	9/30/2008	\$361,098	\$361,098
ST0702	1120	EXCHANGE PKWY SIGNALS	9/30/2008	\$141,638	\$141,638
ST0703	923	WINDRIDGE EXCHANGE PKWY	3/22/2007	\$78,432	\$78,431
ST0705	1091	ALMA/HEDGCOXE	9/9/2008	\$480,000	\$410,322
ST0706	1083	JUPITER RD SEWER REPLACE	9/5/2008	\$193,810	\$193,809
ST0707	954	US 75/SH 121 ROW	9/9/2008	\$150,000	\$150,000
ST0708	980	MCDERMOTT TURN LANE	9/12/2007	\$25,044	\$25,044
ST0712	1092	2551/MAIN ST SIDEWALKS	9/12/2008	\$19,613	\$19,612
ST0715	1093	HEDGCOXE ROAD	9/10/2008	\$400,000	\$370,051
ST0717	1094	MCDERMOTT PAVEMENT REHABI	9/10/2008	\$348,729	\$348,728
ST0809	1119	BETHANY TRAFFIC SIGNALS	9/30/2008	\$8,750	\$8,750
ST9508	719	SH5 MEDIANS,CHP-XCH	9/30/2005	\$1,367,605	\$1,367,605
ST9512	229	MCDERMOTT,CUSTER-US75	9/30/2002	\$11,638,037	\$11,638,037
ST9809	572	COLLECTOR SIDEWALKS	9/30/2003	\$559,631	\$559,225
ST9828	230	ALMA DR, EXCHANGE-SH121	9/30/2002	\$3,566,608	\$3,566,608
ST9829	538	STACY RD,US75-SH121	9/30/2003	\$9,672,319	\$9,672,319
ST9903	541	BETHANY WEST	9/30/2003	\$5,671,564	\$5,671,564
ST9918	366	WATTERS,BETHANY-MCDERMOTT	9/30/2003	\$1,689,394	\$1,689,394
WA0009	228	LOST CREEK LIFT STATION	9/30/2001	\$88,000	\$87,879
WA0016	87	HIGHPOINT WATER LINE	9/30/2001	\$57,271	\$57,271
WA0027	560	ALLEN HTS IMPROVEMENTS	9/30/2003	\$1,170,306	\$1,170,302
WA0030	537	ALLEN HTS,PH II WATERLINE	9/30/2003	\$1,205,493	\$1,205,491
WA0036	579	STACY RD PUMP STA#2	9/30/2003	\$5,130,942	\$5,130,942
WA0112	872	PRESTIGE CIR WATER TOWER	9/12/2006	\$4,165,604	\$4,165,604
WA0120	632	LOST CREEK RANCH PH2A	9/30/2004	\$348,230	\$348,230
WA0132	557	S.C.A.D.A.	9/30/2003	\$352,456	\$352,456
WA0133	356	HEDGCOXE WATERLINE	9/30/2003	\$255,881	\$255,881
WA0134	356	OVERSIZING W&S	9/30/2003	\$14,654	\$14,654

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## CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Closed to Fixed Assets

Date: 1/19/2009

Project Number	Fixed Assets #	Project Description	Completion Date	Project Estimate	Project Total Costs
WA0214	392	WATERLINE REPLACEMENT	9/30/2003	\$124,375	\$124,375
WA0215	677	OLA SEWER/LIFT STA.	9/30/2004	\$936,723	\$936,720
WA0216	578	COTTONWOOD CREEK SEWER	9/30/2003	\$835,838	\$835,838
WA0217	731	RIDGEMONT SEWERLINE	9/30/2005	\$225,000	\$225,000
WA0218	308	STACY RIDGE LIFT STATION	9/30/2002	\$218,550	\$218,550
WA0219	358	BETHANY RIDGE LIFTSTATION	9/30/2003	\$113,616	\$113,616
WA0301	1122	TWN CREEKS 36" WTRLIN 6B	9/30/2008	\$734,100	\$734,099
WA0302	735	WATER TOWER SECURITYLIGHT	9/30/2005	\$423,572	\$423,572
WA0303	676	FAIRVIEW WSTWTR INTR	9/30/2004	\$104,682	\$104,682
WA0402	698	36" WATERLINE TC6A	9/30/2005	\$211,242	\$211,242
WA0403	811	ST. MARY DRIVE, PH 2	2/9/2006	\$83,000	\$82,798
WA0407	739	TWIN CREEKS 7A1 AND 7A2	9/30/2005	\$237,435	\$237,435
WA0415	720	WATTERS RD-QUAIL RUN	9/30/2005	\$29,470	\$29,470
WA0507	936	ST MARY DR PH III WATER	6/20/2007	\$57,000	\$57,000
WA0511	932	EAST MAIN WATER LINE	6/12/2007	\$1,554,666	\$1,554,666
WA0701	579	STACY RD GROUND STORAGE	9/12/2007	\$555,816	\$555,816
WA0702	1095	COUNTRY CLUB WATERLINE	9/9/2008	\$97,442	\$96,121
WA0801	1084	ALLEN DRIVE PHASE III	9/5/2008	\$161,198	\$161,198
WA9822	226	PUMP STA #3 & 2 TNK	9/30/2002	\$9,552	\$9,552
WA9923	224	LNDSCP 2 ELEV TANK	9/30/2002	\$6,645	\$6,645
WA9925	225	CUSTER PMP ST3 LDSC	9/30/2002	\$89,488	\$89,488
WA9931	636	ALMA,TATUM-BELAIR	9/30/2004	\$20,921	\$20,920
<b>Total Expenditures:</b>				<b>\$180,349,265</b>	





# CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Active Status

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Project Number	Project Description	Funding Sources	Completion Date	Project Estimate	Total Encumbrance & Expenditures	Percent Expended
CD0201	HERITAGE GLD HISTORIC VLG	NON-BONDS, CDC, GRANT	9/30/2009	\$1,202,284	\$1,185,316	98.6%
DR0602	BOWLING ALLEY DRAINAGE	GO BOND & NON-BONDS	3/31/2009	\$500,000	\$435,284	87.1%
DR0801	BUCKINGHAM DRAINAGE REHAB	NON-BONDS	9/30/2009	\$23,003	\$17,373	75.5%
DR0802	RIDGEVIEW DRIVE	NON-BONDS	9/30/2009	\$101,448	\$0	0.0%
DR0803	FOUNTAIN GATE ALLEY DRAIN	NON-BONDS	9/30/2009	\$23,004	\$14,550	63.2%
EC0801	EVENT CENTER BUILDING	CDC BONDS	10/29/2009	\$27,600,000	\$17,705,268	64.1%
EC0802	EVENT CTR PARKING GARAGE	CDC BONDS	2/20/2010	\$7,000,000	\$7,000,000	100.0%
EC0803	EVENT CTR INFRASTRUCTURE	EDC BONDS	2/20/2010	\$13,095,545	\$13,095,545	100.0%
IT0701	IT MASTER PLAN	NON-BONDS	9/30/2009	\$522,935	\$0	0.0%
IT0801	IT PUBLIC SAFETY WIRELESS	GO BONDS, NON BONDS	9/30/2010	\$560,821	\$560,821	100.0%
LB0601	LIBRARY DONOR WALL	NON-BONDS	9/30/2009	\$143,000	\$130,000	90.9%
PR0202	HILLSIDE PARK	CDC, GO BOND, NON-BOND	9/30/2009	\$569,064	\$15,831	2.8%
PR0204	TREE FARM	CDC	12/31/2009	\$48,000	\$5,207	10.8%
PR0302	JUPITER PARK	GO BOND	9/30/2009	\$785,156	\$20,990	2.7%
PR0305	ENTRY & MONUMENT SIGNAGE	CDC, GO BOND	9/30/2009	\$75,304	\$6,039	8.0%
PR0402	DAYSRING NATURE PRESERVE	CDC, PARK DEDICATION FEES	9/30/2009	\$300,330	\$5,787	1.9%
PR0405	TRAILS CONSTRUCTION, PH 3	CDC, GO BOND, NON-BONDS	9/30/2010	\$651,890	\$342,198	52.5%
PR0406	ALLENWOOD PARK DEVELOPMNT	GO BOND, CDC, PARKLAND	4/30/2009	\$1,037,307	\$1,027,306	99.0%
PR0408	PUBLIC ART	NON-BONDS	9/30/2009	\$1,127	\$0	0.0%
PR0418	HERITAGE VILLAGE LANDSCAP	NON-BONDS	9/30/2009	\$25,000	\$0	0.0%
PR0504	ALLEN BARK PARK	CDC	9/30/2009	\$247,000	\$25,830	10.5%
PR0508	FOX HOLLOW RECREATION A.	CDC	4/30/2009	\$72,000	\$0	0.0%
PR0509	FORD POOL REDEVLPMNT PLAN	CDC	6/30/2009	\$100,000	\$74,500	74.5%
PR0514	6 CITIES TRL CONNECTION 8	CDC,GO BOND,NON-BONDS,GR	9/30/2009	\$930,422	\$71,300	7.7%
PR0604	COUNTRY MEADOW PARK IMP#2	CDC, PARKLAND, BOND,NON B	6/30/2009	\$226,515	\$206,352	91.1%
PR0609	BETHANY LAKES VETERAN'S	CDC	5/30/2010	\$25,000	\$25,000	100.0%
PR0611	PARKS & REC MASTER PLAN	BONDS	9/30/2009	\$30,000	\$0	0.0%
PR0615	CHASE OAKS IMPROVEMENT II	CDC	9/30/2010	\$1,135,392	\$240,923	21.2%
PR0701	PARK LAND ACQUISITION #3	GO BONDS	9/30/2010	\$3,244,288	\$1,043	0.0%
PR0702	WINDRIDGE NEIGHBORHOOD PK	PARKLAND FEE	12/31/2009	\$160,000	\$144,320	90.2%
PR0703	SHADOW LAKES GREENBELT	CDC	12/31/2009	\$150,000	\$7,500	5.0%
PR0705	PARK COMP SECURITY SYSTEM	CDC	9/30/2009	\$150,000	\$0	0.0%
PR0706	MOLSEN FARM MASTER PLAN	CDC	5/30/2009	\$25,000	\$25,000	100.0%
PR0707	SHADE STRUC @ BALLFIELDS	CDC	9/30/2009	\$236,802	\$215,512	91.0%
PR0709	ASP II BRIDGE DECK	GO BOND, GRANT, CDC	3/31/2009	\$36,381	\$36,360	99.9%
PR0710	YOUTH CENTER CUST COUNTER	NON-BONDS	9/30/2009	\$6,500	\$0	0.0%
PR0711	WATER FORD PARK PH 5 NP	GO BONDS,PARK DEDICATION	9/30/2010	\$745,350	\$745,349	100.0%
PR0801	SHADE @ CELEBRATION PARK	CDC	9/30/2009	\$100,000	\$0	0.0%
PR0804	MOLSEN FARM DRIVE	CDC	5/30/2009	\$150,000	\$0	0.0%
PR0805	BETHANY LAKES PIER	CDC	9/30/2009	\$85,000	\$0	0.0%
PR0806	RAIL/DAM ARCHEOLOGICAL	CDC	9/30/2009	\$30,000	\$0	0.0%
PR0809	SHELLEY FARM NEIGHBH PARK	PARKLAND	12/31/2010	\$6,000	\$6,000	100.0%
PR0810	CELEBRATION PASS PED TRL	CDC,GRANT	12/31/2009	\$91,224	\$48,000	52.6%
PR0812	WATTERS BRANCH BRIDGE	CDC	9/30/2009	\$50,000	\$36,000	72.0%



# CAPITAL IMPROVEMENT PROJECTS

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PR0813	CANCER WALK OF HOPE	NON-BOND	5/30/2009	\$40,000	\$1,200	3.0%
PR0814	PUBLIC ART BONDS FUND	BONDS	9/30/2010	\$88,501	\$0	0.0%
PR0815	CELEBRATION PARK PHASE II	GO-BOND,CDC	12/31/2009	\$682,352	\$272,325	39.9%
PR0816	OUTDOOR CINEMA SYSTEM	CDC	2/28/2009	\$19,937	\$19,492	97.8%
PR0901	PATIENT MOBILE TRANSPORT	CDC	9/30/2009	\$25,000	\$0	0.0%
PR0904	SCOREBOARDS (ASP/BOLIN)	CDC	9/30/2009	\$49,500	\$0	0.0%
PR0907	STACY RD - VILLAGES TRAIL	CDC	9/30/2009	\$70,680	\$0	0.0%
PR0909	WALDEN PARK RENOVATION	PARKLAND	9/30/2009	\$80,000	\$0	0.0%
PS0601	FIRE STATION #5	NON-BONDS, BONDS	9/30/2010	\$3,743,726	\$456,170	12.2%
PS0701	SERVICE CENTER	NON-BONDS	9/30/2011	\$2,356,461	\$1,360,137	57.7%
PS0801	JAIL EXPANSION	GO BONDS	9/30/2009	\$746,407	\$724,247	97.0%
PS0802	ANIMAL SHELTER EXPANSION	GO BONDS	2/28/2010	\$147,719	\$14,000	9.5%
PS0803	FIRE STATION #6	GO BONDS	9/30/2012	\$196,501	\$24,699	12.6%
PS0901	PS COMMUNICATION SYSTEMS	GO BONDS	9/30/2011	\$196,502	\$0	0.0%
ST0110	SH5, EXCHANGE-STACY	GO BOND & NON-BOND	9/30/2009	\$1,470,518	\$1,340,928	91.2%
ST0312	SIGNAL UPGRADE/COM.SYSTEM	GO BOND & NON-BOND	9/30/2009	\$1,134,131	\$977,395	86.2%
ST0316	FM 2551	FACILITY AGREEMENT	9/30/2010	\$553,080	\$0	0.0%
ST0317	N BETHANY LAKES-WALL PRJ	FACILITY AGREEMENT	9/30/2009	\$100,000	\$0	0.0%
ST0501	EXCHANGE,WATTERS-W.BRANCH	FACILITY AGRMNT, NON-BONDS	9/30/2009	\$2,450,000	\$2,375,030	96.9%
ST0503	EXCHANGE PK,TWN CRK-SH121	FACILITY AGRM, NON-BONDS	9/30/2010	\$3,363,814	\$3,142,394	93.4%
ST0603	STACY RD-US 75 TO GREENVI	NON-BONDS, FCLTY AG	9/30/2009	\$635,652	\$540,560	85.0%
ST0610	ANGEL PARKWAY, PH III	GO BONDS, NON-BOND, FAC AGR	9/30/2009	\$860,564	\$803,964	93.4%
ST0704	STACY PII-GREENV TO ANGEL	NON-BONDS	10/31/2011	\$52,500	\$0	0.0%
ST0709	COUNTRY BROOK LANE	NON-BONDS	9/30/2009	\$535,000	\$462,662	86.5%
ST0710	RIDGEVIEW DRIVE	ROADWAY IMPACT FEES	3/31/2009	\$44,000	\$44,000	100.0%
ST0711	MAIN STREET LANDSCAPING	NON-BONDS	3/31/2009	\$289,682	\$289,681	100.0%
ST0713	STREET LIGHTS PAHSE II	NON-BONDS	9/30/2009	\$17,752	\$0	0.0%
ST0714	EXCHANGE/STACY RAMP REVER	EDC BONDS	2/20/2010	\$1,905,141	\$1,875,482	98.4%
ST0801	RIDGEVIEW-CUSTER TO ALMA	GO BONDS	3/30/2010	\$5,276,887	\$588,500	11.2%
ST0802	WATTERS RD BOSSY TO RIDGE	NON-BONDS	9/30/2010	\$502,141	\$201,363	40.1%
ST0805	STREET & ALLEY REPAIR	NON-BONDS	3/31/2009	\$300,000	\$297,831	99.3%
ST0806	ALMA IMP ROWLETT/TATUM	NON-BONDS	9/30/2009	\$253,404	\$0	0.0%
ST0810	ALMA/HEDGCOXE TRAFFIC SIG	NON-BONDS	9/30/2009	\$43,740	\$30,747	70.3%
ST0811	2009 TRAFFIC SIGNALS	NON-BONDS	12/31/2009	\$470,644	\$116,826	24.8%
ST0812	FY09 STREET& ALLEY REPAIR	NON-BONDS	9/30/2009	\$427,587	\$0	0.0%
ST0813	SHALLOWATER DRIVE	GO BONDS	9/30/2009	\$35,000	\$33,685	96.2%
ST9904	CHAPARRAL BRIDGE	GO BOND, NON-BONDS, FCLTY	9/30/2010	\$1,572,025	\$382,313	24.3%
WA0118	ALLENWOOD SANITARY SEWER	NON-BONDS	9/30/2009	\$1,128,234	\$1,098,732	97.4%
WA0240	CUSTER RD PMP STA#3 EXPNS	W&S BOND, NON-BONDS, IMPACT	3/30/2009	\$6,003,821	\$5,746,143	95.7%
WA0305	OVERSIZING W/S	NON-BONDS, IMPACT FEES	9/30/2010	\$250,000	\$131,109	52.4%
WA0335	WESTSIDE WATERLINE	W&S BOND, NON-BONDS, IMPACT	9/30/2009	\$3,500,459	\$3,372,306	96.3%
WA0401	US75 LIFT STA +12"FRC MN	NON-BONDS	9/30/2011	\$450,054	\$0	0.0%
WA0601	JUPITER RD SEWER REPLACEM	NON-BONDS	9/30/2009	\$573,500	\$488,200	85.1%
WA0602	EXCHANGE PARKWAY WATERLIN	NON-BONDS	9/30/2009	\$84,000	\$71,545	85.2%





## CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

**Active Status**

Date: 1/19/2009

Project Number	Project Description	Funding Sources	Completion Date	Project Estimate	Total Encumbrance & Expenditures	Percent Expended
WA0703	BEACON HILL/MCDERMOTT W/L	NON-BONDS	3/31/2009	\$60,117	\$53,399	88.8%
WA0704	CUSTER ROAD WATERLINE	NON-BONDS	3/30/2009	\$155,000	\$49,292	31.8%
WA0802	FAIR MEADOW SANITARY SEWE	NON-BONDS	3/31/2009	\$144,000	\$123,876	86.0%
WA0803	LIFT STATION IMPROVEMENTS	NON-BONDS	9/30/2009	\$40,000	\$23,040	57.6%
WA0804	PUMP STATION IMPROVEMENTS	NON-BONDS	9/30/2009	\$50,000	\$36,419	72.8%
WA0805	HILLSIDE WATER TOWER	IMPACT FEES	6/30/2010	\$4,534,676	\$233,200	5.1%
WA0806	STACY TANK CATHODIC PROTE	NON-BONDS	9/30/2009	\$10,000	\$9,813	98.1%
WA0807	HIGH MEADOWS SEWER LINE	NON-BONDS	3/27/2009	\$150,000	\$81,900	54.6%
WA0808	WATERLINE REPLACEMENT	NON-BONDS	9/30/2009	\$750,000	\$0	0.0%
WA0809	PUMP STATION REHABILITATI	NON-BONDS	9/30/2009	\$25,000	\$0	0.0%
WA0810	LIFT STATION REHABILITATI	NON-BONDS	9/30/2009	\$15,000	\$0	0.0%
WA0901	ROWLETT WATER TOWER FENCE	NON BONDS	9/30/2009	\$185,000	\$0	0.0%
WA9998	WATER/SEWER REPLACEMENT	NON-BONDS	9/30/2009	\$500,000	\$0	0.0%