

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JUNE 8, 2010 – 7:00 P.M.
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY
ALLEN, TEXAS 75013**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Election of Mayor Pro Tem.

Public Recognition.

1. Citizens' Comments. *[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]*
2. Presentation of a Blue Star Flag to Families of Allen Service Personnel Currently Deployed by the U.S. Armed Forces.
3. Recognition of the Election Clerks from the May 8, 2010, City of Allen General Election.

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

4. Approve Minutes of the May 25, 2010, Regular Meeting.
5. Motion to Approve the Third and Final Reading of Ordinance No. 2910-5-10 Renewing the Term of an Electric Franchise Agreement Granted to Grayson-Collin Electric Cooperative, Inc. for an Additional Five (5) Years, Amending the Definition of Gross Revenue and Providing New Language for the Compensation of Costs Associated with the Relocation of Electric Facilities in Accordance with State Law.

6. Adopt an Ordinance Authorizing the City Manager to Amend the Code of Ordinances, Chapter 9 – Motor Vehicles and Traffic, Section 9-137(b), in Order to Establish a School Zone for Cheatham Elementary.
7. Adopt an Ordinance Abandoning Water Line, Fire Lane, Access, and Utility Easements for Allen Retail Center (Belz Mall).
8. Authorize the City Manager to Execute a Contract with DMG Commercial Construction Services, Inc. in the Amount of \$298,548 for the Construction of the Police Dispatch Communications Center Project and Amend the Budget to \$599,000.
9. Authorize the City Manager to Approve the Purchase of Equipment for the Traffic Signal Resynchronization or Replacement Project from Siemens Industry, Inc. and from Iteris, Inc. for a Total Amount not to Exceed \$147,705.
10. Authorize the City Manager to Amend the Annual Unit Price Contract with Stripe-a-Zone for Thermoplastic Pavement Markings to Authorize Expenditures up to \$125,000.

Regular Agenda.

11. Conduct a Public Hearing and Adopt an Ordinance to Create PD Planned Development No. 103 for SC Shopping Center, and Adopt a Concept Plan for Cabela's by Rezoning 12± Acres from PD Planned Development No. 58, Tract 2A for LI Light Industrial and 1± Acres from PD Planned Development No. 73 for SC Shopping Center on Property Located South of Village Drive and West of Allen Station Parkway.
12. Motion to Confirm City Council Appointments to the Various Nominating Committees for the Appointment of Boards and Commissions for Fiscal Year 2010-11.

Other Business.

13. Calendar.

June 14, 21 - Summer Sounds Concert Series/ Joe Farmer Recreation Center Amphitheater/ 7 p.m.
June 26 - Allen USA/ Celebration Park / 4 p.m.
14. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*

Executive Session. (As needed)

Legal, Section 551.071.

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

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

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

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, June 4, 2010, at 5:00 p.m.

Shelley B. George, City Secretary

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

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Presentation of a Blue Star Flag to Families of
Allen Service Personnel Currently Deployed
by the U.S. Armed Forces

STAFF RESOURCE: Shelley B. George, City Secretary

BACKGROUND

The City of Allen wishes to honor our Allen area service personnel currently deployed by the U.S. Armed Forces by presenting a Blue Star Flag to their families. The Blue Star Flag, whose history dates back to World War I, is displayed in the family's window when a loved one is currently serving in the Armed Forces.

Mayor Terrell and the Allen City Councilmembers will present a Blue Star Flag to the following family:

Bethany Marie Brezik, spouse of Specialist Aaron Brezik of the United States Army B Company 72nd STB. Specialist Brezik was deployed in October 2009 to Iraq as a combat medic. He joined the United States Army in September 2007.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Recognition of the Election Clerks from the
May 8, 2010, City of Allen General Election

STAFF RESOURCE: Shelley B. George, City Secretary

BACKGROUND

Mayor Terrell and the Allen City Council wish to recognize the election workers from the May 8, 2010, City of Allen General Election. Certificates of Recognition will be presented to:

Margaret Miller
Molly Phillips
Carol Barkley
Joyce Boone
Brenda Kiser
Don Phillips
Marian Ulibarri
Faith Younse

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

ATTACHMENT

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

MAY 25, 2010

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
Shelley B. George, City Secretary
Pete Smith, City Attorney

Workshop Session

The Workshop Session was not held.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:00 p.m. on Tuesday, May 25, 2010, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizens' Comments.

2. Administration of Oaths-of-Office and Presentations of Certificates-of-Election.

City Secretary George administered the Oaths-of-Office to reelected Councilmember Robin L. Sedlacek, Place No. 4, and Councilmember Jeff McGregor, Place No. 6. Mayor Terrell presented the Certificates-of-Election and offered his congratulations to them. The Councilmembers took their places at the Council bench.

3. Presentation of a Check Indicating 'Volunteer Hours to the Community,' by Sondra Long, Vice President of the Allen Retired Educators' Association (AREA).

**ALLEN CITY COUNCIL
REGULAR MEETING
MAY 25, 2010**

PAGE 2

4. Recognition of Reuse-a-Shoe Contest Winners:

- Grand Prize: Evans Elementary collected 1,409 pairs of shoes.
- Second Place: Kerr Elementary collected 1,331 pairs of shoes.
- Third Place: Vaughan Elementary collected 906 pairs of shoes.
- Classroom Winner: Ms. Bryner's 4th grade class, Kerr Elementary, collected 412 pairs of shoes.
- Student Winner: Maya Bullock, Kerr Elementary 4th grader, collected 271 pairs of shoes.

Consent Agenda

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

- 5. Approve Minutes of the May 11, 2010, Regular Meeting.**
- 6. Approve Minutes of the May 18, 2010, Special Called Meeting to Canvass the Results of the May 8, 2010, General Election.**
- 7. Motion to Approve Second Reading of Ordinance No. 2910-5-10 Renewing the Term of an Electric Franchise Agreement Granted to Grayson-Collin Electric Cooperative, Inc. for an Additional Five (5) Years, Amending the Definition of Gross Revenue and Providing New Language for the Compensation of Costs Associated with the Relocation of Electric Facilities in Accordance with State Law.**

ORDINANCE NO. 2910-5-10: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, RENEWING THE FRANCHISE AGREEMENT GRANTED TO GRAYSON-COLLIN ELECTRIC COOPERATIVE, INC. FOR AN ADDITIONAL 5 YEARS; AMENDING THE DEFINITION OF GROSS REVENUE AND PROVIDING NEW LANGUAGE FOR THE COMPENSATION OF COSTS ASSOCIATED WITH THE RELOCATION OF ELECTRIC FACILITIES IN ACCORDANCE WITH STATE LAW; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.
- 8. Award Bid and Authorize the City Manager to Execute a Contract with H-B Construction, Inc. in the Amount of \$77,466 for the Construction of the Allen Heritage Village Blue House/Bridal Parlor Renovations and Establish a Project Budget of \$100,000.**
- 9. Authorize the City Manager to Approve the Purchase and Installation of Furniture, Fixtures, and Equipment (FF&E) from Facility Interiors, Inc. in the Amount of \$491,136.56 for the Municipal Service Center and Public Safety Training Facility Project.**
- 10. Receive the Summary of Property Tax Collections as of April, 2010.**
- 11. Receive the Capital Improvement Program (CIP) Status Report.**

The motion carried.

Regular Agenda

**ALLEN CITY COUNCIL
REGULAR MEETING
MAY 25, 2010**

PAGE 3

- 12. Adopt a Resolution Establishing New Rates and Fees for Commercial and Residential Solid Waste, Recycling and Household Hazardous Waste Services.**

RESOLUTION NO. 2913-5-10(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING FEES AND RATES FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 2913-5-10(R), as previously captioned, that sets new rates and fees for commercial and residential solid waste, recycling, and household hazardous waste services. The motion carried.

- 13. Adopt a Resolution Relating to the “Allen Economic Development Corporation Sales Tax Revenue Bonds, Series 2010A” and “Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2010B”; Approving (i) the Resolution of the Allen Economic Development Corporation (AEDC) Authorizing the Issuance of Such Bonds and (ii) the Execution, on Behalf of the City, of the Financing/Use Agreement Relating to Such Financing by the Corporation; Resolving other Matters Incident and Related to the Issuance of Such Bonds; and Providing an Effective Date.**

RESOLUTION NO. 2914-5-10(R): A RESOLUTION RELATING TO THE “ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, SERIES 2010A” AND “ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, TAXABLE SERIES 2010B”; APPROVING (I) THE RESOLUTION OF THE ALLEN ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE ISSUANCE OF SUCH BONDS AND (II) THE EXECUTION, ON BEHALF OF THE CITY, OF THE FINANCING/USE AGREEMENT RELATING TO SUCH FINANCING BY THE CORPORATION; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Caplinger and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 2914-5-10(R), as previously captioned, relating to the “Allen Economic Development Corporation Sales Tax Revenue Bonds, Series 2010A” and “Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2010B”; Approving (i) the Resolution of the Allen Economic Development Corporation (AEDC) Authorizing the Issuance of Such Bonds and (ii) the Execution, on Behalf of the City, of the Financing/Use Agreement Relating to Such Financing by the Corporation; Resolving other Matters Incident and Related to the Issuance of Such Bonds; and Providing an Effective Date. The motion carried.

Other Business

- 14. Calendar.**
- May 31 – Dedication of City of Allen Veterans Memorial, Bethany Lakes, 11:45 a.m.
 - May 31 – Summer Sounds Concert Series, Joe Farmer Recreation Center Hillside Amphitheater, 7 p.m.

**ALLEN CITY COUNCIL
REGULAR MEETING
MAY 25, 2010**

PAGE 4

15. Items of Interest.

- Council expressed congratulations to area students graduating from high school in 2010.

Executive Session

The Executive Session was not held.

16. Reconvene and Consider Action on Items Discusses during Executive Session.

Adjourn

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember McGregor, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:46 p.m. on Tuesday, May 25, 2010. The motion carried.

These minutes approved on the 8th day of June, 2010.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 8, 2010

SUBJECT:

Motion to Approve the Third and Final Reading of Ordinance No. 2910-5-10 Renewing the Term of an Electric Franchise Agreement Granted to Grayson-Collin Electric Cooperative, Inc. for an Additional Five (5) Years, Amending the Definition of Gross Revenue and Providing New Language for the Compensation of Costs Associated with the Relocation of Electric Facilities in Accordance with State Law

STAFF RESOURCE:

Wes Pierson, Assistant to the City Manager

PREVIOUS COUNCIL ACTION:

On May 11, 2010, Council Approved the First Reading and Adopted Ordinance No. 2910-5-10; on May 25, 2010, Council Approved the Second Reading of Ordinance No. 2910-5-10 Renewing the Term of an Electric Franchise Agreement Granted to Grayson-Collin Electric Cooperative, Inc. for an Additional Five (5) Years, Amending the Definition of Gross Revenue and Providing New Language for the Compensation of Costs Associated with the Relocation of Electric Facilities in Accordance with State Law

Council Adopted Ordinance No. 2846-7-09 Extending the Term of an Electric Franchise Agreement to Grayson-Collin County Electric Cooperative, Inc. for Two Six- Month Terms

ACTION PROPOSED:

Motion to Approve the Third and Final Reading of Ordinance No. 2910-5-10 Renewing the Term of an Electric Franchise Agreement Granted to Grayson-Collin Electric Cooperative, Inc. for an Additional Five (5) Years, Amending the Definition of Gross Revenue and Providing New Language for the Compensation of Costs Associated with the Relocation of Electric Facilities in Accordance with State Law

BACKGROUND

The current Franchise Agreement with Grayson-Collin Electric Cooperative, Inc. (GCEC) was granted on July 13, 2004, to use the public streets, alleys, and rights-of-way within the City for their electric distribution system. The Franchise Agreement can be renewed for two additional five-year terms. The first five-year term was set to expire on July 31, 2009, but on July 28, 2009, the Allen City Council extended the agreement for two six-month terms to allow for an audit to be conducted. The Audit found an underpayment by GCEC to the City in the amount of \$100,598 that GCEC promptly rectified. Additionally, as a result of the audit, GCEC agreed to amend the definition of "Gross Revenue" to exclude reference to revenue uncollectible from customers (i.e. bad debt). Because GCEC pays their franchise fees as a percentage of "Gross Revenue" and not "Gross Receipts," the bad debt language is irrelevant.

This Ordinance renews the term of the Franchise Agreement to July 31, 2014, amends the definition of "Gross Revenue" and provides new language for the compensation of costs associated with the relocation of electric facilities in accordance with state law. The one year extension that was granted on July 28, 2009, is counted toward the five (5) year renewal period. There will be three public readings of this Ordinance pursuant to Section 8.04 of the Allen City Charter.

BUDGETARY IMPACT

The City recovered \$100,598 due to the City from GCEC.

STAFF RECOMMENDATION

Staff recommends approval of the Ordinance renewing the term of an electric Franchise Agreement granted to GCEC for an additional five (5) years, amending the definition of Gross Revenue and providing new language for the compensation of costs associated with the relocation of electric facilities in accordance with state law.

MOTION

I make a motion to approve the third and final reading of Ordinance No. 2910-5-10 renewing the term of an electric Franchise Agreement granted to Grayson-Collin Electric Cooperative, Inc. for an additional five (5) years, amending the definition of "Gross Revenue" and providing new language for the compensation of costs associated with the relocation of Electric Facilities in accordance with state law.

ATTACHMENT

Ordinance

ORDINANCE NO. 2910-5-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, RENEWING THE FRANCHISE AGREEMENT GRANTED TO GRAYSON-COLLIN ELECTRIC COOPERATIVE, INC. FOR AN ADDITIONAL 5 YEARS; AMENDING THE DEFINITION OF GROSS REVENUE AND PROVIDING NEW LANGUAGE FOR THE COMPENSATION OF COSTS ASSOCIATED WITH THE RELOCATION OF ELECTRIC FACILITIES IN ACCORDANCE WITH STATE LAW; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Grayson-Collin Electric Cooperative, Inc. ("GCEC") is engaged in the business of providing electric delivery service within the City of Allen, Texas ("City") and is using the public streets, alleys, grounds and rights-of-way within the City for that purpose under the terms of a franchise ordinance duly passed by the governing body of the City, by Ordinance No. 2296-6-04 on July 13, 2004, ("Franchise Agreement"); and,

WHEREAS, the first five-year term of the Franchise Agreement expired on July 31, 2009, and the City and GCEC, pursuant to Ordinance No. 2846-7-09, extended the term of the Franchise Agreement for a period of six (6) months and allowed for an automatic renewal for an additional (6) six months. The purpose of this extension was to provide time for the City to conduct an audit of GCEC and provide time to renegotiate the terms of the Franchise Agreement if the audit revealed significant findings; and,

WHEREAS, Section 3 of the Franchise Agreement provides for the renewal for two additional terms of five (5) years upon the expiration of the initial term, and the City and GCEC desire to renew the Franchise Agreement for one (1) additional term of five years to expire on July 31, 2014; and,

WHEREAS, City and GCEC desire to amend Section 1.7 of the Franchise Agreement to provide for a new definition of "Gross Revenue" and amend Section 2 of the Franchise Agreement to provide for the reimbursement of relocation expenses in accordance with State law.

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

SECTION 1. The City Council hereby agrees to renew the terms of the Existing Franchise Agreement for an additional five years to expire on July 31, 2014, pursuant to Section 3 of Franchise Agreement between the City and GCEC.

SECTION 2. The City and GCEC hereby amend Section 1.7 of Ordinance No. 2296-6-04 to read as follows:

"Gross Revenue" shall mean the gross operating revenue for all services provided by Cooperative to its customers within the corporate boundaries of the City as accrued on the Cooperative's books pursuant to the accounting principles established by the rural Utilities Service of the U.S. Department of Agriculture, 7 CFR 1767, and, specifically, 1767.26, Accounts 440-456, as amended. The term "Gross Revenue" shall include franchise fees collected from the Cooperative's customers located with the City and shall also include miscellaneous service fees and charges and pole attachment fees. The term "Gross Revenue" shall not include (i) local, state, or federal taxes collected by Cooperative that have been billed to its customers and separately stated on customers' bills or (ii) contributions in aid of construction (CIAC).

SECTION 3. The City and GCEC hereby amend Section 2 of Ordinance No. 2296-6-04 by adding a new Section 2.11 to read as follows:

2.11 Relocation of Electric Facilities. The City shall compensate GCEC in accordance with applicable State law.

SECTION 4. That except as amended herein, the terms and conditions of the Franchise Agreement adopted pursuant to Ordinance No. 2296-6-04 shall remain in full force and effect.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance which shall remain in full force and effect.

SECTION 6. All provisions of the Ordinances of the City of Allen, Texas, in conflict with the provisions of this Ordinance, be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 7. This Ordinance shall take effect immediately from and after its passage and it is accordingly so ordained.

DULY PASSED AND APPROVED ON THE FIRST READING BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 11TH DAY OF MAY, 2010.

DULY PASSED AND APPROVED ON THE SECOND READING BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY, 2010.

DULY PASSED AND APPROVED ON THE THIRD READING BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8TH DAY OF JUNE, 2010.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Adopt an Ordinance Amending the Code of Ordinances, Chapter 9 – Motor Vehicles and Traffic, Section 9-137(b), in Order to Establish a School Zone for Cheatham Elementary

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Adopt an Ordinance amending the Code of Ordinances, Chapter 9 – Motor Vehicles and Traffic, Section 9-137(b), in order to establish a school zone for Cheatham Elementary

BACKGROUND

The continued growth of the City of Allen requires the expansion of the school capacity within the Allen ISD. Cheatham Elementary is the newest school to be opened in the Fall of 2010. To prepare for this opening, the City Engineer has determined the location for school zones to provide a safe route to school for the children. The location of the school zones are described in the attached ordinance and location map.

BUDGETARY IMPACT

The signage, markings and flashers are budgeted in the FY10 school zone safety grant fund and will approach \$25,000.

STAFF RECOMMENDATION

Staff recommends adopting an ordinance amending the Code of Ordinances, Chapter 9 – Motor Vehicles and Traffic, Section 9-137(b), in order to establish a school zone for Cheatham Elementary.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances, Chapter 9 – Motor Vehicles and Traffic, Section 9-137(b), in order to establish a school zone for Cheatham Elementary.

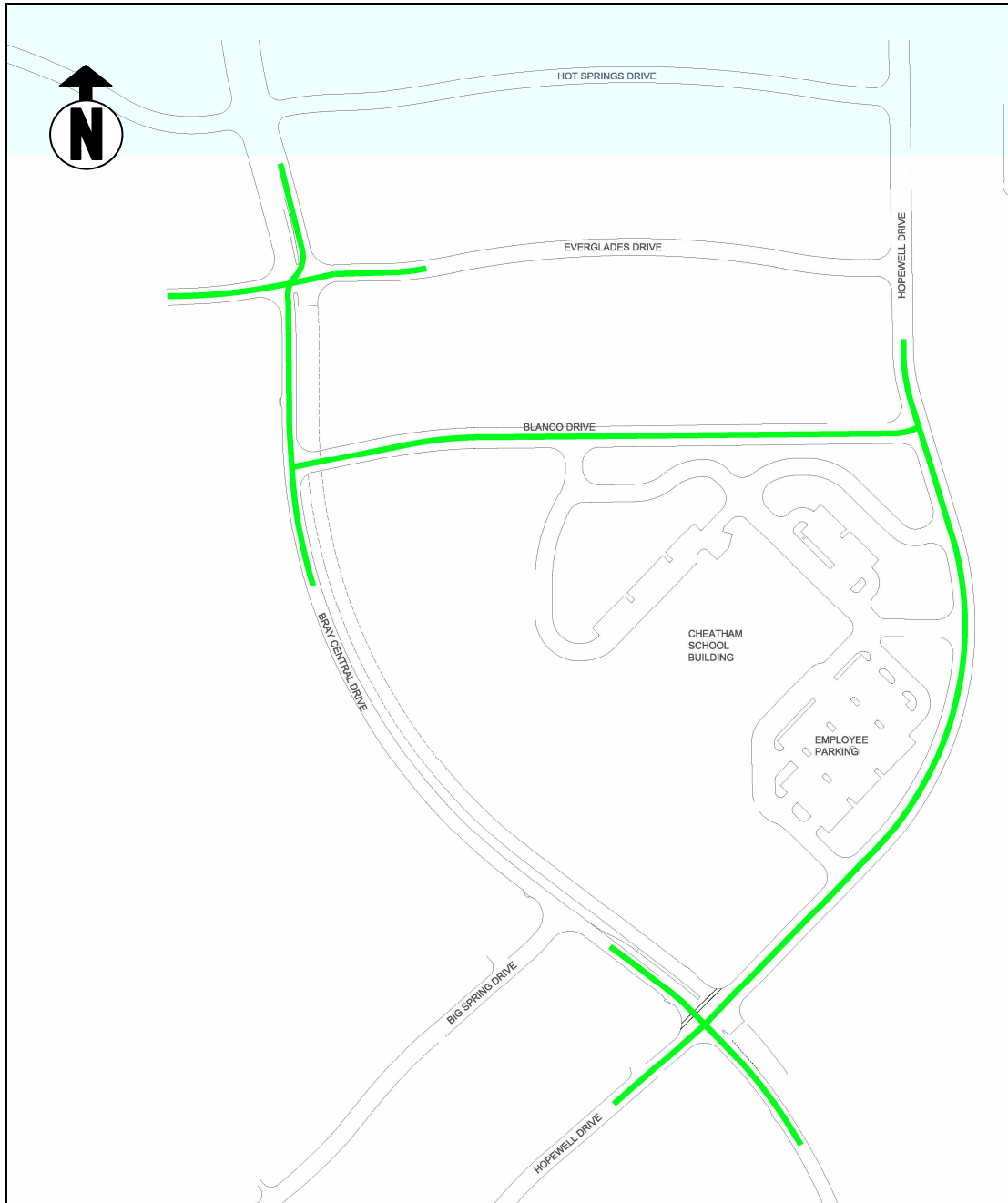
ATTACHMENT

Location Map

Ordinance

LOCATION MAP

Cheatham Elementary School Zone
(June 8, 2010)



 Approx. School Zone Limits

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING SECTION 9-137(b) OF THE CODE OF ORDINANCES TO DESIGNATE BRAY CENTRAL DRIVE FROM 200 FEET NORTH OF EVERGLADES DRIVE TO 200 FEET SOUTH OF BLANCO DRIVE, BRAY CENTRAL DRIVE FROM 200 FEET NORTH OF HOPEWELL DRIVE TO 270 FEET SOUTH OF HOPEWELL DRIVE, EVERGLADES DRIVE FROM 200 FEET WEST OF BRAY CENTRAL DRIVE TO 200 FEET EAST OF BRAY CENTRAL DRIVE, HOPEWELL DRIVE FROM 150 FEET NORTH OF BLANCO DRIVE TO 200 FEET WEST OF BRAY CENTRAL DRIVE AND BLANCO DRIVE FROM BRAY CENTRAL DRIVE TO HOPEWELL DRIVE AS SCHOOL ZONES WITH A MAXIMUM PRIMA FACIE SPEED LIMIT OF TWENTY (20) MILES PER HOUR; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by Section 9-137(b), in part to designate Bray Central Drive from 200 feet north of Everglades Drive to 200 feet south of Blanco Drive, Bray Central Drive from 200 feet north of Hopewell Drive to 270 feet south of Hopewell Drive, Everglades Drive from 200 feet west of Bray Central Drive to 200 feet east of Bray Central Drive, Hopewell Drive from 150 feet north of Blanco Drive to 200 feet west of Bray Central Drive and Blanco Drive from Bray Central Drive to Hopewell Drive as school zones to read as follows:

“Sec. 9-137. School Zones; Signs.

- (a)
- (b) In accordance with the recommendations of the Traffic Engineer, the following designated locations, measured from centerline of roadway to centerline of roadway, and areas are declared to be school zones and the maximum speed limit for all motor vehicles operated within such areas and locations and on such streets on school days, when either a flashing warning signal is in operation, or when appropriate signs are in place and conspicuous shall be as follows:
 - (7) Chandler Elementary School: Twenty (20) miles per hour,
 - a. Bur Oak Drive from two hundred fifty (250) feet east of Water Oak Drive to two hundred fifty (250) feet west of Woodstream Lane.
 - b. Water Oak Drive from two hundred fifty (250) feet north of Bur Oak Drive to Shelley Drive.
 - (8) Cheatham Elementary School: Twenty (20) miles per hour,
 - a. Bray Central Drive from two hundred (200) feet north of Everglades Drive to two hundred (200) feet south of Blanco Drive.
 - b. Bray Central Drive from two hundred (200) feet north of Hopewell Drive to two hundred seventy (270) feet south of Hopewell Drive.
 - c. Everglades Drive from two hundred (200) feet west of Bray Central Drive to two hundred (200) feet east of Bray Central Drive.
 - d. Hopewell Drive from one hundred fifty (150) feet north of Blanco Drive to two hundred (200) feet west of Bray Central Drive.
 - e. Blanco Drive from Bray Central Drive to Hopewell Drive.
 - (9) Curtis Middle School: Twenty (20) miles per hour.
 - a. Malone Road from two hundred ten (210) feet north of Rivercrest Boulevard to two hundred ten (210) feet north of Autumnmist Drive.
 - b. Rivercrest Boulevard from two hundred (200) feet east of Country Lane to Malone Road.
 - (10)
- (c)

SECTION 2. The Traffic Engineer shall erect appropriate signals, signage, and markings giving notice of the maximum prima facie speed limit established herein.

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

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

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

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8TH DAY OF JUNE, 2010.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(43420)

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Adopt an Ordinance Abandoning Water Line, Fire Lane, Access, and Utility Easements for Allen Retail Center (Belz Mall)

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On August 11, 2009, City Council authorized the City Manager to execute a Conveyance Agreement with Allentowne Mall, LLC for conveyance of right-of-way for Ridgeview Drive and Chelsea Boulevard, including demolition of the mall and abandonment of Shelby Drive

ACTION PROPOSED: Adopt an Ordinance Abandoning Water Line, Fire Lane, Access, and Utility Easements for Allen Retail Center

BACKGROUND

Allentowne Mall, LLC (Allentowne) is the owner of two parcels of land in the City of Allen. Parcel #1 consists of approximately 65.0823 acres and improvements (mall) located north of Shelby Drive. Parcel #2 consists of approximately 173.0607 acres of vacant land located south of Shelby Drive.

The City of Allen and Allentowne Mall, LLC entered into a conveyance agreement on August 12, 2009, which provides for the exchange of property between the two parties. In exchange for right-of-way for the future construction of Ridgeview Drive and Chelsea Boulevard and other consideration, the City of Allen agreed to abandon Shelby Drive and all public easements associated with the Allentowne Mall Development.

Shelby Drive right-of-way has already been abandoned. Now that the Allentowne Mall demolition is complete, the conveyance agreement calls for the City to abandon all easements for Allen Retail Center obtained by plat filed on April 26, 1983.

BUDGETARY IMPACT

None

STAFF RECOMMENDATION

Staff recommends that the Council adopt an Ordinance abandoning water line, fire lane, access, and utility easements for Allen Retail Center.

MOTION

I make a motion to adopt an Ordinance abandoning water line, fire lane, access, and utility easements for Allen Retail Center (Belz Mall).

ATTACHMENT

Location Map
Ordinance

LOCATION MAP
Allen Retail Center
Easement Abandonments
(June 8, 2010)



Approx. Property Location

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ABANDONING WATER LINE, FIRE LANE, ACCESS, AND UTILITY EASEMENTS DESCRIBED IN SECTION ONE; PROVIDING FOR THE FURNISHING OF A CERTIFIED COPY OF THIS ORDINANCE FOR RECORDING IN THE OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS, AS A QUITCLAIM DEED; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY DOCUMENTS NECESSARY TO COMPLETE ABANDONMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, having found that the herein described water line, fire lane, access, and utility easements are no longer needed for public use, and the abandonment of said water line, fire lane, access, and utility easements is an obligation of the terms of the Conveyance Agreement with Allentowne Mall, LLC, approved on August 11, 2009, the City Council of the City of Allen, Texas, finds it to be in the public interest to abandon and quitclaim the hereinafter described water line, fire lane, access, and utility easements, subject to the reservations and conditions of this document.

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

SECTION 1. Except as described in Section 2 below, the City of Allen, of behalf of the public, hereby abandons and quitclaims all of the City's right, title and interest in the water line, fire lane, access, and utility easements, along with any improvements located thereon or therein, as identified in Exhibit "A" attached hereto (collectively the "Easements"), in favor of the current record owners of the underlying fee simple interest in the real property described in Final Plat of Allen Retail Center, filed April 26, 1983, recorded April 27, 1983, Instrument Number 19830427000182100, Deed Records, Collin County, Texas.

SECTION 2. The City of Allen, by this Ordinance, does not abandon the 30-foot utility easement or right-of-way parcel "6R" abutting the west side of US Highway 75 as identified in Exhibit "A."

SECTION 3. The City of Allen by this Ordinance, does not abandon, and expressly reserves unto itself, any other interest other than that described in the Easements, including, but not limited to, any other interest in the real property described in the Easements that may have been given, granted, sold, conveyed, or dedicated by or to the City of Allen by instrument other than the Easements.

SECTION 4. The City Secretary is authorized and directed to prepare a certified copy of this Ordinance upon final passage and to file such copy in the Official Public Records of Collin County, Texas, and, upon receipt of the recorded instrument from the Collin County Clerk, to provide a certified copy to the record owners of the underlying fee simple of the property described in the Easements.

SECTION 5. The City Manager is hereby authorized to sign, on behalf of the City, any other documents as may be reasonable and necessary to complete the abandonment and quitclaim of the Easements.

SECTION 5. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8TH DAY OF JUNE, 2010.

APPROVED:

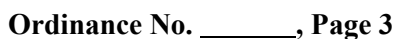
Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, TRMC, CITY SECRETARY



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Authorize the City Manager to Execute a Contract with DMG Commercial Construction Services, Inc. in the Amount of \$298,548 for the Construction of the Police Dispatch Communications Center Project and Amend the Budget to \$599,000
(Bid No. 2010-3-117)

STAFF RESOURCE: John Baumgartner, Director of Engineering
Bill Rushing, Chief of Police
Sid Hudson, Director of Information Technology

PREVIOUS COUNCIL ACTION: On March 23, 2010, City Council awarded the bid and authorized the City Manager to execute a purchase order with Xybix in the amount of \$73,711 for the purchase of Public Safety Communications Center Consoles and established an interim project budget of \$128,000

ACTION PROPOSED: Authorize the City Manager to execute a contract with DMG Commercial Construction Services, Inc. in the amount of \$298,548 for the construction of the Police Dispatch Communications Center Project and amend the budget to \$599,000

BACKGROUND

The current Police Dispatch Center is being relocated in order to increase the work area to receive and process 911 emergency calls. As discussed in the December 2009 Workshop, space constraints in the Police Department limit the expansion, so it is desirable to relocate the facility to the basement area of City Hall prior to the upgrade/replacement of the public safety radio/communication system scheduled for late this year. The basement space requires renovation to accommodate the staff and equipment necessary for a 911 Dispatch Center.

The new dispatch center will house six workstations with the ability to add a seventh console in the future if necessary. In addition to the added space for the dispatchers, the existing dispatch space will be renovated in a future project to provide additional space for police operations.

On May 13, 2010, a total of three bids for construction were received for this project:

Bid No. 2010-3-117

Contractor	Days	Base Bid	Alt. #2*	Base + Alt. #2
DMG	60	\$ 276,398	\$ 22,150	\$ 298,548
Schmoldt	80	\$ 320,000	\$ 47,000	\$ 367,000
Piazza	60	\$ 360,000	\$ 21,000	\$ 381,000

*Alternate #2 – Provide Fire Suppression System for Radio Equipment/Data Room

BUDGETARY IMPACT

The estimated project costs are illustrated in the following table:

PS1001 – Police Dispatch Communications Center Project Cost Estimate	
Description	Costs
Engineering Design	\$ 48,500
Consoles Purchase	\$ 73,711
Construction (Base + Alternate #2)	\$ 298,548
FF&E	\$ 20,000
Existing 911 Equipment Relocation	\$ 10,000
Network & Voice Equipment	\$ 83,600
Access & Security	\$ 25,000
Contingency	\$ 39,641
TOTAL	\$ 599,000

The project will be funded from Public Safety Bond Funds.

STAFF RECOMMENDATION

Staff recommends that Council authorize the City Manager to execute a contract with DMG Commercial Construction Services, Inc. in the amount of \$298,548 for the construction of the Police Dispatch Communications Center Project and amend the budget to \$599,000.

MOTION

I make a motion to authorize the City Manager to execute a contract with DMG Commercial Construction Services, Inc. in the amount of \$298,548 for the construction of the Police Dispatch Communications Center Project and amend the budget to \$599,000.

ATTACHMENT

Fixed Price Contract

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 DMG Commercial Construction Services, Inc., (hereinafter referred to as the "Contractor") for construction of Allen Communication Renovation, (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 PROJECT MANUAL

1.2.1 The Contract Documents Project Manual consist of this Agreement, the General Information and Requirements 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):

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. Drawings should not be scaled.

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 and Architect'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:

ALLEN COMMUNICATION RENOVATION

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 the number of Calendar Days indicated within the Proposal 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 "Substantial Completion of the Work" 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. 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.

Once substantial completion is achieved, the contractor has 30 calendar days to achieve final acceptance. Final acceptance is defined as that point in time that no punch list items remain from any subsequent (or current) inspections and the project is 100% complete. The contractor shall pay the owner \$240 per day for each and every calendar day beyond 30 calendar days from the date of substantial completion. In the event that the liquidated damages incurred (at the point of \$240 a day) have exceeded the amount of retainage held, the Owner shall have the right to utilize these retained funds (payments withheld) to engage others to make such repairs, corrections, or improvements required to achieve final completion. In such an instance, the delay of the contractor shall constitute abandonment of the project and forfeiture of the retained earnings.

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.

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 of 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.

3.3.2 Once the facility is substantially complete, if attention is needed by the contractor for operationally critical elements of the facility (HVAC, plumbing, access, etc), the contractor shall respond with active repair corrections, or improvements within 24 hours of written (email or facsimile) request, or Owner shall expend retainage owed the Contractor to make such repairs, corrections, or improvements.

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 \$298,548.

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 itot imbalance ittractor shall submit to tnflate 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 **25th 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-five percent (95%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect 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 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 Owner's receipt and approval of each Application for Payment approved by the Architect. 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; (See item 3.3.2 for timelines of response);
- (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, (see item 3.1.2 also),
- (e) evidence that the Work will not be completed in the time required for substantial or final completion; (see item 3.1.2 also);
- (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, he 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 determine the final completion date to occur within 30 days. (see item 3.1.2 also) Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. If the Architect is unable to determine that the work is in fact substantially complete 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. A Certificate of Substantial Completion will not be issued if the value of incomplete work exceeds the amount of retainage withheld.

The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. (See item 3.1.2)

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 See items 3.1.2.

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. A complete set of accurate redline markups shall be submitted to the Architect for record drawing preparation prior to final payment made by Owner

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) 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. If contractor fails to do so, the Owner will engage the engineer to survey the site to achieve an accurate record set

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, **ten (10) copies** 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. A maintenance bond, effective for 1 year from date of substantial completion and for 100% of the total contract price shall be submitted for the Owner making final payment

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(s) 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 Architect shall not allow for multiple reviews (no more than two reviews). If additional reviews are necessary as a result of the contractor's failure to submit complete submittal documents, the contractor shall incur the cost for additional review services performed by the Architect. 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 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. 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.

7.15 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 City 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 City to protect persons or property in, near or adjacent to the jobsite. 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 proposal to a request for information (RFI), or issuance of a clarification or interpretation shall be considered an interpretation, clarification, supplemental information or an 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 proposal 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 therefore, 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. This section shall not apply to the time of completion between the date of substantial completion and Final Completion**

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 approvals 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:

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

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

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of

this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

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

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, 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 / Each 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.
Pollution Liability	\$1,000,000 Each Claim \$1,000,000 Each Aggregate

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable) 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. The Contractor shall not terminate this insurance until the project is 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 Engineering 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 coverage provided herein shall be primary and noncontributory with any other insurance maintained by the City of Allen, Texas, for its benefit, including self insurance.

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (B) no later than seven (7) 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 (1) year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (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 (1) year thereafter;
- (G) notify the governmental entity in writing by certified mail or personal delivery, within ten (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 Collin County, Texas.

14.3 SUCCESSORS AND ASSIGNS

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

14.4 SURETY BONDS

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

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

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

14.5 SEVERABILITY

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

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect 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 8th day of June, 2010.

CITY OF ALLEN

DMG Commercial Construction Services, Inc.

APPROVED:

Peter H. Vargas, City Manager

(Signature)

Mark Spaulding, General Manager

ATTEST:

3939 Beltline Road, Suite 540
Addison, Texas 75001

Shelley B. George, City Secretary

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., 2010.

Notary Public In and For

County, _____

My Commission expires: _____

CITY MANAGER'S ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared the undersigned, City Manager of the City of Allen, Texas, a municipal corporation, 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 City of Allen, Texas, a municipal corporation, that he/she was duly authorized to perform the same by appropriate resolution of the City Council of the City of Allen and that he/she executed the same as the act of the said City for purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, A.D., 2010.

Notary Public in and for the State of Texas

My Commission expires: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Authorize the City Manager to Approve the Purchase of Equipment for the Traffic Signal Resynchronization or Replacement Project from Siemens Industry, Inc. and Iteris, Inc. for an Amount not to Exceed \$147,705

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On January 26, 2010, the City Council adopted a resolution authorizing the City Manager to execute a grant agreement with the Comptroller of Public Accounts for Traffic Synchronization or Replacement and establishing a project budget

On March 9, 2010, the City Council authorized the City Manager to execute a professional services contract with Lee Engineering, LLC in the amount of \$228,800 for services related to the Traffic Signal Resynchronization or Replacement Project

ACTION PROPOSED: Authorize the City Manager to approve the purchase of equipment for the Traffic Signal Resynchronization or Replacement Project from Siemens Industry, Inc. and Iteris, Inc. for an amount not to exceed \$147,705

BACKGROUND

As part of the American Recovery and Reinvestment Act of 2009 (ARRA), the Comptroller of Public Accounts was awarded funds to support the Comptroller's State Energy Program. Through these appropriations, the City of Allen was awarded \$392,500 for our Traffic Signal Synchronization or Replacement Project which includes upgrading traffic signal controllers (new equipment), progression timing, video detection, creation of a traffic signal communication system and improvements to intersection signing and striping. The main benefits of the upgrades are the following:

1. Standardize traffic signal system hardware
2. Allow for remote management of the traffic signal operations from a central control center
3. Update all traffic signal timing plans

This is the second upgrade project and will complete the signals throughout the City.

Siemens Industry, Inc. is the manufacturer and sole source distributor (the only distributor in Texas to sell Siemens) for M52 signal controllers. Volume pricing is applied to the contract amount.

Iteris Inc. is the manufacturer and sole source distributor (the only distributor in Texas to sell Iteris) for Video Imaging Vehicle Detection System which the City of Allen Traffic Division has adopted as the Standard for the City. Volume pricing is applied to the contract amount.

Siemens Industry, Inc. and Iteris, Inc.	
Items	Amount
Siemens M52 Signal Controllers	\$ 52,515
Iteris Video Imaging Vehicle Detection System (VIVDS)	\$ 95,190
TOTAL	\$ 147,705

BUDGETARY IMPACT

Funds are available in the approved budget for the purchase of equipment (CIP #GRA005).

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to approve the purchase of equipment for the Traffic Signal Resynchronization or Replacement Project from Siemens Industry, Inc. and Iteris, Inc. for an amount not to exceed \$147,705.

MOTION

I make a motion to authorize the City Manager to approve the Purchase of Equipment for the Traffic Signal Resynchronization or Replacement Project from Siemens Industry, Inc. and Iteris, Inc. for an amount not to exceed \$147,705.

ATTACHMENT

Sales Quotes

Page Number - 1
Date - 5/26/2010
Brn/Plt - 01230
Related P.O. -
Order Nbr - 12682 SQ

Terms Net 30 Days



Kirk Barnes

1700 Carnegie Ave. Suite 100

Santa Ana, CA 92705-5551

Phone: (979) 571-6120 Fax: (979) 731-1264

email: keb@iteris.com, web site: www.iteris.com

EQUIPMENT QUOTATION

Quote #: 052710-1

Vantage®

Mike Kealy mkealy@cityofallen.org

Allen, City of

305 Century Parkway,

Allen, TX 75013-8042



Agency: City of Allen

Project Name: VIVDS Equipment

May 27, 2010

Fax or email Purchase Orders to: Marilyn Holden, (949) 270-9441, mdh@iteris.com, please include quote number on your purchase order

Quote Terms: Net 30 days, subject to credit approval and Iteris Standard Terms & Conditions unless negotiated in writing with Iteris, Inc. prior to purchase.

Prices are valid for 30 days from the date of quote unless extended in writing.

FOB Shipping point, freight included, does not include insurance.

Part Number	Description	Qty	Unit	Unit Price	Ext. Price
EDGE2-2N-TX	Iteris Vantage Edge2 Processor - 2 Camera Input, 24VDC	22	ea	\$2,545.00	\$55,990.00
SURGEPAN-TX	Iteris Surge Panel with mounting clips for up to 6 Suppressors (SURGEVAN)	3	ea	\$60.00	\$180.00
SURGEVAN	Video Surge Suppressor with one FCABLE	12	ea	\$50.00	\$600.00
DINCLIP	Dinrail Clip for SURGEVAN	44	ea	\$0.00	\$0.00
CAM-RZ4C-PAK	Iteris Vantage Color Camera Assembly - Model CAM-WDR - RS 170 Motorized Zoom Lens, 115VAC, with power/coax connector set	44	ea	\$775.00	\$34,100.00
PELCO0175-62	Pelco Signal Mast Arm Camera Bracket Extension- (Pelco P/N: AS-0175-5-62-ALO)	12	ea	\$100.00	\$1,200.00
Lilliput 319GL-70NP	7" Color Monitor, w/ BNC connector (for use with RZ4C cameras)	3	ea	\$120.00	\$360.00
Y Cable	Adaptor Cable for Lilliput Monitor	3	ea	\$0.00	\$0.00
ISOCBL	Composite 8281 Coax/16 AWG power cable (500', 1000', or 2000' spools)	3000	ft	\$0.92	\$2,760.00

IMPORTANT NOTES:

Camera quote is for 32 stand alone replacement cameras plus 12 cameras with mounting hardware, surge protection, power panels.

Authorized Signature

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Authorize the City Manager to Amend the Annual Unit Price Contract with Stripe-a-Zone for Thermoplastic Pavement Markings to Authorize Expenditures up to \$125,000

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: In 2008, an annual unit price contract for Thermoplastic Pavement Markings (Bid No. 2008-5-257-C) was awarded by the City Manager with annual expenditures anticipated at less than \$50,000 per year

ACTION PROPOSED: Authorize the City Manager to amend the annual unit price contract with Stripe-a-Zone for Thermoplastic Pavement Markings to authorize expenditures up to \$125,000

BACKGROUND

An annual unit price contract for Thermoplastic Pavement Markings (Bid No. 2008-5-257-C) was awarded by the City Manager in 2008 with annual expenditures anticipated at less than \$50,000 per year. To date this year, over \$40,000 in separate work orders has been expended. Additional pavement markings are to be placed for school zones and as part of our maintenance program. Additional locations that need to be re-marked have been identified throughout the City to include: cross walks, turn arrows, and other important markings.

BUDGETARY IMPACT

Funding for this project will come from the School Safety Grant Fund, FY10 G.O. Bonds for street and alley rehabilitation, and the General Fund.

STAFF RECOMMENDATION

Staff recommends that Council authorize the City Manager to amend the annual unit price contract with Stripe-a-Zone for Thermoplastic Pavement Markings to authorize expenditures of up to \$125,000.

MOTION

I make a motion to authorize the City Manager to amend the annual unit price contract with Stripe-a-Zone for Thermoplastic Pavement Markings to authorize expenditures up to \$125,000.

ATTACHMENT

Original Contract

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this 12th day of June, A.D. 2008, 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

thereunto duly authorized so to do,
Party of the First Part, hereinafter termed OWNER, and Stripe-A-Zone, Inc.

of the City of Grand Prairie, County of Tarrant and State of Texas, 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:

Two-Year Contract for Thermoplastic Pavement Markings at Various Locations (BID NO. 2008-5-257-C)

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 **City of Allen, 305 Century Parkway, Allen, TX 75013** 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 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) calendar days after the date a written work order is given to him.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the bid response, which forms a part of this contract. Such payments to be subject to the General and Special Conditions of the contract, in an amount not to exceed \$ 31,965.00 in any single year.

The CONTRACTOR hereby agrees to perform Pavement Marking for the City of Allen for a period of two (2) years, with the option to renew the contract for a period of two (2) additional terms of one (1) year each.

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 4/26/08
Peter H. Vargas, City Manager

Attest:

Shelley B. George
Shelley B. George, City Secretary

Stripe-A-Zone, INC

Party of the Second Part (CONTRACTOR)

By:

DAVID SARRENT - PRESIDENT

Attest:

Ray Quinn

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	June 8, 2010
SUBJECT:	<p>Conduct a Public Hearing and adopt an ordinance to create PD Planned Development No. 103, SC Shopping Center, and adopt a Concept Plan for Cabela's by rezoning 12.88± acres from PD Planned Development No. 58, Tract 2A for LI Light Industrial and 1.12± acres from PD Planned Development No. 73 for SC Shopping Center. The property is 14.0± acres of land situated in the L.K. Pegues Survey, Abstract No. 702, the F.C. Wilmeth Survey, Abstract No. 999, and the Henry Wetsel Survey, Abstract No. 1026; City of Allen, Collin County, Texas; located south of Village Drive and west of Allen Station Parkway (Z-5/5/10-36) [Cabela's]</p>
STAFF RESOURCE:	<p>Ogden "Bo" Bass, AICP Director of Planning and Development</p>
PREVIOUS COUNCIL ACTION:	None
BOARD/COMMISSION ACTION:	<p>The Planning and Zoning Commission conducted a Public Hearing at the June 1, 2010, meeting and recommended approval of the request to adopt an ordinance to create PD Planned Development No. 103, SC Shopping Center, and adopt a Concept Plan for Cabela's</p>
ACTION PROPOSED:	<p>Conduct a Public Hearing and establish an ordinance to create PD Planned Development No. 103, SC Shopping Center, and adopt a Concept Plan for Cabela's by rezoning 12.88± acres from PD Planned Development No. 58, Tract 2A for LI Light Industrial and 1.12± acres from PD Planned Development No. 73 for SC Shopping Center</p>

BACKGROUND

The property is located south of Village Drive, west of Allen Station Parkway, north of Exchange Parkway and east of US Hwy 75 and the DART right-of-way. The property to the north is zoned PD Planned Development No. 73 for SC Shopping Center. The property to the west is zoned PD Planned Development No. 45 for CC Corridor Commercial. The property to the south and east is zoned PD Planned Development No. 58 for LI Light Industrial.

The property is currently zoned PD Planned Development No. 73 for Shopping Center and PD Planned Development No. 58 for LI Light Industrial. The request is to rezone the property to PD Planned Development No. 103 SC Shopping Center and adopt a Concept Plan for Cabela's. Included in the ordinance is the Concept Plan, Planned Development Regulations, Landscape Plan, building elevations, monument sign elevations, lighting details, dog kennel details and outdoor display exhibit.

Cabela's is proposing to build a ±105,812 square foot Next Generation store on the 14 acre site. The Planned Development will include various additional uses to the SC Shopping Center zoning district and are identified in the attached PD Development Regulations. The Concept Plan for the site provides for a main entrance from Cabela Drive and secondary access from Allen Station Parkway. Elements illustrated on the Concept Plan include boat display/storage, RV parking, a dog kennel, and a boat hoist. A Landscape Plan for the site has been included in the PD Planned Development to address landscape requirements. The building elevations provide a visual of the proposed building facade, building materials, boat hoist, and outdoor boat storage. Site Sections have been included to ensure the proposed visual screening along Allen Station Parkway is adequate.

The ALDC allows for one monument for a site and the applicant has proposed two monument signs. Screening elevations have also been included and propose alternative screening. The proposed parking lot lighting has also been included in the Planned Development.

On June 1, 2010, the Planning and Zoning Commission recommended approval of the request subject to the following staff recommendations:

1. The dog kennel shall have a low heat/low ray mesh on the roof and three sides of the kennel. Signage must also include that owners are responsible for pet's behavior and Cabela's may request an owner to remove a pet from the kennel at any time. **(The applicant has agreed to this condition and it has been added to the PD.)**
2. Staff recommends the asphalt roofing material be replaced with a standing seam metal roof for aesthetics. **(The applicant has agreed to this condition and it has been added to the PD.)**
3. The PD Development Regulations for the monument sign dimensions shall be revised to correspond to the sign elevation. A maximum sign height of eight feet, a maximum copy area of 100 square feet per face, and a maximum structure of 200 square feet each face. **(The applicant has agreed to the maximum sign height being eight feet. It is reflected in the PD.)**

LEGAL NOTICES

Public Hearing Sign Installed --- May 21, 2010
Public Hearing Letters Mailed --- May 21, 2010

STAFF RECOMMENDATION

Staff concurs with the recommendation from the Planning and Zoning Commission.

MOTION

I make a motion to adopt an ordinance to create PD Planned Development No. 103, SC

Shopping Center, and adopt a Concept Plan for Cabela's by rezoning 12.88± acres from PD Planned Development No. 58, Tract 2A for LI Light Industrial and 1.12± acres from PD Planned Development No. 73 for SC Shopping Center.

ATTACHMENT

Property Owner Notification Map

Ordinance

Minutes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, BY CHANGING THE ZONING OF A 14.0± ACRE TRACT OF LAND OUT OF THE L.K. PEGUES SURVEY, ABSTRACT NO. 702, THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, CITY OF ALLEN, COLLIN COUNTY, TEXAS; SAID TRACT BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO, AND WHICH PROPERTY IS PRESENTLY ZONED “PD” PLANNED DEVELOPMENT NO. 58 “LI” LIGHT INDUSTRIAL AND “PD” PLANNED DEVELOPMENT NO. 73 “SC” SHOPPING CENTER TO “PD” PLANNED DEVELOPMENT NO. 103 “SC” SHOPPING CENTER; ADOPTING DEVELOPMENT REGULATIONS FOR SAID “PD” PLANNED DEVELOPMENT NO. 103 “SC” SHOPPING CENTER; ADOPTING A CONCEPT PLAN; ADOPTING A LANDSCAPE PLAN; ADOPTING BUILDING ELEVATIONS; ADOPTING A SIGN PLAN; ADOPTING AN OUTDOOR SALES/DISPLAY EXHIBIT; ADOPTING A LIGHTING EXHIBIT; ADOPTING A SCREENING EXHIBIT; ADOPTING A DOG KENNEL DETAIL; PROVIDING FOR A CONFLICT RESOLUTION CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

SECTION 1. The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as amended, shall be further amended by changing the zoning of a 14.0 ± acre tract of land out of the L.K. Pegues Survey, Abstract No. 702, the F.C. Wilmeth Survey, Abstract No. 999, and the Henry Wetsel Survey, Abstract No. 1026, City of Allen, Collin County, Texas, said land being more particularly described in Exhibit “A,” attached hereto and incorporated herein by reference (“the Property”), from “PD” Planned Development No. 58 “LI” Light Industrial and “PD” Planned Development No. 73 “SC” Shopping Center, to “PD” Planned Development No. 103 “SC” Shopping Center.

SECTION 2. The Property shall be developed and used in accordance with the development and use regulations of the “SC” Shopping Center Zoning District as set forth in the Allen Land Development Code except as supplemented or modified as follows:

- A. Concept Plan: The Property shall be developed and used in accordance with the Concept Plan attached hereto as Exhibit “B” and incorporated herein by reference.
- B. Building Elevations/Materials: In general, the Property shall be developed and used in accordance with the building elevations attached hereto as Exhibit “C,” and incorporated herein by reference. Building elevations may include brick, stone, concrete, concrete block, metal, glass, metal panels, natural materials (i.e. wood, etc.), glazing, and stucco. Alternate designs can be approved by the Director of Planning and Development.
- C. Area, Height, and Setback Regulations: The Property shall be developed in accordance with the following area, height, and setback regulations:
- | | | |
|-----|--------------------------|---|
| (1) | Maximum Building Height: | 60 feet |
| (2) | Minimum front yard: | 50 feet |
| (3) | Minimum side yard: | 25 feet (from Allen Station Parkway) |
| | | 25 feet (from DART right-of-way) |
| (4) | Minimum rear yard: | 25 feet |
| (5) | Landscape Easement: | 10 feet along Village Drive (to become known as Cabela Drive) |
| | | Setback along Allen Station Parkway shall be as illustrated on the Concept Plan |
| | | 5 feet along DART right-of-way |
| | | None along southern property line |
- D. Schedule of permitted uses: In addition to the uses allowed in the “SC” Shopping Center District, the Property may be used for the following purposes:
- (1) Firearms sales and service
 - (2) RV Waste Disposal Facility, provided that such use shall be limited to the area of the Property indicated on the Concept Plan and subject to the additional regulations set forth in Paragraph I(4)(a), below.
 - (3) Outside/onsite dog kennel, provided such use shall:
 - (a) be limited to the area of the Property indicated on the Concept Plan;
 - (b) subject to the additional regulations set forth in Paragraph I(4)(b), below; and
 - (c) be designed substantially in accordance with the detail attached hereto as Exhibit “D,” and incorporated herein by reference.
 - (4) Outside/onsite horse corral, but only after obtaining a Specific Use Permit (“SUP”) for such use.

- (5) Boat and boat accessories sales and service/repairs/hoist.
 - (6) ATV sales, service and repairs.
 - (7) Outside display of hunting items (e.g., tree- stands, blinds, chairs, etc.), Camping Items (e.g. tents, BBQ grills, etc.), and Marine Items (e.g. kayaks, canoes, single person flotation); provided, however, such use shall be limited to the locations identified on the “Outdoor Sales/Display Exhibit” attached hereto as Exhibit “E,” and incorporated herein by reference.
 - (8) Outdoor food vendors (e.g. popcorn sales in self contained trailer, food items during tent sales and special event weekends, etc.) provided, however, such use shall be limited to the locations identified on the “Outdoor Sales/Display Exhibit.”
 - (9) Outside sales, including vendors, subject to the following additional limitations:
 - (a) Such use shall be limited to the location identified on the “Outdoor Sales/Display Exhibit.”
 - (b) Tent sales events are limited to six (6) events through the year that average three (3) to four (4) days in length. Tent sales events will be in compliance with the City’s tent permit application.
 - (c) Sidewalk sales may occur throughout the year provided:
 - (i) there shall be no more than twelve (12) sidewalk sales events during a calendar year;
 - (ii) each sidewalk sale event shall be limited to a duration of three (3) consecutive days; and
 - (iii) all sidewalk sales shall be limited to the locations identified on the “Outdoor Sales/Display Exhibit” at the front of the store.
- E. Outdoor lighting: The outdoor lighting installed on the Property shall be subject to the following:
- (1) Maximum luminaries height – thirty feet (30.0’) as detailed on the Lighting Exhibit attached hereto as Exhibit “F,” and incorporated herein by reference.
 - (2) Pole standards shall be square or tapered wood poles with steel or aluminum base.
 - (3) Up and down lighting on building columns are allowed.
 - (4) Down lights on wood brackets attached to the sides of the building are allowed.
- F. Landscaping: The Property shall be developed in accordance with the Landscape Plan to be developed as shown on Exhibit “G,” attached hereto and incorporated herein by reference. In addition, parking spaces shall be located a distance from the center point of any city-approved parking lot tree as shown on the Concept Plan.
- G. Screening: The Property shall be developed with screening as required by the Allen Land Development Code, provided, however, the Director of Planning and Development shall have the authority to allow required screening to be substituted with an alternate design, including living screens. In addition, the Property shall be developed in accordance with the following specific screening requirements:

- (1) A screening wall eight feet (8.0') in height shall be constructed substantially as show on the Screen Exhibit attached hereto as Exhibit "H" and incorporated herein by reference, the Building Elevation, and the Concept Plan to screen the truck dock from the public right-of-way.
- (2) Screening for the boat storage area shall be an 8 foot high decorative metal fence with a continuous row of evergreen shrubs not less than forty-two inches (42.0") tall spaced no further apart than three foot (3.0') on center.
- (3) Screening for the RV Waste Disposal Facility shall be a continuous row of evergreen shrubs not less than forty-two inches (42.0") tall spaced no further apart than three foot (3.0') on center.
- (4) Screening for the trash dumpster/compactor and recycle dumpster shall be a combination of berming and landscape with a combined height of eight feet (8.0') as shown on the Concept Plan and the Landscape Plan.
- (5) Screening for utility boxes and similar appurtenances located on the exterior of any building shall be a continuous row of evergreen shrubs not less than forty-two inches (42.0") tall spaced no further apart than three foot (3.0') on center.

H. Sign Regulations: Signs placed on the Property shall be located and designed in accordance with the Concept Plan and subject to the following:

- (1) Monument Signs shall be located as shown on the Concept Plan, generally designed as set forth in Exhibit "I," attached hereto and incorporated herein by reference, and subject to the following additional regulations:
 - (a) Maximum number of signs shall be two (2).
 - (b) Maximum height shall be eight feet (8.0').
 - (c) Maximum copy area shall be 100 square feet on each face.
 - (d) Maximum structure shall be 200 square feet on each face.
- (2) Light Pole Banner Signs may be utilized for seasonal advertising/display and placed around the site and within the parking lot.

I. Miscellaneous:

- (1) Outdoor sales and display are permitted around the site as shown on the attached "Outdoor Sales/Display Exhibit." Additional areas can be utilized for outdoor sales/display as approved by the Director of Planning and Development.
- (2) The operation of generators and other emergency equipment is allowed to maintain operations of the facility.
- (3) The boat hoist will be limited to loading and unloading of boats and materials associated with the operation. Boat repairs will not be made outside at the hoist.
- (4) Operation of the RV Waste Disposal Site and Dog Kennel facilities located on the Property shall be subject to the following:

- (a) The owner or operator (whichever is applicable) of the store located on the Property must implement a policy regarding operation and use of the RV Waste Disposal Facility that, as a minimum, includes the following:
 - (i) The RV Waste Disposal Facility shall be reserved for use only by store customers operating Recreational Vehicles owned or leased by the customer.
 - (ii) The store owner or operator will not permit waste from septic haulers or commercial portable toilet waste to be disposed in the RV Waste Disposal Facility.
 - (iii) The RV Waste Disposal Facility will be unlocked by only by a store employee who will remain on-site to supervise customer use of the facility.
 - (iv) Before disposal of any waste may occur at the RV Waste Disposal Facility, a potable water connection located by the facility must be established and made available for customer and store employee use. No disposal of waste will be allowed during any period in which the water connection is unavailable.
 - (v) After each customer use, the store employee will assure any spilled wastes are washed into the RV Dump Site's sanitary sewer connection; that the lid to the sewer connection is properly sealed when the cover is reinstalled, and that the facility is locked to prevent unauthorized use when a store employee is not present.

The store operator is responsible for assuring that septic wastes from RV's or from the RV Waste Disposal Facility is not released into the adjacent parking lot/environment and that rainwater is not unnecessarily introduced into the RV Waste Disposal Facility's sanitary sewer connection.

- (b) Use of the Dog Kennel shall be limited to customers' personal pets while the customers are shopping in the store located on the property. Water and dog bags will be available at this location for customers' to use. The dog kennel units must be constructed with a woven mesh material (polypropylene mesh with a 70% block in dark green color) across the top and on three (3) sides to provide shade. No overnight stays are allowed. Daily maintenance will occur to ensure the Dog Kennel area is clean and ready

SECTION 3. The provisions of this Ordinance shall be controlling with respect to the use and development of the Property for the purposes authorized in Sections 1 and 2, above. In the event of any irreconcilable conflict with the provisions of this Ordinance and any other ordinances of the City of Allen, the provisions of this ordinance shall be controlling.

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

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

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

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8TH DAY OF JUNE, 2010.

APPROVED:

Stephen Terrell, Mayor

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, City Attorney

Shelley B. George, City Secretary

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

A 14.000 ACRE PARCEL OF LAND OUT OF THE L.K. PEGUES SURVEY, ABSTRACT NO. 702, THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, AND THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, COLLIN COUNTY, TEXAS, BEING PART OF LOT 1, BLOCK 1, ALLEN STATION BUSINESS PARK, PHASE II, AN ADDITION TO THE CITY OF ALLEN AS RECORDED IN CABINET R, SLIDE 229 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT), AND BEING ALL OF A 1.120 ACRE TRACT OF LAND AS DEEDED TO THE CITY OF ALLEN AND RECORDED IN CC FILE NO. 20071116001556210, DRCCT, AND BEING PART OF THE 20.7275 ACRE TRACT OF LAND AS DEEDED TO ANDREWS FAMILY PROPERTIES, LLC AND RECORDED IN COUNTY CLERKS FILE NO. 20080303000247380 DRCCT, AS SHOWN ON THE ATTACHED EXHIBIT "A" AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

IT IS THE INTENT TO DESCRIBE A TRACT OF LAND BEING BOUNDED ON THE NORTH BY THE SOUTH LINE OF THE RIGHT OF WAY FOR VILLAGE DRIVE, BEING BOUNDED ON THE EAST BY THE WEST LINE OF THE RIGHT OF WAY FOR ALLEN STATION PARKWAY, BEING BOUNDED ON SOUTH BY A LINE WHICH MARKS THE SOUTH LINE OF THE NORTH 14 ACRES OF SAID ANDREWS FAMILY TRACT, AND BEING BOUNDED ON THE WEST BY THE EAST LINE OF THE RIGHT OF WAY FOR THE DALLAS AREA RAPID TRANSIT (DART);

The POINT OF BEGINNING is the northwest corner of said Andrews Family tract, being on the south line of the Right of Way for Village Drive, and being on the east line of the Right of Way for the Dallas Area Rapid Transit (DART);

THENCE South 70°38'14" East, with the north line of said Andrews Family tract, being the south line of the Right of Way for Village Drive, a distance of 561.77 feet to a point at the beginning of a non-tangent curve to the right;

THENCE continue with said common line, with said curve to the right, having a radius of 1055.00 feet, through a central angle of 07°37'08", an arc distance of 140.29 feet, and having a chord which bears South 66°52'14" East, a distance of 140.19 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said common line, with said curve to the right, having a radius of 38.50 feet, through a central angle of 09°39'30", an arc distance of 6.49 feet, and having a chord which bears South 59°36'07" East, a distance of 6.48 feet to a point;

THENCE, South 54°46'19" East, continue with said common line, a distance of 109.94 feet to a point at the beginning of a non-tangent curve to the left;

THENCE continue with said common line, with said curve to the left, having a radius of 261.50 feet, through a central angle of 01°34'00", an arc distance of 7.15 feet, and having a chord which bears South 55°33'18" East, a distance of 7.15 feet to a point at the beginning of a tangent reverse curve;

THENCE continue with said common line, with said curve to the right, having a radius of 1045.00 feet, through a central angle of 06°09'37", an arc distance of 112.36 feet and having a chord which bears South 53°16'21" East, a distance of 112.30 feet to a point;

THENCE continue with said common line, South 50°07'01" East, a distance of 62.29 feet to a point at the beginning of a corner clip for the southwest corner of the intersection of Village Drive with Allen Station Parkway;

THENCE South 01°14'34" East, with said corner clip, a distance of 32.89 feet to a point on the east line of the curving Right of Way of Allen Station Parkway;

THENCE South 49°12'08" East, with said corner clip, a distance of 0.63 feet to a point at the beginning of a non-tangent curve;

THENCE with said curving west line of the Right of Way for Allen Station Parkway to the right, having a radius of 1095.00 feet, through a central angle of 00°52'19", an arc distance of 16.67 feet, and having a chord which bears South 41°14'02" West, a distance of 16.67 feet to a point on a corner clip;

THENCE South 00°47'07" East, with said corner clip, a distance of 22.98 feet to a point at the beginning of a non-tangent curve;

THENCE along the west line of the Right of Way for Allen Station Parkway with said curve to the right having a radius of 616.00 feet, through a central angle of 16°44'37", an arc distance of 180.02 feet, and having a chord which bears South 60°03'58" West, a distance of 179.38 feet to a point at the beginning of a tangent compound curve;

THENCE continue with said Right of Way line with said curve to the right, having a radius of 287.00 feet, through a central angle of 08°59'23", an arc distance of 45.03 feet, and having a chord which bears South 72°56'00" West, a distance of 44.98 feet to a point of tangent;

THENCE continue with said Right of Way line South 77°25'41" West, a distance of 59.58 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 336.00 feet, through a central angle of 10°22'16", an arc distance of 60.82 feet, and having a chord which bears South 72°14'34" West, a distance of 60.74 feet to a point of tangent;

THENCE continue with said Right of Way line South 67°03'26" West, a distance of 8.13 feet to a point at the beginning of a tangent curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 669.28 feet, through a central angle of 09°32'33", an arc distance of 111.47 feet, and having a chord which bears South 62°11'44" West, a distance of 111.34 feet to a point at the beginning of a non-tangent compound curve;

THENCE continue with said Right of Way line with said curve to the left, having a radius of 645.00 feet, through a central angle of 33°41'08", an arc distance of 379.21 feet, and having a chord which bears South 40°04'09" West, a distance of 373.77 feet to a point;

THENCE North 78°40'00" West, crossing said Andrews Family tract, a distance of 449.42 feet to a point on the west line of said Andrews Family tract, being on the east line of the Right of Way for DART;

THENCE North 11°20'00" East, with said common line, a distance of 290.81 feet to a point at the beginning of a tangent curve to the right;

THENCE with said Right of Way curve to the right, having a radius of 6812.41 feet, through a central angle of 03°37'13", an arc distance of 430.43 feet, and having a chord which bears North 13°04'22" East, a distance of 430.36 feet to a point at the beginning of a compound curve to the right;

THENCE continue with said Right of Way curve to the right, having a radius of 2814.79 feet, through a central angle of 03°40'26", an arc distance of 180.48 feet, and having a chord which bears North 18°57'53" East, a distance of 180.45 feet to the POINT OF BEGINNING, and containing 14.000 acres of land.

NOTE: Bearings are based on the north line of the Final Plat for Allen Station Business Park Phase I.

EXHIBIT "C" **BUILDING ELEVATIONS**

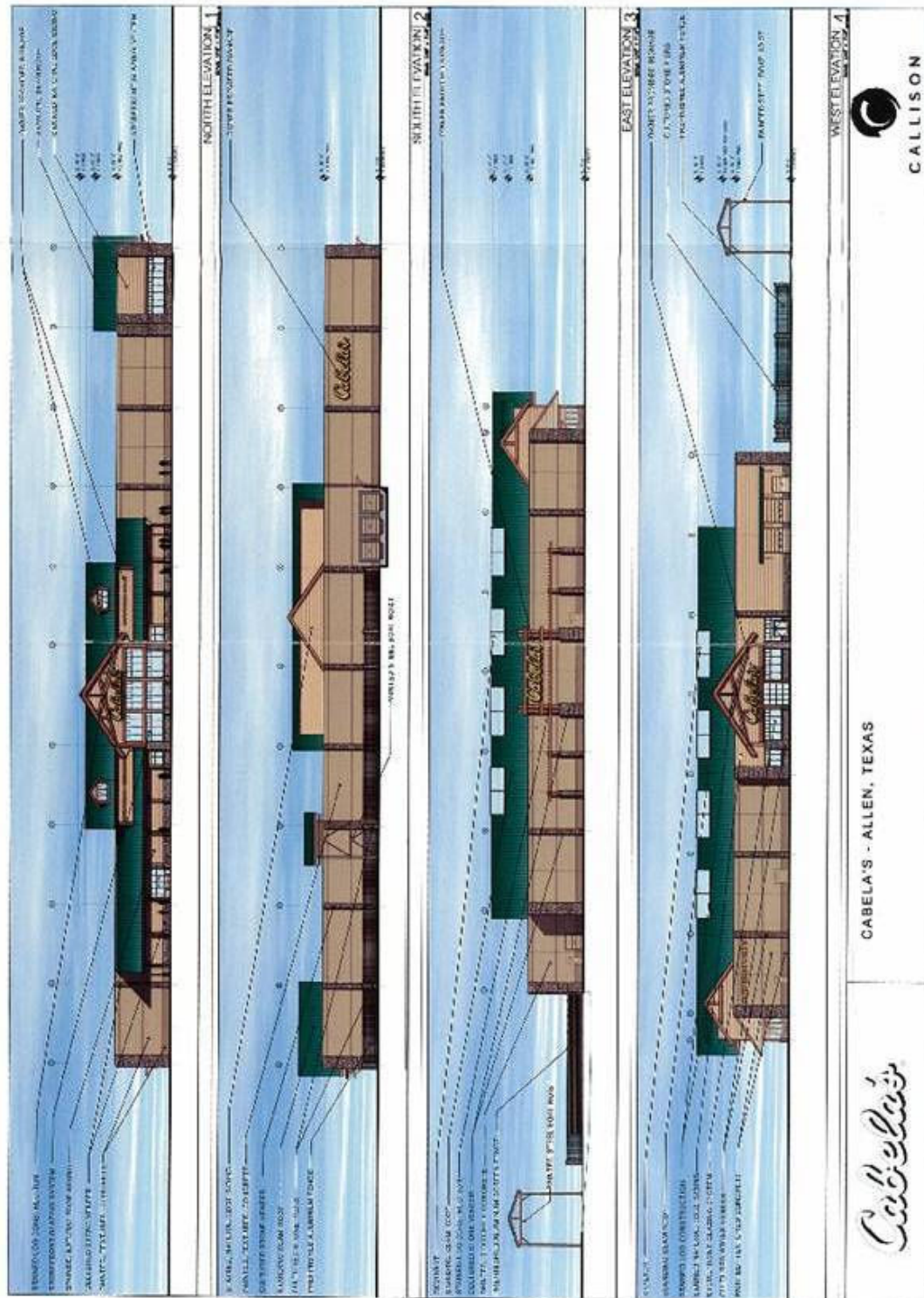
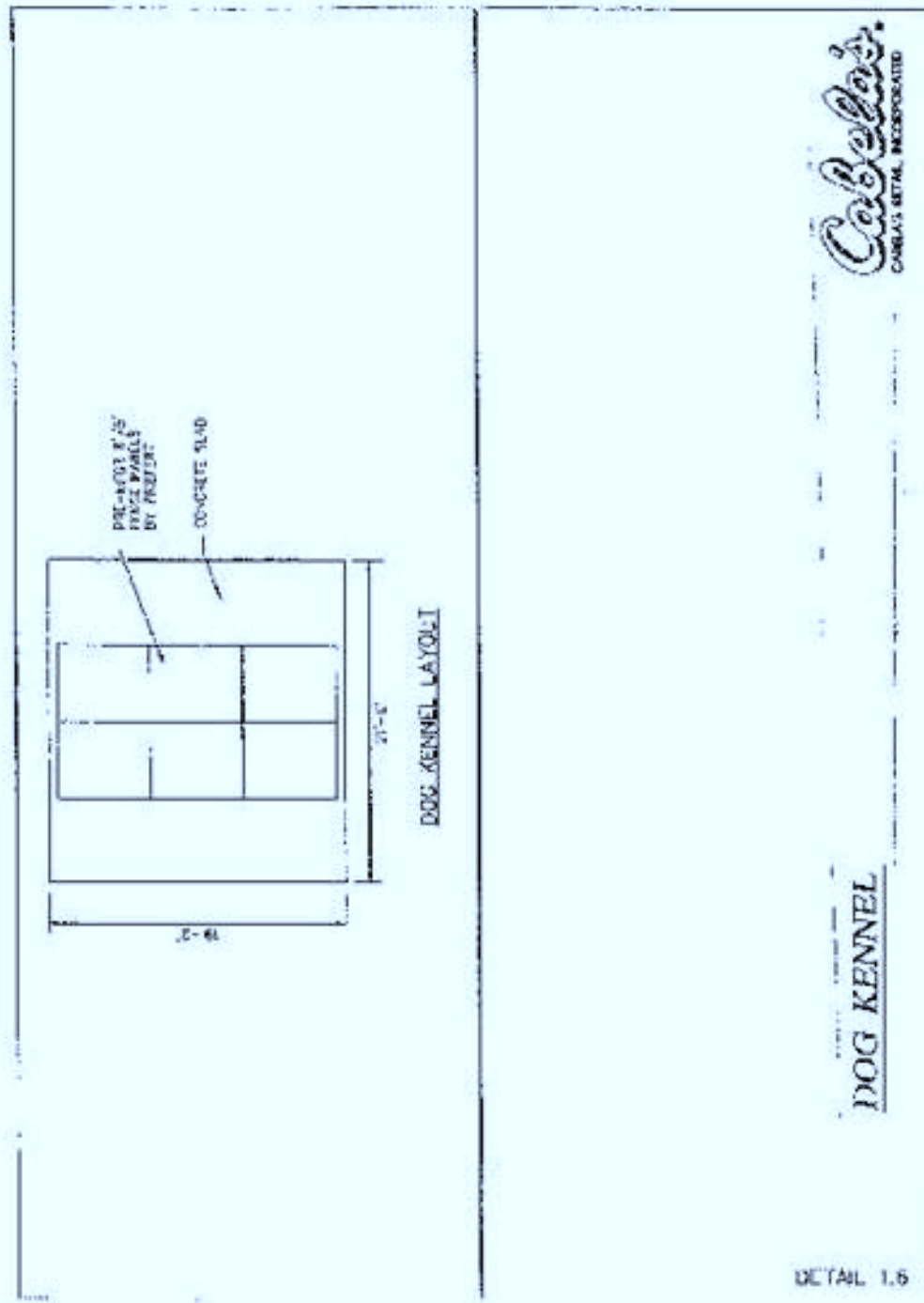


EXHIBIT "D"
DOG KENNEL DETAIL



FS-38

Upd: Updated: 12/17/2005

EXHIBIT "D" (CON'T)
DOG KENNEL DETAIL



EXHIBIT "E"
OUTDOOR SALES/DISPLAY EXHIBIT

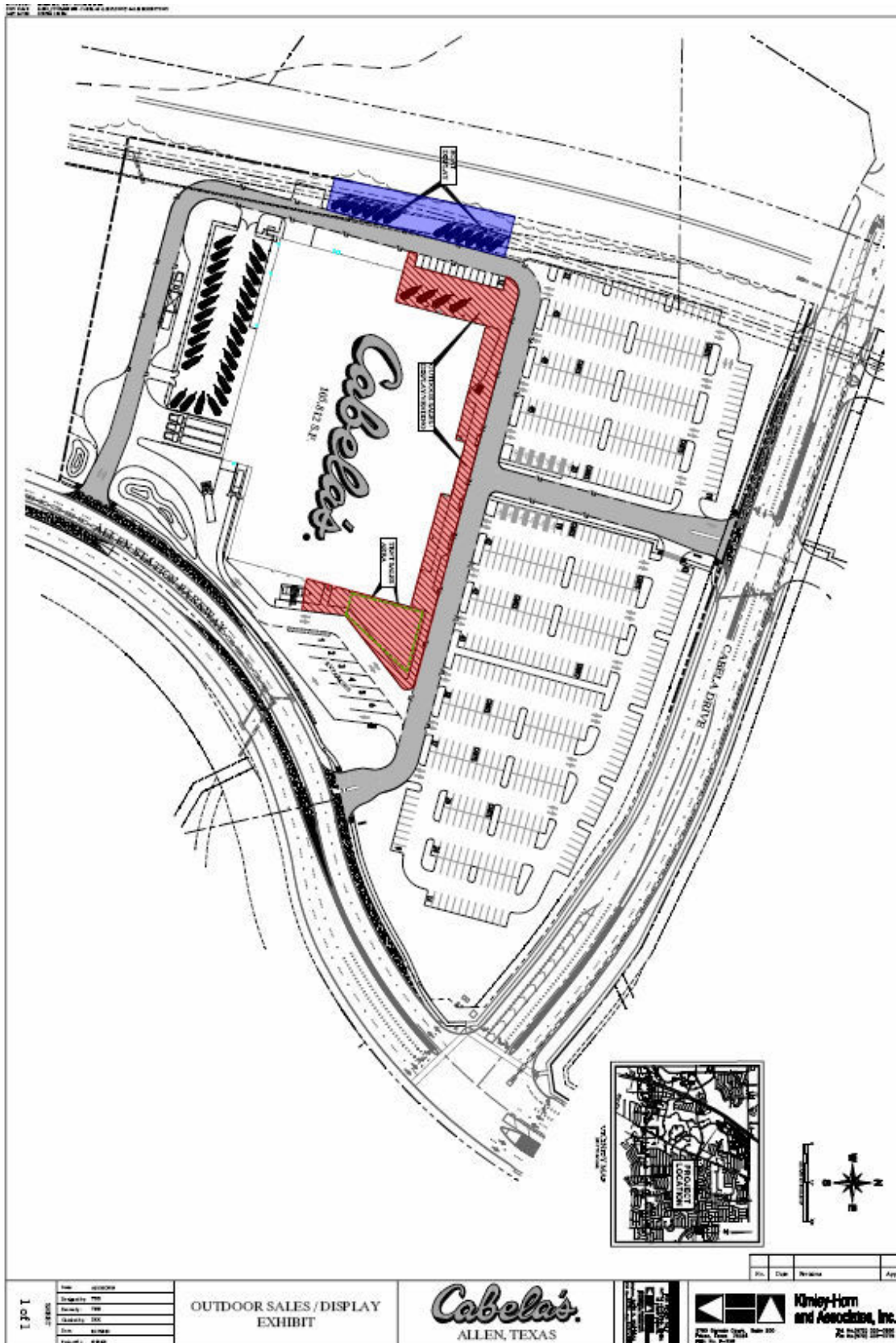
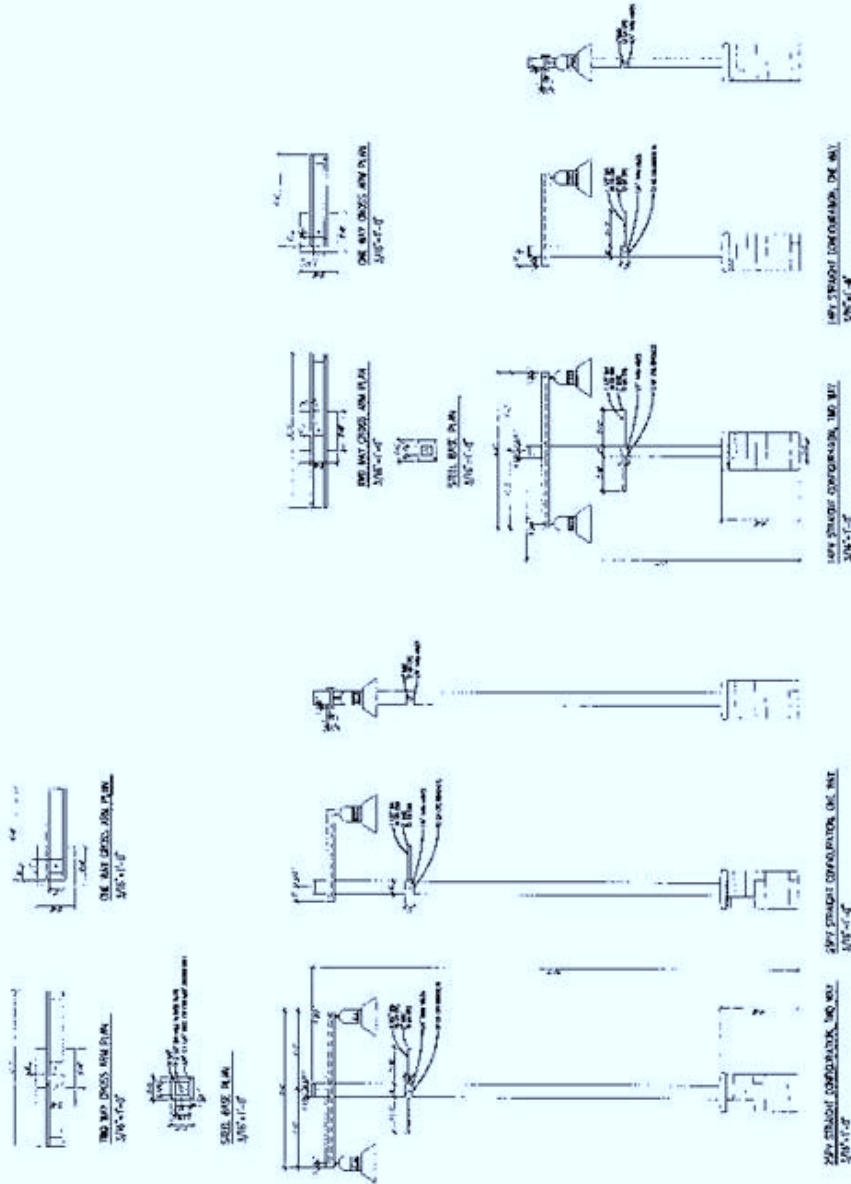


EXHIBIT "F" **LIGHTING EXHIBIT**



CABE JA'S ALLI.FN, TEXAS

Callison

EXHIBIT "G" LANDSCAPE PLAN

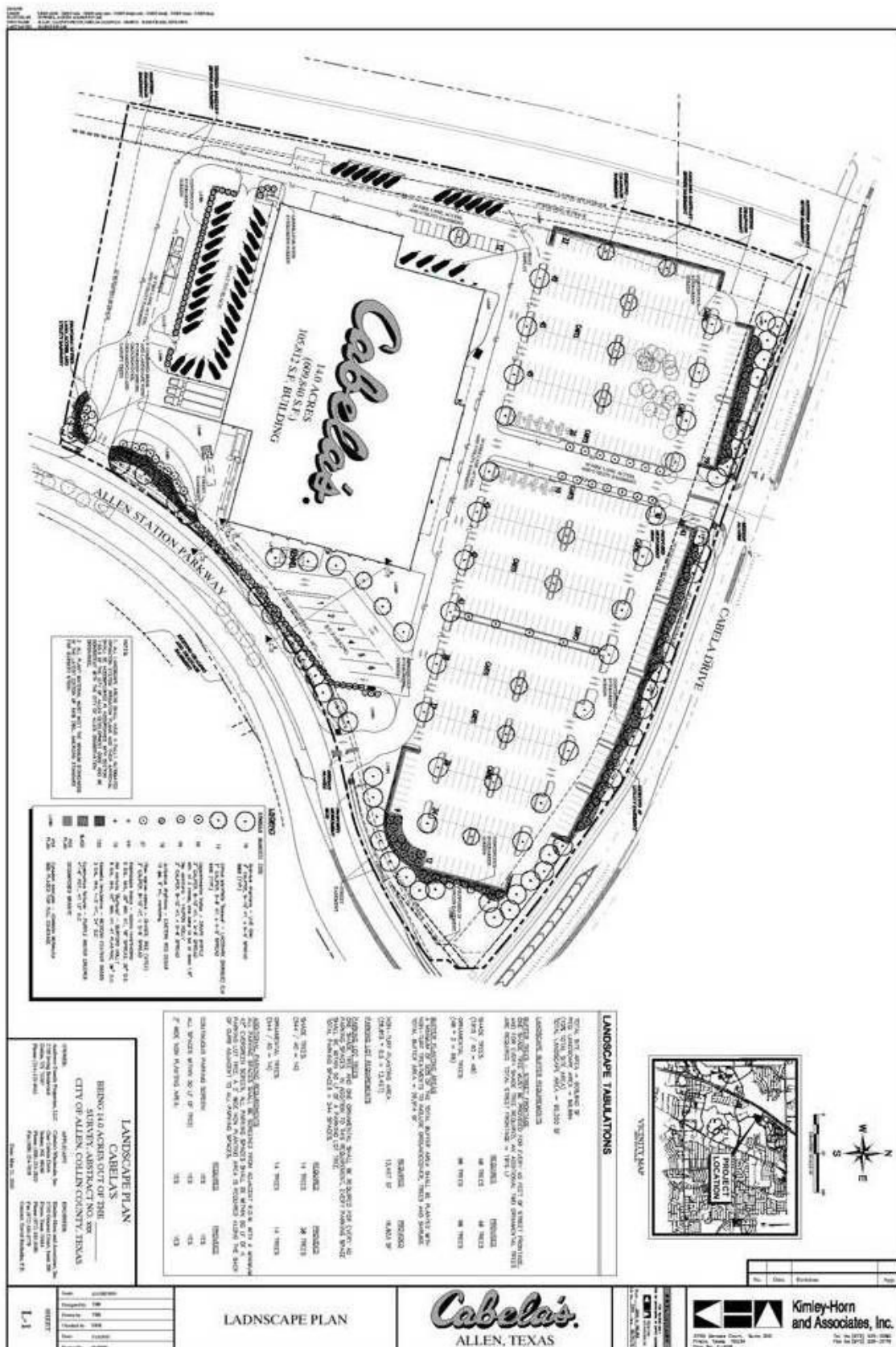


EXHIBIT "G" (CON'T)
LANDSCAPE PLAN

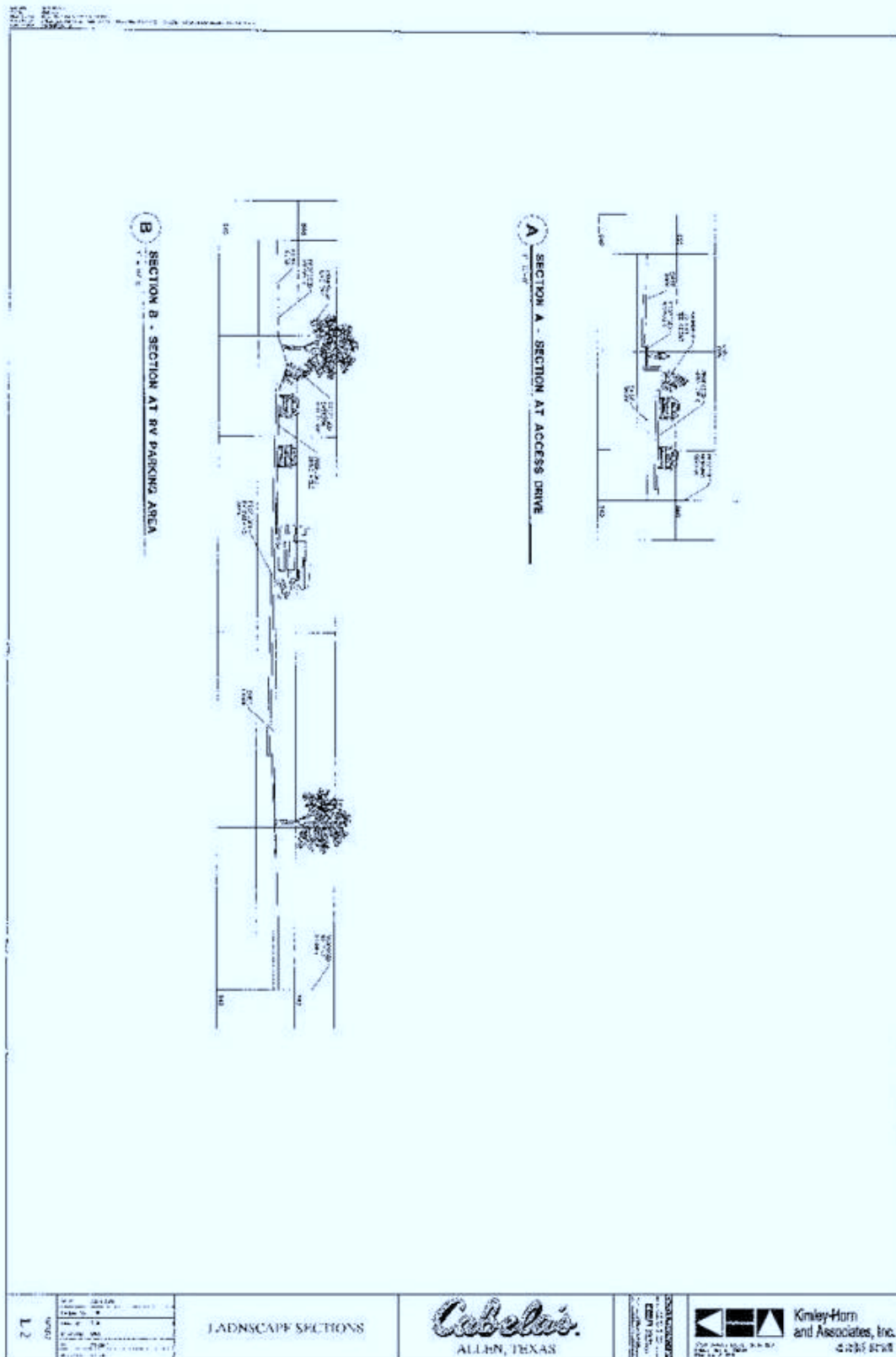


EXHIBIT "H"
SCREENING EXHIBIT

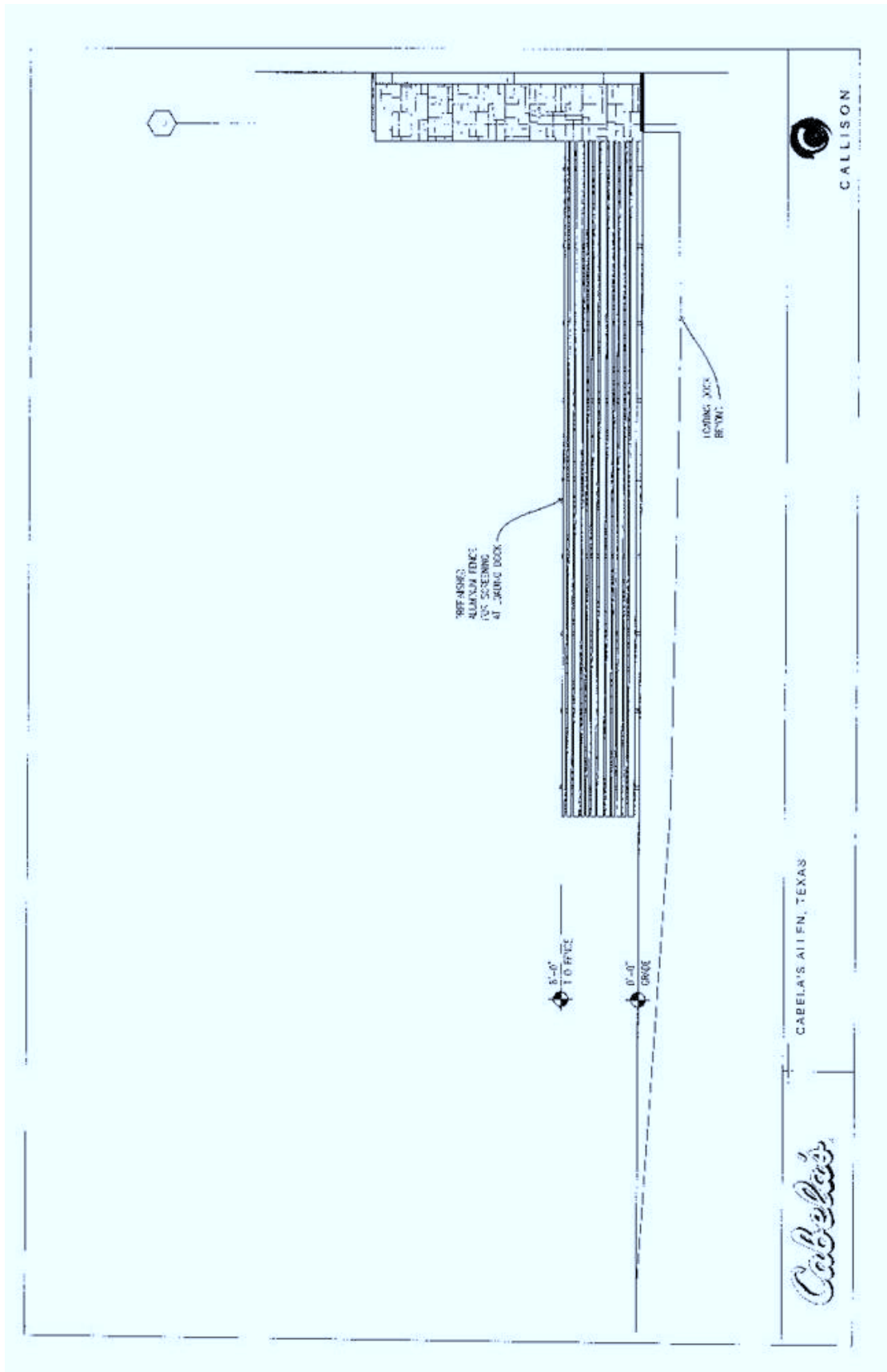
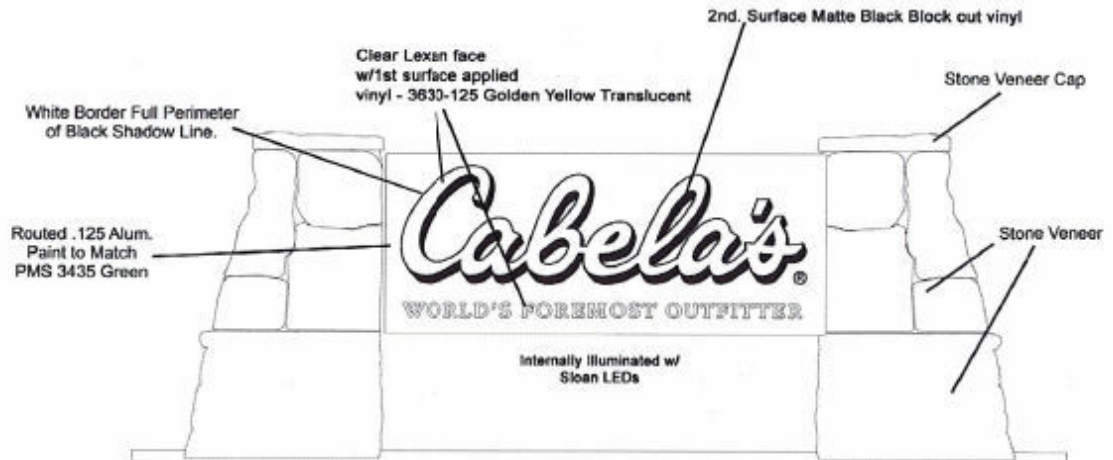
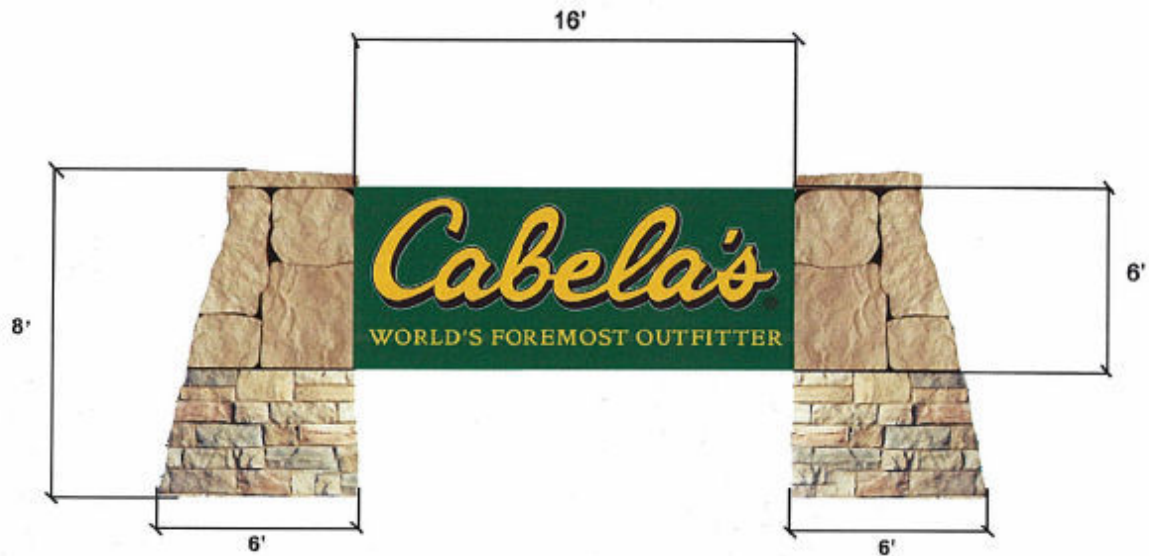


EXHIBIT "H" (CON'T)
SCREENING EXHIBIT



EXHIBIT "I"
SIGN PLAN



June 1, 2010 P&Z Meeting Minutes

Agenda Item #5: Public Hearing - Conduct a Public Hearing and consider a request to create PD Planned Development No. 103, SC Shopping Center, and adopt a Concept Plan for Cabela's by rezoning 12.88± acres from PD Planned Development No. 58, Tract 2A for LI Light Industrial and 1.12± acres from PD Planned Development No. 73 for SC Shopping Center. The property is 14.0± acres of land situated in the L.K. Pegues Survey, Abstract No. 702, the F.C. Wilmeth Survey, Abstract No. 999, and the Henry Wetsel Survey, Abstract No. 1026; City of Allen, Collin County, Texas; located south of Village Drive and west of Allen Station Parkway. (Z-5/5/10-36) [Cabela's]

Ogden "Bo" Bass, Director of Planning and Development, presented to the Commission. The property is currently zoned PD Planned Development No. 73 for Shopping Center and PD Planned Development No. 58 for LI Light Industrial. The request is to rezone the property to PD Planned Development No. 103 SC Shopping Center and adopt a Concept Plan for Cabela's. Cabela's is proposing to build a ± 105,812 square foot Next Generation store on the 14 acre site. The Concept Plan for the site provides for a main entrance from Cabela Drive and secondary access from Allen Station Parkway. Elements illustrated on the Concept Plan include boat display/storage, RV parking, a dog kennel, and a boat hoist. A Landscape Plan for the site has been included in the PD Planned Development to address landscape requirements. Building elevations provide a visual of the proposed building facade, building materials, boat hoist, and outdoor boat storage. Site Sections have been included to ensure the proposed visual screening along Allen Station Parkway is adequate. Screening elevations propose alternative screening. The proposed parking lot lighting has also been included in the Planned Development.

The ALDC allows for one monument for a site and the applicant has proposed two monument signs.

Staff recommends approval subject to the following:

1. The dog kennel shall have a low heat/low ray mesh on the roof and three sides of the kennel. Signage must also include that owners are responsible for pet's behavior and Cabela's may request an owner to remove a pet from the kennel at any time. *The applicant has agreed to this.*
2. Staff recommends the asphalt roofing material be replaced with a standing seam metal roof for aesthetics. *The applicant has agreed to this.*
3. The PD Development Regulations for the monument sign dimensions shall be revised to correspond to the sign elevation. A maximum sign height of eight feet, a maximum copy area of 100 square feet per face, and a maximum structure of 200 square feet each face. *The applicant has agreed to the maximum sign height being 8 feet.*

Commissioner Dreggors inquired about fuel sales for boats and RVs. Dennis Armstrong, Corporate Architect, Cabela's, stated that fueling is not being proposed at this location.

Commissioner Dreggors asked if a dump station is being provided. Mr. Bass answered yes. The dump station location is shown on the Concept Plan.

Commissioner Dreggors asked if RVs would be allowed to park overnight. Mr. Armstrong answered that Cabela's would follow local jurisdiction. There would be no overnight parking since it is not allowed in the City.

Commissioner Platt inquired about horses in the kennel area. Mr. Bass stated a horse corral is still under discussion; therefore has not been identified on the Concept Plan.

Chairman Wendland opened the Public Hearing.

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

The following people submitted a written statement in support of the request:
Andrews Family Properties, LLC, 1300 Allen Station Parkway, Allen, Texas

Motion: Upon a motion by Commissioner Platt, and a second by Commissioner Dreggors, the Commission voted 7 IN FAVOR, and 0 OPPOSED, to approve the request to create PD Planned Development No. 103, SC Shopping Center, and adopt a Concept Plan for Cabela's with the following staff recommendations:

1. The dog kennel shall have a low heat/low ray mesh on the roof and three sides of the kennel. Signage must also include that owners are responsible for pet's behavior and Cabela's may request an owner to remove a pet from the kennel at any time.
2. Staff recommends the asphalt roofing material be replaced with a standing seam metal roof for aesthetics.
3. The PD Development Regulations for the monument sign dimensions shall be revised to correspond to the sign elevation. A maximum sign height of eight feet, a maximum copy area of 100 square feet per face, and a maximum structure of 200 square feet each face.

The motion carried.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 8, 2010

SUBJECT: Motion to Confirm City Council Appointments to the Various Nominating Committees for the Appointment of Boards and Commissions for Fiscal Year 2010-11

STAFF RESOURCE: Shelley B. George, City Secretary

BACKGROUND

Section 1.2 of the *City Council Rules of Order and Procedure* states:

“...ad hoc committees, each to consist of up to three Councilmembers, shall be recommended by the Mayor with concurrence through a motion of the full City Council. Ad hoc committees are formed on an *as needed* basis with a clearly defined purpose and term, as well as reporting requirements.”

The Appointment Procedure Policy for Boards and Commissions provides for the appointment of Council Nominating Committees to bring forth recommendations to the entire Council for consideration of appointment. A description of each of the Council Nominating Committees is provided below:

Advisory: A two-member nominating committee to review applications for the advisory boards. In the selection process, preference might be given to Councilmembers who have interest in the board and/or experience with it. These members may be selected specifically for this committee, or may also serve on the nominating committee for the quasi-judicial boards as well.

Quasi-Judicial: A two-member nominating committee to review applications for quasi-judicial boards. In the selection process, preference might be given to Councilmembers who have interest in the board and/or experience with it. These members may be selected specifically for this committee, or may serve on the advisory boards’ nominating committee as well.

Corporations: The full Council may choose to take an active role in selecting members for the EDC and CDC. Before the regular process of screening, interviews, and the final recommendation, an initial screening process might be used that involves only two Councilmembers. The members performing the initial selection would be the Council liaisons to the EDC and CDC. The screening committee’s role would be to recommend three to five individuals per position to be interviewed by the full Council, if desired.

Councilmembers serving on the Nominating Committees during FY 2009-10 were:

Advisory and Quasi-Judicial – Councilmembers Obermeyer, Sedlacek and Caplinger
Corporations – all members of the City Council

MOTION

I make a motion to confirm the appointments of _____ to the Advisory Boards' Nominating Committee, the appointments of _____ to the Quasi-Judicial Boards' Nominating Committee, and the appointments of _____ to the Corporation Boards' Nominating Committee, as recommended by Mayor Terrell.