

**AGENDA
CITY OF ALLEN
CITY COUNCIL WORKSHOP MEETING
JUNE 23, 2009 – 6:00 P.M.
COUNCIL CONFERENCE ROOM
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Questions on Current Agenda.

Items of Interest.

1. Update Regarding an Economic Development Agreement with Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room —
John Baumgartner, Director of Engineering

2. Committee Updates from City Council Liaisons —

Adjourn to Regular Meeting.

- open to the public -

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, June 19, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

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

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

June 23, 2009

SUBJECT:

Update Regarding an Economic Development Agreement with Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room —

STAFF RESOURCE:

John Baumgartner, Director of Engineering

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JUNE 23, 2009 – 7:00 P.M.
COUNCIL CHAMBERS**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizens' Comments. *[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]*
2. Presentation by Help Our Planet Earth (H.O.P.E.) Members Kennedy Bailey, Jenna Barratt, and Abbie Reeves on Reducing the Use of Plastic Bags in City of Allen.
3. Presentation of a Proclamation by the Office of the Mayor:
 - Presentation of a Proclamation to Representatives of the Allen Parks and Recreation Department, Proclaiming the Month of July as “Parks and Recreation Month.”

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 June 9, 2009, Regular Meeting.
5. Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Collin County Parks and Open Space Funding Assistance Program Grant for the Design of the Molsen Farm Park Property.

6. Adopt a Resolution Authorizing the City Manager to Enter into and Execute an Interlocal Agreement by and between Texas Woman's University and the City of Allen to Allow Texas Woman's University to Use the City of Allen's Supplier Contracts.
7. Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement by and between the City of Fort Worth, Texas and the City of Allen, Texas for the Use of the City of Fort Worth's Supplier Contracts.
8. Authorize the City Manager to Award and Execute a Contract for Construction of the Improvements Planned for a Shade Structure at kidMania to USA Shade and Fabric Structures, Incorporated in the Amount of \$62,014.
9. Accept a Resignation and Declare a Vacancy on the Board of Adjustment.
10. Receive the Summary of Property Tax Collections as of May 2009.
11. Receive the Capital Improvement Program (CIP) Status Report.

Regular Agenda.

12. Conduct a Public Hearing and Consider an Ordinance to Grant a Change in Zoning to Amend PD Planned Development No. 54, Tract 11, from IT Industrial Technology to MF-18 Multi-Family to Allow for an Active Adult Senior Community on 22± Acres Located North of Watters Road and East of Bray Central Drive.

Other Business.

13. Calendar.
 - June 27 - Allen USA Celebration / Celebration Park / Noon - 11 p.m.
 - July 3 - City Observance of Independence Day / City Hall Closed
14. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*

Executive Session. (As needed)

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

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

15. Personnel Pursuant to Section 551.074 of the Texas Government Code –
Discuss Appointments to the Allen Economic Development Corporation and Board
of Adjustment

16. Reconvene and Consider Action 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 19, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

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CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: June 23, 2009

SUBJECT: Presentation by Help Our Planet Earth (H.O.P.E.) Members Kennedy Bailey, Jenna Barratt, and Abbie Reeves on Reducing the Use of Plastic Bags in City of Allen

STAFF RESOURCE: Donna Kliewer, Waste Services Manager

ACTION PROPOSED: Receive Information from Help Our Planet Earth (H.O.P.E.) on Reducing Use of Plastic Bags

BACKGROUND

The H.O.P.E. for the Best Campaign is a grass-roots movement to influence Texans to stop the use of plastic bags in Texas and to educate others about the impact their choices make on the environment. Their well-researched materials have been put into a compelling and entertaining program which is presented to schools, municipalities, corporate teams and a variety of other organizations. The H.O.P.E. website states, “their message is TRANSFORMING, their commitment is IMMOVABLE, and their confidence in our ability to make necessary changes that make a difference is UNDENIABLE.”

Their message was presented to the City Public and Media Relations and Solid Waste Staff in March of 2009. Keep Allen Beautiful chose to support their environmental commitment and have involved the H.O.P.E. Team in education aspects of the Reuse-a-Bag NCTCOG grant. The H.O.P.E. campaign was part of the “Seeding a Healthy Community” event at Watters Creek in April 2009 and was presented at the Keep Texas Beautiful Conference in June 2009. Numerous other H.O.P.E. presentations have been made at local schools and to civic organizations.

The H.O.P.E. mission statement reads: “We ... are committed to educating, encouraging and providing solutions that enable our families and communities to become sustainable communities. We believe that we have a stewardship over this great earth that promotes responsible decision making and choices. We stand for excellence in that stewardship. In all that we do, we extend an invitation to be a part of a measurable and profound difference in the way that we care for our planet and for one another.”

Considering the age of the H.O.P.E. Campaign Team and their commitment to the environment, the City of Allen is fortunate to have youth willing to educate others on critical environmental issues effecting our city and state, and lead others to become involved in their community.

BUDGETARY IMPACT

None

STAFF RECOMMENDATION

Staff recommends that City Council accept the H.O.P.E. presentation.

*Office of the Mayor
City of Allen*

Proclamation

WHEREAS, the City of Allen Parks and Recreation Department is dedicated to enhancing the quality of life for Allen residents through recreation programming, leisure activities and conservation efforts; and,

WHEREAS, parks, playgrounds, nature trails, open spaces, recreational centers, and historic sites make our City an attractive and desirable place to live, work, play and visit which contributes to our economic vitality; and,

WHEREAS, the Allen Parks and Recreation staff are members of the National Parks and Recreation Association which engages in special efforts, during the month of July, to inform the public about the important role played by parks and recreation in contributing to the welfare of the community.

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

“PARKS AND RECREATION MONTH”

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

Stephen Terrell, MAYOR

ALLEN CITY COUNCIL

REGULAR MEETING

JUNE 9, 2009

Present:

Stephen Terrell, Mayor

Council Members:

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney (absent)

Joe Gorfida, Attorney

Workshop Session

With a quorum of the Council Members present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:16 p.m. on Tuesday, June 9, 2009, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Update Regarding the Proposed Health Clinic
- Update Regarding the Allen USA 2009 Celebration
- Questions on Current Agenda

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 7:05 p.m. on Tuesday, June 9, 2009.

Call to Order and Announce a Quorum is Present

With a quorum of the Council Members present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:08 p.m. on Tuesday, June 9, 2009, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizens' Comments.

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REGULAR MEETING
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2. **Recognition of the Allen Economic Development Corporation (AEDC) and Tim Wood, AEDC Board of Directors President, for Receiving the 2008 Texas Economic Development Council Economic Excellence Award.**

Consent Agenda

Mayor Terrell removed the following agenda item from the Consent Agenda:

10. **Authorize the City Manager to Execute an Economic Development Agreement between the City of Allen and Coventry II DDR/Trademark Montgomery Farm L.P. for the Purpose of Providing a Community Room for Use by Civic and Other Local Organizations at Reduced Costs and Establish a Project Budget of \$125,000.**

No action was taken on this agenda item.

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

3. **Approve Minutes of the May 26, 2009, Regular Meeting.**
4. **Adopt an Ordinance Amending the Code of Ordinances Designating a Portion of Angel Parkway and Exchange Parkway as School Zones for Olsen Elementary School.**

ORDINANCE NO. 2835-6-09: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 9, "MOTOR VEHICLES AND TRAFFIC," ARTICLE V, "OPERATION OF VEHICLES," DIVISION 2, "SPEED REGULATIONS," SECTION 9-137, "SCHOOL ZONE"; TO DESIGNATE EXCHANGE PARKWAY FROM 100 FEET WEST OF ANGEL PARKWAY TO 200 FEET WEST OF WINDGATE WAY AND ANGEL PARKWAY FROM 100 FEET NORTH OF EXCHANGE PARKWAY TO 100 FEET SOUTH OF EXCHANGE PARKWAY AS SCHOOL ZONES WITH A MAXIMUM PRIMA FACIE SPEED LIMIT OF TWENTY (20) MILES PER HOUR, AS SCHOOL ZONES; 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.

5. **Adopt an Ordinance Amending Police Department General Order 300 Discipline / Complaints Against Police Personnel and General Order 1700 Hiring / Recruiting Process.**

ORDINANCE NO. 2836-6-09: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE PERSONNEL POLICY FOR THE CITY OF ALLEN POLICE DEPARTMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

6. **Adopt a Resolution Authorizing the City Manager to Execute an Interlocal Agreement with the Town of Fairview for Stacy Road Median Maintenance from US 75 to Greenville Avenue (SH 5).**

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RESOLUTION NO. 2837-6-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE TOWN OF FAIRVIEW AUTHORIZING MAINTENANCE AND ALLOCATION OF COSTS OF MAINTENANCE OF THE ROADWAY MEDIANS INCLUDING THE MAINTENANCE OF THE LANDSCAPING AND IRRIGATION SYSTEM, MAINTENANCE AND CAPITAL REPLACEMENT OF STREET LIGHTS AND TRAFFIC SIGNALIZATION ON THE ROADWAY, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.

7. **Adopt a Resolution Authorizing the City Manager to Submit Five Project Activities to the Department of Energy's Energy Efficiency and Conservation Block Grant — Formula Grant Program for Funding Assistance Toward Energy Efficiency Activities in Public Facilities.**

RESOLUTION NO. 2838-6-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, HEREINAFTER REFERRED TO AS “APPLICANT”, DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE “APPLICANT” IN DEALING WITH THE U.S. DEPARTMENT OF ENERGY NATIONAL ENERGY TECHNOLOGY LABORATORY, HEREIN AFTER REFERRED TO AS “GRANTOR,” FOR THE PURPOSE OF PARTICIPATING IN THE RECOVERY ACT – ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS – FORMULA GRANTS PROGRAM, HEREINAFTER REFERRED TO AS THE “PROGRAM”; CERTIFYING THAT THE “APPLICANT” IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THE NAME AND CONTACT INFORMATION OF THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

8. **Authorize the City Manager to Execute an Economic Development Incentive Agreement between the City of Allen and Cisco Systems, Inc.**
9. **Authorize the City Manager to Execute a Real Property Exchange Agreement with Coventry II DDR/Trademark Montgomery Farm L.P.**
11. **Authorize the City Manager to Execute Four Contracts with Clear Wireless LLC, a Nevada Limited Liability Company, for Microwave Dishes and Antennae to be Placed on the Bethany, Custer, Hillside, and Rowlett Water Towers, Each with a Five-year Term Contract with an Option for Five Additional Five-year Terms at \$15,000 per Year per Contract with a Rate Increase of 3% Each Year per Contract.**
12. **Authorize the City Manager to Purchase Three Additional Vehicles for the Police Department through the Houston-Galveston Area Council of Government's Cooperative Purchasing Program from Dallas Dodge for an Amount of \$63,740 and the Police Vehicle Package from Pursuit Safety, Inc. for an Amount of \$41,260 with the Total Amount being \$105,000.**

The motion carried.

Regular Agenda

13. **Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code, Article VII, Section 7.03.5, Utility Services, and Article VIII, Section 8.10, Extensions of Water and Wastewater Mains, Subsection 4, Underground Utilities.**

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

The following individuals spoke in opposition to the request:
Clarence Wilkerson, 823 Rockefeller Lane, Allen, Texas
Carl Tiner, 749 Summerfield Drive, Allen, Texas

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

MOTION: Upon a motion made by Councilmember McGregor and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to table consideration of this item to the July 14, 2009, Regular Meeting. The motion carried.

14. TABLED ITEM: Consider a Request to Establish Reinvestment Zone #30 on Property Located North of the Allen Premium Outlets on Chelsea Boulevard and Adopt an Ordinance Implementing Reinvestment Zone #30 and Approve a Tax Abatement Agreement with Cisco Systems, Inc. Supporting Construction of an Approximately 140,000 – 160,000 Square Foot Tier III Data Center Facility on Chelsea Boulevard.

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to remove this item from the table. The motion carried.

ORDINANCE NO. 2839-6-09: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DESIGNATING REINVESTMENT ZONE NO. 30 (CISCO SYSTEMS, INC. DATA CENTER); PROVIDING ELIGIBILITY OF THE ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; CONTAINING FINDINGS THAT THE AREA QUALIFIES TO BE DESIGNATED AS A REINVESTMENT ZONE AND THE IMPROVEMENTS SOUGHT ARE FEASIBLE AND PRACTICABLE AND OF BENEFIT TO THE LAND AND THE CITY; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALING CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF SAID ORDINANCE.

MOTION: Upon a motion made by Councilmember Caplinger and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed to adopt Ordinance No. 2839-6-09, as previously captioned, approving the formation of Reinvestment Zone #30 and authorize the Mayor to execute documents necessary to provide the proposed tax abatement agreement with Cisco Systems, Inc. to provide an abatement on property taxes related to real and business personal property with a stair-stepped abatement schedule that varies from 40-percent in Year 1 to 20-percent in Year 10, to support the construction of a 140,000 - 160,000 square foot Tier III data center facility on Chelsea Boulevard in Allen. The motion carried.

15. Election of Mayor Pro Tem.

Mayor Terrell called for nominations from the Council for the position of Mayor Pro Tem.

Councilmember McGregor nominated Councilmember Stout with a second by Councilmember Sedlacek.

With no other nominations offered, Mayor Terrell closed the call for nominations. Councilmember

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REGULAR MEETING
JUNE 9, 2009**

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Stout was elected as Mayor Pro Tem by a vote of seven (7) for and none (0) opposed.

16. Consider Making Appointments to Fill Vacancies in Place No. 2 on the Keep Allen Beautiful Board and Place No. 6 on the Library Board.

Council Nominating Committee nominated Trent Armstrong to fill the vacancy in Place No. 6 on the Library Board.

With no other nominations offered, Mayor Terrell closed the call for nominations. Trent Armstrong was appointed to Place No. 6 on the Library Board by a vote of seven (7) for and none (0) opposed.

No action was taken on the appointment to the Keep Allen Beautiful Board.

Other Business

17. Calendar.

- June 15, 22 - Summer Sounds Concerts Series / JFRC / 7 p.m.
- June 27 - Allen USA Celebration / Celebration Park / Noon - 11 p.m.

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

- June 15 - Allen Public Safety Recovery Fund Golf Tournament
- The Council expressed congratulations to Mayor Terrell on his election to the North Central Texas Council of Government Board of Directors.

The Regular Meeting was recessed at 7:51 p.m.

Executive Session

In accordance with the Texas Government Code, the Allen City Council convened into Executive Session at 8:13 p.m. on Tuesday, June 9, 2009, in the Council Conference Room, 305 Century Parkway, Allen, Texas, in order to continue discussing matters pertaining to:

19. Personnel Pursuant to Section 551.074 of the Texas Government Code - Discuss Appointment to the Allen Economic Development Corporation

The Executive Session adjourned at 8:40 p.m. on Tuesday, June 9, 2009.

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

The Allen City Council reconvened into Regular Meeting at 8:45 p.m. on Tuesday, June 9, 2009. No action was taken on any items discussed in Executive Session.

Adjourn

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 adjourn the Regular Meeting of the Allen City Council at 8:45 p.m. on Tuesday, June 9, 2009. The motion carried.

**ALLEN CITY COUNCIL
REGULAR MEETING
JUNE 9, 2009**

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These minutes approved on the 23rd day of June, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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- AGENDA DATE:** June 23, 2009
- SUBJECT:** Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Collin County Parks and Open Space Funding Assistance Program Grant for the Design of the Molsen Farm Park Property
- STAFF RESOURCE:** Tim Dentler , Director of Parks and Recreation
Brian Bristow, Assistant Director
Kelly McGinnis, Grant/Project Coordinator
- PREVIOUS COUNCIL ACTION:** Purchase of the Molsen Farm park property.
- ACTION PROPOSED:** Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Collin County Parks and Open Space Funding Assistance Program Grant for the Design of the Molsen Farm Park Property

BACKGROUND

The City purchased the Molsen Farm park property with funding assistance from the Collin County Park and Open Space Funding Assistance Program in February 2006.

Half Associates, Inc. recently completed a high-level, conceptual master plan of the Molsen Farm park property which included numerous opportunities for historical / heritage farm activities, recreational / nature activities, gardening, and other potential opportunities. The Parks and Recreation Capital Projects and Grants Division is proposing to refine these opportunities into a design development plan to further identify the recreational amenities to be located within Molsen Farm. The Collin County Parks & Open Space Advisory Board is again accepting funding assistance proposals from cities and non-profit organizations for park and open space projects through July 7, 2009.

BUDGETARY IMPACT

The Collin County Parks and Open Space Funding Assistance Program will reimburse up to 50% of projects selected.

The application for the Collin County Park & Open Space Funding Assistance is being placed at \$150,000, with the City's required 50% match of \$150,000 for a project total of \$300,000. The program funds are reimbursable, requiring the City to first expend the full cost of design and request monthly reimbursements of funds spent up to the amount granted. The \$150,000 in 2008 Community Development Corporation funds allocated to Molsen Farm will provide sufficient funding for the City's required local cash match.

STAFF RECOMMENDATION

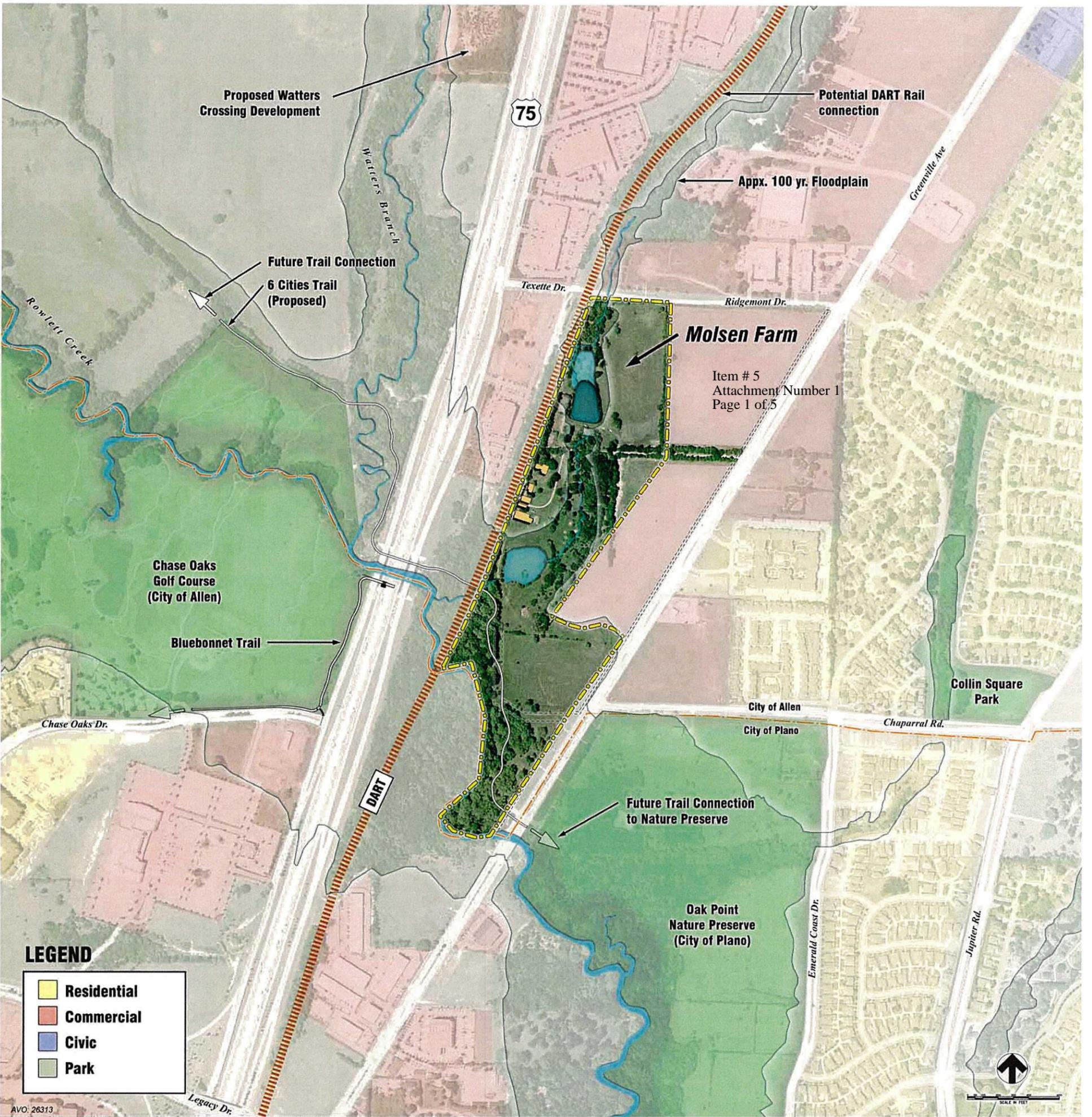
Adopt a resolution authorizing the City Manager to apply for, accept, reject, alter, or terminate a Collin County Parks and Open Space Funding Assistance Program grant for design of the Molsen Farm park property.

MOTION

I make a motion to adopt resolution No. _____ authorizing the City Manager to apply for, accept, reject, alter, or terminate a Collin County Parks and Open Space Funding Assistance Program grant for design of the Molsen Farm park property.

ATTACHMENT

Conceptual Master Plan
Potential Programs and Activities
Resolution



AVO: 26313

November 2008

MOLSEN FARM MASTER PLAN

City of Allen, TX

Context Map





Item # 5
Attachment Number 1
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AVQ 26313
November 2008

MOLSEN FARM MASTER PLAN

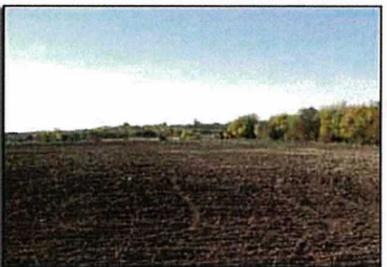
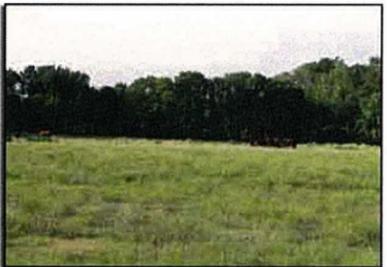
City of Allen, TX

Existing Conditions





Chase Oaks Dr.



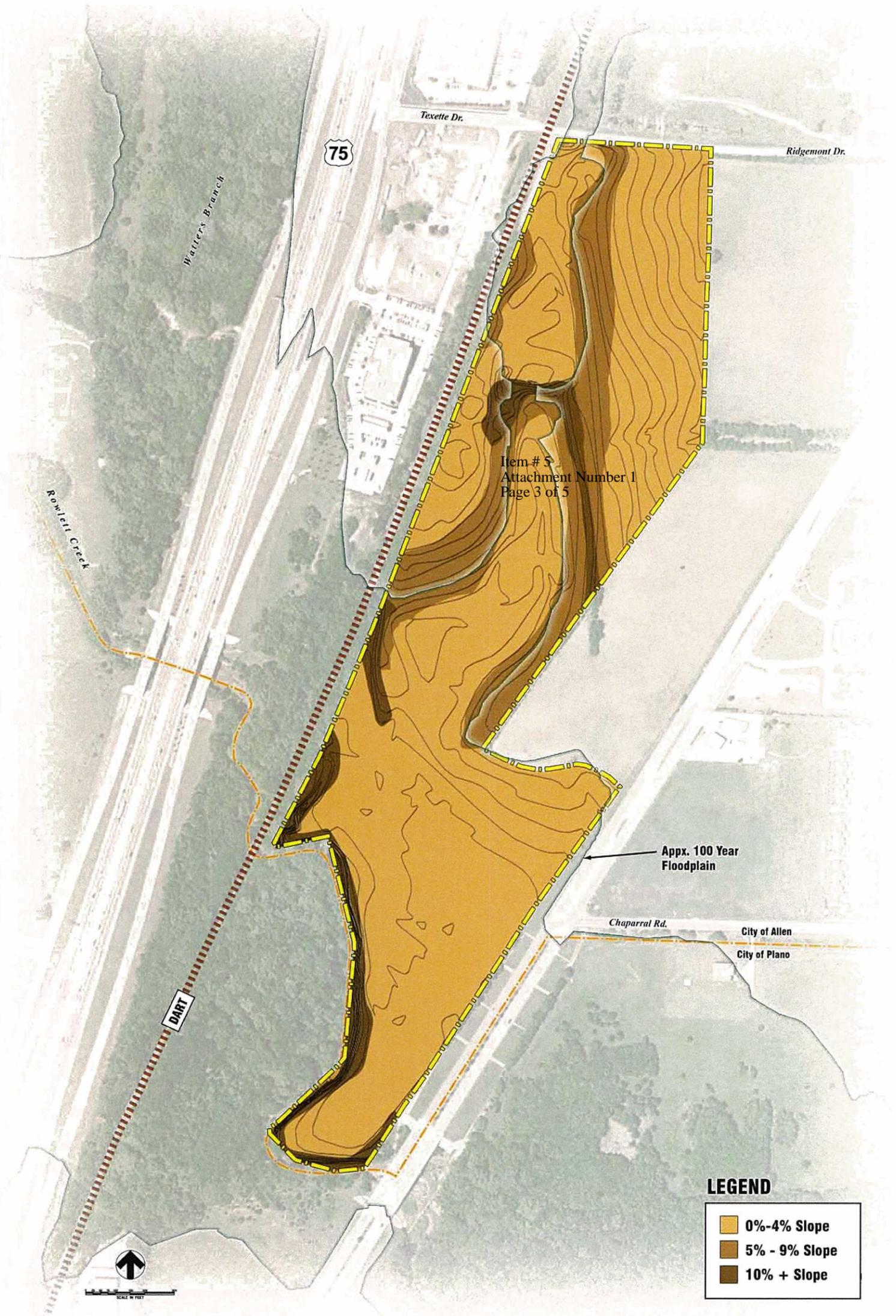
AVO: 26313
November 2008

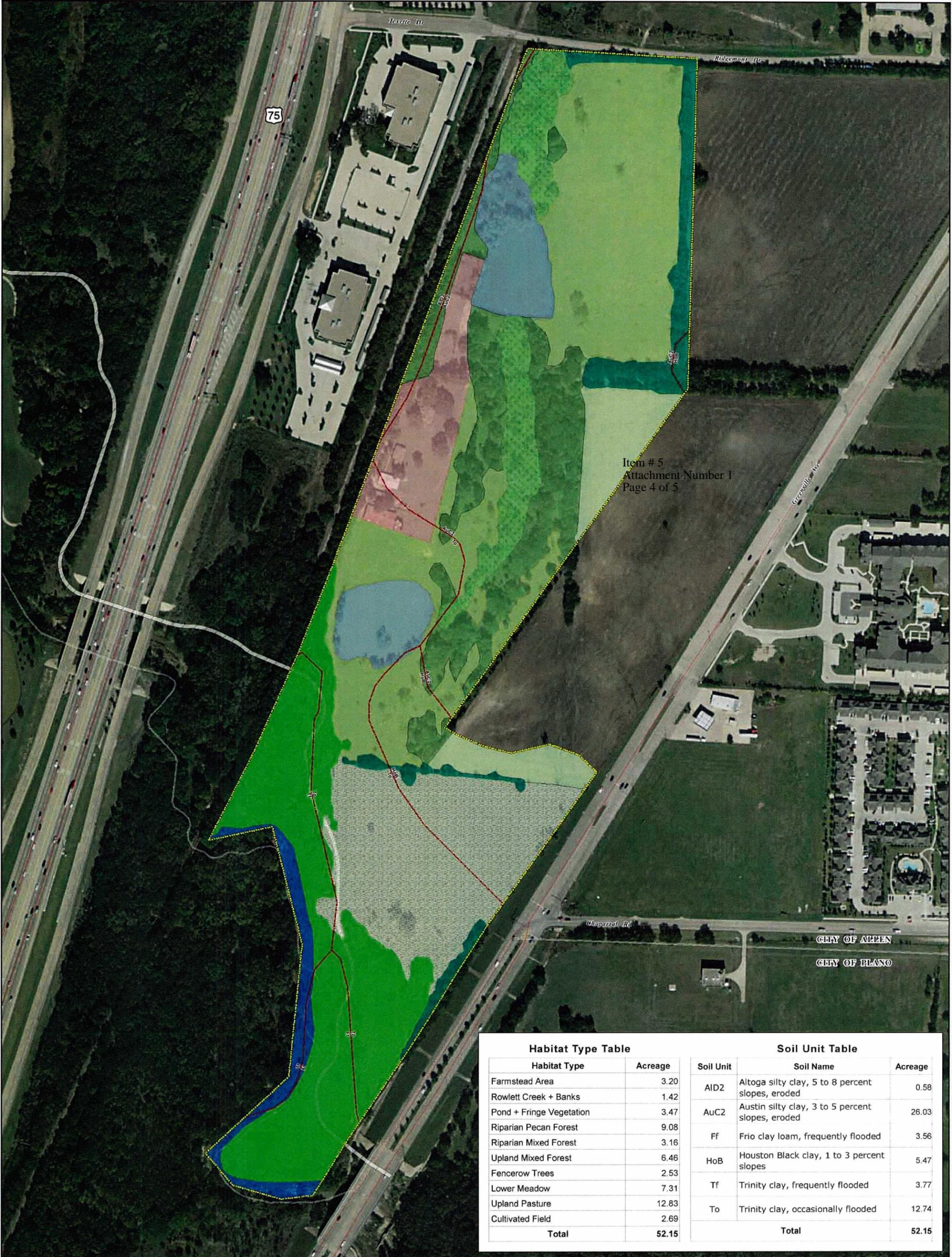


MOLSEN FARM MASTER PLAN

City of Allen, TX

Slope Analysis





Item # 5
Attachment Number 1
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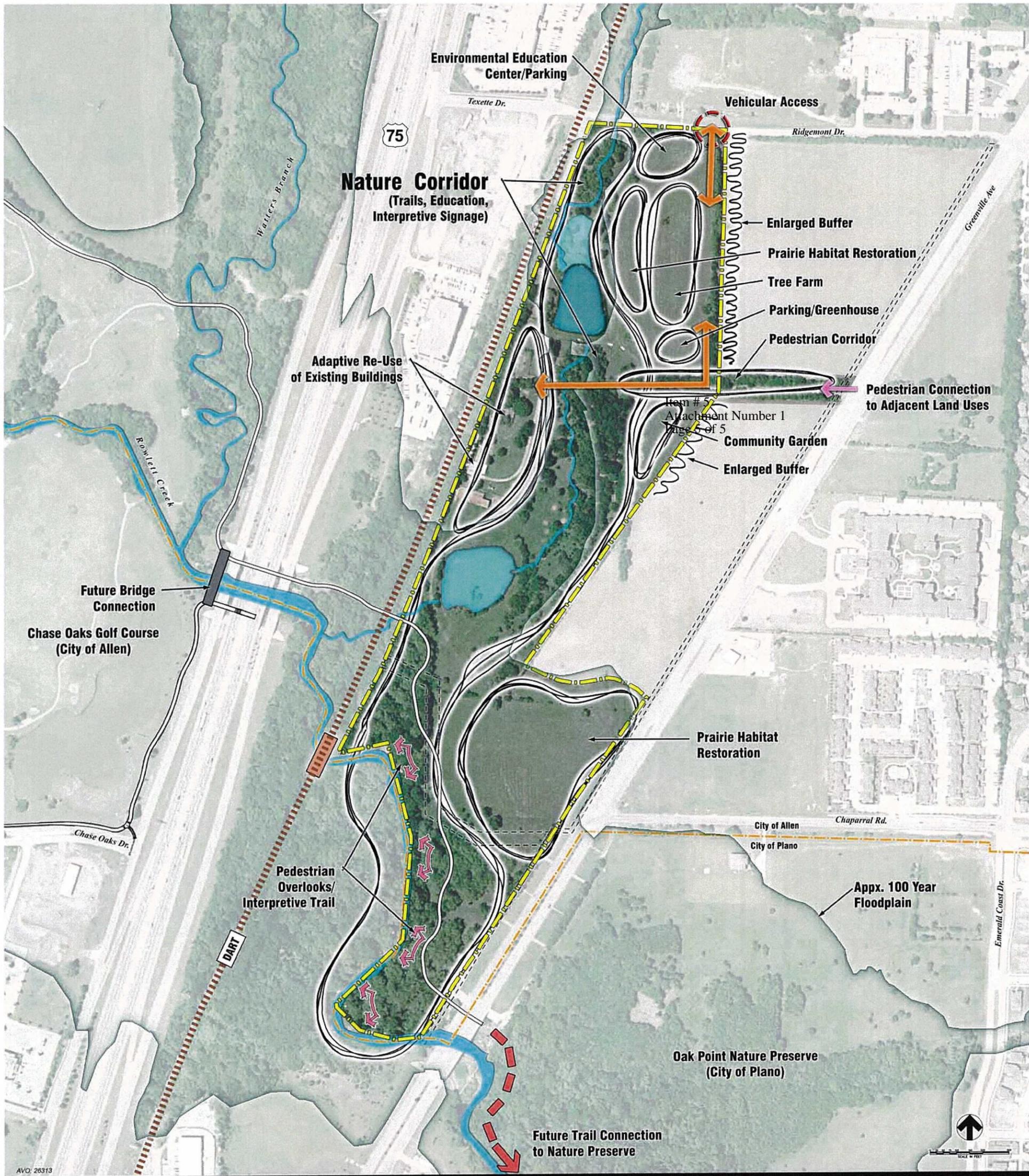
Habitat Type Table		Soil Unit Table		
Habitat Type	Acreage	Soil Unit	Soil Name	Acreage
Farmstead Area	3.20	AID2	Altoga silty clay, 5 to 8 percent slopes, eroded	0.58
Rowlett Creek + Banks	1.42	AUC2	Austin silty clay, 3 to 5 percent slopes, eroded	26.03
Pond + Fringe Vegetation	3.47	Ff	Frio clay loam, frequently flooded	3.56
Riparian Pecan Forest	9.08	HoB	Houston Black clay, 1 to 3 percent slopes	5.47
Riparian Mixed Forest	3.16	Tf	Trinity clay, frequently flooded	3.77
Upland Mixed Forest	6.46	To	Trinity clay, occasionally flooded	12.74
Fencerow Trees	2.53			
Lower Meadow	7.31			
Upland Pasture	12.83			
Cultivated Field	2.69			
Total	52.15		Total	52.15

Map Features

Roadway	Molsen Farm Property Boundary	Riparian Pecan Forest	Rowlett Creek + Banks
Major Highway	Soil Unit Boundary	Riparian Mixed Forest	Lower Meadow
Six Cities Trail	Farmstead Area	Upland Mixed Forest	Upland Pasture
City Limits	Pond + Fringe Vegetation	Fencerow Trees	Cultivated Field

Molsen Farm Master Plan Habitat Types and Soils Map

SCALE IN FEET
0 100 200



AVO: 26313

November 2008

MOLSEN FARM MASTER PLAN

City of Allen, TX

Low Impact





Historical / Heritage Farm	
Potential Programs / Activities	Potential Organizations to Participate in Operations
Farm Animal Festival Cattle (on site) Horses (Boarding) FFA (AISD) Small Animals (goats, chickens, rabbits) Farm Equipment Exhibit Agricultural History Historical Exhibits Muncy Family Massacre (1844) Allen's Agricultural History Railroad County Roads Create Heritage Farm Relocate Old Farmhouse to Farm Install Windmill and Cistern Ranchland with Cattle On-Site Care Worker Small Farm Animal Petting Zoo	<ul style="list-style-type: none"> • City of Allen Parks and Recreation Tim Denter - Director Brian Bristow - Asst. Director Matt McComb, P.M. (214) 509-4721 Jerry Carpenter - Local Farmer (214) 535-3503 • Allen Heritage Guild Paula Ross (972) 727-2772 • Tom Keener - Historian (214) 509-4911 • Allen Seniors Citizen Club • Rehabilitation Centers Physical Therapy, Senior Citizens, Families, Schools

Recreation / Nature	
Potential Programs / Activities	Potential Organizations to Participate in Operations
Day Camps Children's Native Plant Garden Nature Walks Hike Bike Trail (Connections) Fishing Hay Rides Trail Rides Outdoor Sculpture Exhibits (i.e. Connemara) Habitat Restoration Bottomland Forest Native Prairie Habitat/Ecosystem Interpretation (Prior Land Use/Existing Vegetation) Guided Trail Tours Bird Watching Plant Identification Wildlife / Bug Identification Bug Tasting Picnic Horse Back Riding On-Site Care Worker Overnight Camping (Possible) Bird/Owl/Bat Nest Box Construction and Monitoring	<ul style="list-style-type: none"> • City of Allen Parks and Recreation Tim Denter - Director Brian Bristow - Asst. Director Matt McComb, P.M. (214) 509-4721 • YMCA Scouting (Boy/Girl) Allen ISD Jackie Schornick Regina Taylor Kirk Evans • AISD / FFA • Allen Seniors Citizen Club • Rehabilitation Centers Physical Therapy, Senior Citizens, Families, Schools • Texas P&W Community Fishing Lakes Program



Gardening Plants	
Potential Programs / Activities	Potential Organizations to Participate in Operations
Community Garden For families, schools, seniors City Tree Farm Richard Townsend, Parks Service Manager (214) 509-4713 Organic Gardening Techniques Community Orchard (Pecan/Fruit) Horticulture Classes Xeriscape Landscaping Butterfly Garden Worm Farm Compost Demonstration Bee Keeping Farmers Market (From Community Garden) On-Site Care Worker Organic Agricultural Techniques Greenhouse Native Plant Arboretum Pumpkin Patch	<ul style="list-style-type: none"> • City of Allen Parks and Recreation Tim Denter - Director Brian Bristow - Asst. Director Matt McComb, P.M. (214) 509-4721 • Allen Garden Club Denise Webre - Club President • Master Gardner's Club Amey Moiner • Keep Allen Beautiful Donna Kliewer (214) 509-4554 • Master Naturalist Club • Master Composter Club • Allen Seniors Citizen Club • Rehabilitation Centers Physical Therapy, Senior Citizens, Families, Schools • Master Gardeners • Texas Organic Research Center • Texas Native Plant Society

Other	
Potential Programs / Activities	Potential Organizations to Participate in Operations
Facility Rentals Wedding Events Receptions Retreats Culinary School Organic Themed Restaurant On-Site Care Worker Stormwater Management Demo	

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, HEREINAFTER REFERRED TO AS “APPLICANT,” DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE “APPLICANT” IN DEALING WITH COLLIN COUNTY, HERINAFTER REFERRED TO AS “GRANTOR,” FOR THE PURPOSE OF PARTICIPATING IN THE COLLIN COUNTY PARK AND OPEN SPACE PROJECT FUNDING ASSISTANCE PROGRAM, HEREINAFTER REFERRED TO AS THE “PROGRAM”; CERTIFYING THAT THE “APPLICANT” IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE “APPLICANT” MATCHING SHARE IS READILY AVAILABLE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the “Applicant” is fully eligible to receive assistance under the “Program”; and,

WHEREAS, the “Applicant” is desirous of authorizing an official to represent and act for the “Applicant” in dealing with the “Grantor” concerning the “Program”; and,

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

SECTION 1. The “Applicant” hereby certifies that it is eligible to receive assistance under the “Program.”

SECTION 2. The “Applicant” hereby certifies that the matching share for this application is readily available at this time.

SECTION 3. The “Applicant” hereby authorizes and directs its City Manager to act for the “Applicant” in dealing with the “Grantor” for the purpose of the “Program,” and Peter H. Vargas is hereby officially designated as the representative in this regard.

SECTION 4. The “Applicant” hereby specifically authorizes the official to make application to the “Grantor” concerning the site to be known as the Molson Farm Community Park in the City of Allen for use as a park site.

SECTION 5. This Resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 23RD DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 23, 2009

SUBJECT:

Adopt a Resolution and Authorize the City Manager to Enter into and Execute an Interlocal Agreement by and between Texas Woman's University and the City of Allen to Allow Texas Woman's University to Use the City of Allen's Supplier Contracts

STAFF RESOURCE:

Debra Morris, Purchasing Manager

ACTION PROPOSED:

Adopt a Resolution Authorizing the City Manager to Enter into and Execute an Interlocal Agreement by and between Texas Woman's University and the City of Allen to Allow Texas Woman's University to Use the City of Allen's Supplier Contracts

BACKGROUND

Chapter 791 of the Texas Government Code, as amended, authorizes Interlocal Agreements between local government agencies to perform governmental functions and services such as streets, roads, and drainage; and Section 701.025 of the Texas Government Code permits Interlocal Agreements between local governments for the purchase of goods and services and also satisfies the requirements of local governments to seek competitive bids for purchase of such goods and services through supplier contracts.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution to authorize execution of an Interlocal Agreement with Texas Woman's University.

MOTION

I make a motion to adopt Resolution No. _____ authorizing the City Manager to enter into and execute an Interlocal Agreement by and between Texas Woman's University and the City of Allen to allow Texas Woman's University to use the City of Allen's supplier contracts.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE TEXAS WOMAN’S UNIVERSITY, TEXAS, PROVIDING FOR A COOPERATIVE PURCHASING PROGRAM FOR GOODS AND SERVICES; DESIGNATING THE CITY MANAGER, OR DESIGNEE, AS OFFICIAL REPRESENTATIVE OF THE CITY IN MATTERS RELATING TO THE PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and the Texas Woman’s University, Texas, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (herein called “Agreement”); and,

WHEREAS, upon full review and consideration of the Agreement and all matters incident and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved and that the City Manager, or designee, shall be authorized to execute it on behalf of the City of Allen.

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

SECTION 1. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen and found to be acceptable and in the best interests of the City of Allen and its citizens, are hereby in all things approved.

SECTION 2. The City Manager, or designee, of the City of Allen, under the direction of the City Council of the City of Allen, is hereby designated as the official representative to act for the City in all matters relating to the Cooperative Purchasing Program including the designation of specific contracts in which the City desires to participate.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in this Agreement.

SECTION 4. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 23RD DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

STATE OF TEXAS §
 § **INTERLOCAL COOPERATION AGREEMENT**
COUNTY OF COLLIN §

This Interlocal Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas (“Allen”), and the Texas Woman’s University, Texas acting by and through their authorized officers.

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code; and

WHEREAS, Section 271.102 of the TEX. LOC. GOV’T CODE authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

WHEREAS, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and materials; and

WHEREAS, each party has and will on an annual basis obtain competitive bids for the purchase of goods and services; and

WHEREAS, the parties desire to enter into a cooperative purchasing program which will allow each party to purchase under goods and services under each other’s competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

Article I
Purpose

The purpose of this Agreement is to establish a cooperative purchasing program between the parties, which will allow each party to purchase goods and services under each other’s competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE.

Article II
Term

The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution hereof (“Effective Date”). Thereafter this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

Article III
Termination

Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

Article IV
Purchasing

The City Manager or School Superintendent or their respective designees are authorized to act on behalf of the respective party in all matters relating to this cooperative purchasing program. Each party shall make payments to the other party or directly to the vendor under the contract made pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE. Each party shall be responsible for the respective vendor’s compliance with provisions relating to the quality of items and terms of delivery.

**Article V
Miscellaneous**

5.1 **Relationship of Parties.** This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

5.2 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective party at the address set forth below the signature of the party.

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

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

5.5 **Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the parties shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas.

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

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

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

EXECUTED this ____ day of _____, 2009.

CITY OF ALLEN, TEXAS

By: _____
Peter Vargas, City Manager

305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this _____ day of _____, 2009.

TEXAS WOMAN'S UNIVERSITY

By: _____

P.O. Box 425619
Denton, Texas 76204-5619

ATTEST:

By: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 23, 2009

SUBJECT: Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement by and between the City of Fort Worth, Texas and the City of Allen, Texas for the Use of the City of Fort Worth's Supplier Contracts

STAFF RESOURCE: Debra Morris, Purchasing Manager

ACTION PROPOSED: Adopt a Resolution Authorizing the City Manager to enter into an Interlocal Agreement by and between the City of Fort Worth, Texas and the City of Allen, Texas for the use of the City of Fort Worth's Supplier Contracts

BACKGROUND

Chapter 791 of the Texas Government Code, as amended, authorizes Interlocal Agreements between local government agencies to perform governmental functions and services such as streets, roads, and drainage; and Section 701.025 of the Texas Government Code permits Interlocal Agreements between local governments for the purchase of goods and services and also satisfies the requirements of local governments to seek competitive bids for purchase of such goods and services through supplier contracts.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution to authorize execution of an Interlocal Cooperative Agreement with the City of Fort Worth.

MOTION

I make a motion to adopt Resolution No. _____ authorizing execution of an Interlocal Agreement with the City of Fort Worth for use of the City of Fort Worth's Supplier Contracts.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE CITY OF FORT WORTH, TEXAS; PROVIDING FOR A COOPERATIVE PURCHASING PROGRAM FOR GOODS AND SERVICES; DESIGNATING THE CITY MANAGER, OR DESIGNEE, AS OFFICIAL REPRESENTATIVE OF THE CITY IN MATTERS RELATING TO THE PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and the City of Fort Worth, Texas, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (herein called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement and all matters incident and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved and that the City Manager, or designee, shall be authorized to execute it on behalf of the City of Allen.

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

SECTION 1. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen and found to be acceptable and in the best interests of the City of Allen and its citizens, are hereby in all things approved.

SECTION 2. The City Manager, or designee, of the City of Allen, under the direction of the City Council of the City of Allen, is hereby designated as the official representative to act for the City in all matters relating to the Cooperative Purchasing Program including the designation of specific contracts in which the City desires to participate.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in this Agreement.

SECTION 4. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 23RD DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

STATE OF TEXAS §
§
COUNTY OF DALLAS §

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas (“Allen”), and the City of Fort Worth, Texas (“Fort Worth”), acting by and through their authorized officers.

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code; and

WHEREAS, Section 271.102 of the TEX. LOC. GOV’T CODE authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

WHEREAS, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and materials; and

WHEREAS, each party has and will on an annual basis obtain competitive bids for the purchase of goods and services; and

WHEREAS, the parties desire to enter into a cooperative purchasing program which will allow each party to purchase under goods and services under each other’s competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

ARTICLE I PURPOSE

The purpose of this Agreement is to establish a cooperative purchasing program between the parties, which will allow each party to purchase goods and services under each other’s competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV’T CODE.

ARTICLE II TERM

The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution hereof (“Effective Date”). Thereafter this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

ARTICLE III TERMINATION

Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

ARTICLE IV PURCHASING

The City Manager or designee for each of party is authorized to act on behalf of the respective party in all matters relating to this cooperative purchasing program. Each party shall make payments to the other party or directly to the vendor under the contract made pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE. Each party shall be responsible for the respective vendor's compliance with provisions relating to the quality of items and terms of delivery.

ARTICLE V MISCELLANEOUS

5.1 **Relationship of Parties:** This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

5.2 **Notice:** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective party at the address set forth below the signature of the party.

5.3 **Amendment:** This Agreement may be amended by the mutual written agreement of both parties hereto.

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

5.5 **Governing Law:** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

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

5.7 **Recitals:** The recitals to this Agreement are incorporated herein.

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

EXECUTED this ____ day of _____, 2009.

CITY OF ALLEN, TEXAS

By: _____
PETER H. VARGAS, CITY MANAGER

One Allen Civic Plaza
305 Century Parkway
Allen, TX 75013

ATTEST:

By: _____
Shelley B. George, CITY SECRETARY

EXECUTED this ____ day of _____, 2007.

CITY OF FORT WORTH, TEXAS

By: _____

ATTEST:

By: _____
CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

June 23, 2009

SUBJECT:

Authorize the City Manager to Award and Execute a Contract for Construction of the Improvements Planned for a Shade Structure at kidMania to USA Shade and Fabric Structures, Incorporated in the Amount of \$62,014

STAFF RESOURCE:

Tim Dentler, Director of Parks and Recreation
 Brian Bristow, Assistant Director
 Matt McComb, Landscape Architect
 Paul Naughton, Park Planner

ACTION PROPOSED:

1. Establish a new project budget that encompasses funding for design and construction of a shade structure at kidMania, and;
2. Authorize the City Manager to award and execute a contract with USA Shade and Fabric Structures, Incorporated for construction of a shade structure at kidMania.

BACKGROUND*Planning and Design*

In June 2003 phase one of Celebration Park was completed, which includes one of the largest community built accessible playgrounds, termed 'kidMania', in the State of Texas. KidMania is also home to the only outdoor sprayground owned and operated by the City of Allen. This unique infrastructure provides a great array of programming opportunities that have become successful and well received by the local and regional communities. With the intense use and after receiving several requests from the community for shade Allen Parks and Recreation staff has evaluated and further studied the potential for shade structures in and around the location of kidMania and have determined that the site would benefit from having shade opportunities available.

Early 2009 Allen Parks and Recreation Staff started working with the vendor, USA Shade and Fabric Structures, Incorporated to design the most efficient shade structure for kidMania at Celebration Park. With several input and review meetings both from the Allen Community Development Corporation and City staff the plans underwent several revisions.

Funding and Bidding for Construction

The original project budget was set at \$100,000 consisting of all of the funds being sourced through the Allen Community Development Corporation funds.

On April 29, 2009, a proposal was received for the design and construction of the Shade at Celebration Park from USA Shade and Fabric Structures, Incorporated, which is summarized in the table below:

Contractor	Calendar Days	Project Amount
USA Shade and Fabric Structures, Incorporated	80	\$62,014.00

BUDGETARY IMPACT

The project is funded through Allen Community Development Corporation funds. Below is a summary of the funds being allocated to the project.

	Current Funding	Expenses to Date	Remaining Budget
Allen Community Development Corporation Funds	\$100,000		
Funds Subtotal	\$100,000		
Design and Construction Fees		\$62,014	
Construction Subtotal		\$62,014	
Remaining Funds			\$37,986

Allen Parks and Recreation Staff used the Buy Board® cooperative purchasing program to secure services with the design / build firm USA Shade & Fabric Structures, Inc.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with USA Shade and Fabric Structures, Incorporated in the amount of \$62,014 for design and construction of a shade structure at kidMania.

MOTION

I make a motion to authorize the City Manager to award and execute a contract for construction for a shade structure at kidMania to USA Shade and Fabric Structures, Incorporated in the Amount of \$62,014.

ATTACHMENT

USA Shade Fabric Structures
Contract



USASHADE
& Fabric Structures, Inc.



A Brand of USA Shade & Fabric Structures, Inc.

COVER SHEET

PROPOSAL FOR SHADE STRUCTURES

CORPORATE OFFICE

Dallas
8505-A Chancellor Row
Dallas, TX 75247
800-966-5005 Phone
214-905-9514 Fax

REGIONAL OFFICES

Arizona
2628-B W. Birchwood Cir.
Mesa, AZ 85202
480-446-0066 Phone
480-446-8679 Fax

Austin
1508-A Ferguson Lane
Austin, TX 78754
512-836-5500 Phone
512-836-5600 Fax

California
350 Kalmus Drive
Costa Mesa, CA 92626
714-427-6981 Phone
714-427-6982 Fax

927 Enterprise Way
Suite A
Napa, CA 94558
707-257-7296 Phone
707-257-7297 Fax

Las Vegas
6225 S. Valley View Blvd.
Suite I
Las Vegas, NV 89118
702-227-5273 Phone
702-227-5132 Fax

Date: 5/18/09

To: Paul Naughton

Fax: _____

Phone: (214) 509-4720

Pages including this cover page: 8

Project Name: Kid Mania

Quote Number: 090233 Amended DHH

COMMENTS:

Hi Paul, Enclosed is all the information you will need to be able to use BUY BOARD for the purchase of you new structure. **Buy Board Contract # 269-08** You can go ahead and send us your purchase order so we can get started on the drawings, and we will tie this to the buy board contract once we get it.

Do not hesitate to call me for further assistance.

Sincerely,

Dot Haymann
Executive VP of Sales
Phone: (972) 354-6512

PROPOSAL

Corporate Mailing Address:
P.O. Box 560168
Dallas, TX 75356-0168
(800) 966-5005



USASHADE
& Fabric Structures, Inc.



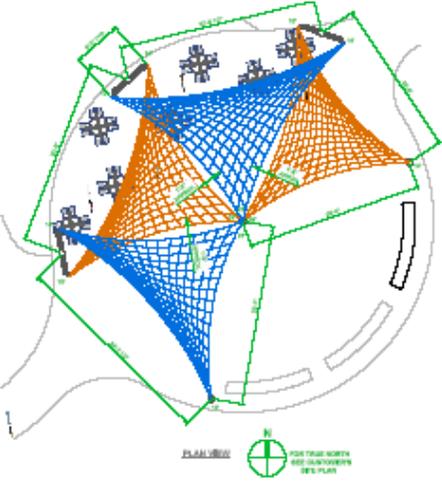
A Brand of USA Shade & Fabric Structures, Inc.

Remittance address:
USA Shade & Fabric Structures, Inc.
P.O. Box 678420
Dallas, TX 75267-8420

This is a legal agreement – Please read carefully. Complete and initial all pages

Purchaser: City of Allen	Date: 5/19/09	Sales Rep: Dot Haymann
Contact: Paul Naughton	PO Number:	Phone: (972) 354-6512
Phone:	Quote No.: 090233DHH	Email: dhaymann@usa-shade.com
Billing Information:	Shipping Information:	Jobsite Information (including site name):
305 Century Parkway Allen, TX	Celebration Park Kid Mania, 701 Angel Prkwy Allen, TX 75013	Celebration Park Kid Mania, 701 Angel Prkwy Allen, TX 75013
Contact:	Contact:	Contact:
Phone: (214) 509-4720	Phone:	Phone:
Fax:	Fax:	Fax:
Email: pnaughton@cityofallen.org	Email:	Email:

STRUCTURE PRICING

QTY	DESCRIPTION	DETAILS	PRICE
1	Sun Port "Custom Tension Sail" Structure 	<p>Structure Size 69ft x 36t</p> <p>Number of Posts 6 posts, 3 have cantilevers on them</p> <p>Sails attached at center pole at two heights</p> <p>Top of the posts to be angled, not straight</p> <p>Number of Fabric Tops 4</p> <p>Fabric Type Shadesure®</p> <p>Fabric Color White</p> <p>Steel Color Red</p> <p>Clear Top coat over Powder Coat</p> <p>Post Attachment Method Recessed Plates</p> <p>Entry Height 10ft to 21ft</p> <p>Wind load 90MPH</p> <p>Snow load 5Lbs/Sft</p> <p>Notes: Sealed Drawings</p> <p>Fencing to be provided around work area</p>	\$60,798.00

PRICING DETAILS

Unit Total	\$60,798.00	PAYMENT TERMS:	
Payment and Performance bound	\$1,216.00		(1) Upon execution of the Agreement (Deposit)
Shipping/Handling	Included		(2) Upon delivery of Sun Port(s)
SUBTOTAL	\$62,014.00	(3) Upon completion of assembly/installation	
Assembly/Installation	Included	NOTES:	
Engineering	Included		
TOTAL PRICE	\$62,014.00		

PROPOSAL

Corporate Mailing Address:
P.O. Box 560168
Dallas, TX 75356-0168
(800) 966-5005



USASHADE
& Fabric Structures, Inc.



A Brand of USA Shade & Fabric Structures, Inc.

Remittance address:
USA Shade & Fabric Structures, Inc.
P.O. Box 678420
Dallas, TX 75267-8420

GENERAL SCOPE OF WORK

PERMIT REQUIREMENTS			ASSEMBLY REQUIREMENTS		
YES	NO		YES	NO	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Purchaser is responsible for Permit Submittal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Underground obstacles
<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>		Dirt Removal
ENGINEERING REQUIREMENTS			<input type="checkbox"/>	<input checked="" type="checkbox"/>	Soil Tests
		Building Code	<input checked="" type="checkbox"/>		Concrete Cutting
		Type of drawings	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Concrete Truck Access
		# of sealed drawings	<input checked="" type="checkbox"/>		Fencing
		Calculations Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Inspection
Notes:			<input type="checkbox"/>	<input checked="" type="checkbox"/>	Permits (see Permit Requirements)
PRICING INCLUDES			<input type="checkbox"/>	<input checked="" type="checkbox"/>	Prevailing Wages & Certified Payroll
YES	NO		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Union Wages
<input checked="" type="checkbox"/>		Assembly/Installation (based on a single mobilization)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Removal of existing structure or poles
<input checked="" type="checkbox"/>		Shipping and Handling	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Curb Repair
<input checked="" type="checkbox"/>		Engineered Drawings	<input checked="" type="checkbox"/>		Landscaping Repair/ grass area
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sales Tax	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Electrical hook-up or trenching
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Permit Submittal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Site Plan Approval
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Permit fees	<input checked="" type="checkbox"/>		Site Survey
<input checked="" type="checkbox"/>		Clear Coat over the posts	<input checked="" type="checkbox"/>		Bobcat Access
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coastal Primer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Liquidated Damages
<input checked="" type="checkbox"/>		Payment and Performance Bonds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other special conditions (noted below):
<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Anchor Bolts Included

GENERAL TERMS AND CONDITIONS AND WARRANTY

- Proposal:** The above proposal is valid for **30** days from the date first set forth above. After 30 days we reserve the right to increase prices due to the rise in costs of raw material, fuel or other cost increases. When applicable, USA Shade & Fabric Structures, Inc. reserves the right to implement a surcharge for significant increases in raw materials, including the following, but not limited to; fuel, steel and concrete. Due to the duration of time between proposals, contracts and final installation, USA Shade & Fabric Structures, Inc. reserves the right to implement this surcharge when applicable.
- Purchase:** By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by the SA Shade & Fabric Structures, Inc. (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase the Sun Ports brand shade structures ("Structures") and the services to be provided by the Company, as detailed in the "Structure Pricing" and "General Scope of the Work" sections of this agreement, above, or in the relevant purchase order accepted by the Company, for use by Purchaser or for installation by Company or Purchaser on behalf of a third-party who will be the ultimate owner of the Structures (the ultimate owner of a Structure, whether Purchaser or a third-party, being the "Owner").
- Short Ship Claims:** Purchaser has 15 days from receipt of the Structures to file a short ship report in writing to its sales representative. Company will not honor claims made after this time.
- Standard Exclusions:** Unless specifically included under "General Scope of the Work" section above, this agreement does not include, and Company will not provide Services, labor or materials for any of the following work: (a) removal and disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or

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replacement of any Purchaser or Owner-supplied materials; (d) repair of concealed underground utilities not located on prints, supplied to Company by Owner during the bidding process, or physically staked out by Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

- 5) **Bonding Guidelines:** If Purchaser will use or provide the Structures and Services for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner:
- "The manufacturer's warranty for the Sun Ports brand shade structures is a separate document between USA Shade & Fabric Structures, Inc. and the ultimate owner of the Sun Ports brand shade structures, which will be provided to the ultimate owner at the time of completion of the installation and other services to be provided by USA Shade & Fabric Structures, Inc. Due to surety requirements, any performance and/or payment bond will cover only the first year of USA Shade & Fabric Structures, Inc. warranty."
- 6) **Insurance Requirements:** Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's quote.
- 7) **Payment:** Terms of payment are defined in the "Pricing Details" section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the Structure is suitable for its intended use, the issue of an occupancy consent, or a final building department approval is issued, whichever occurs first. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when Completion was scheduled, had the delay not occurred. All payments must be made to USA Shade & Fabric Structures, Inc., PO Box 678420, Dallas TX 75267-8420. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.
- 8) **Lien Releases:** Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.
- 9) **Site-plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:** Site-plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in an additional cost to Purchaser.
- 10) **Manufacturing & Delivery:** Manufacturing lead-time from Company's receipt of the "Notice To Proceed" is approximately 6 to 8 weeks for standard Structures, and 8 to 12 weeks for custom Structures. Delivery is approximately 1 week thereafter. Delivery of Structures may be prior to or at start of assembly.
- 11) **Returned Product and/or Cancelled Order:** Within the first 45 days after shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns or refunds (partial or full) are available following this 45 day period. Please contact your sales representative for details.
- 12) **Concealed Conditions:** "Concealed conditions" include, without limitation, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. This agreement is based solely on observations Company was able to make either by visual inspection or by drawings and / or plans submitted by Owner at the time this agreement was bid. If additional Concealed Conditions are discovered once work has commenced which were not visible at the time this proposal was bid, Company will stop work and point out these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a change order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks bigger than 4 inches in diameter or any other condition that will require additional labor, equipment and / or materials not specified by the Purchaser or Owner in the bidding process. Any condition requiring additional labor, equipment and / or materials to complete the drilling or concrete operations will require a change order before Company will complete the process. Price quotes are based on a drill pier footing. Any variation will incur additional charges (i.e. spread footings, concrete mat, sand, water, landfill, etc.). Costs for footing and installation do not include any allowance for extending below frost lines (the additional costs for which vary by geographical region).
- 13) **Changes in the Work:** During the course of this project, Purchaser may order changes in the work (both additions and deletions). The cost of these changes will be determined by the Company, and a change order form must be completed and signed by both the Purchaser and

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the Company, which will detail the "General Scope of the Change Order". Should any change order be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Company will be deemed to have performed its part of the project, and the project and Services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less a labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.

14) **Warranty; Limitations of Liability:**

- Company warrants that all Company-supplied labor and Services will be performed in a good and workmanlike manner.
- The warranty set forth in this Section 14 will be the Purchaser's sole and exclusive warranty.
- The warranty set forth in this Section 14 will run from the date of performance of the service by the Company, and any warranty claims brought by Purchaser must be brought within 30 days of the date of performance of the Service giving rise to the claim.
- Purchaser's sole remedy for a breach of the warranty set forth in this Section 14 will be the re-performance of the Services, or if that is not possible or practical, the refund of the price of the Services that breached the warranty.
- Purchaser shall notify Company in writing detailing any defects in Service for which a warranty claim is being made.
- **COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL PUNITIVE OR LIQUIDATED DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- **IN NO EVENT WILL COMPANY'S LIABILITY FOR MONETARY DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID OR DUE AND PAYABLE FOR THE SERVICES UNDER THIS AGREEMENT (OR THE RELEVANT PURCHASE ORDER).**
- **EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES, AND PURCHASER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING OUT OF, RELATED TO, OR UNDER THIS AGREEMENT, AND SPECIFICALLY DENIES THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. FURTHER, EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY ACKNOWLEDGES THAT THE SERVICES AND STRUCTURES PROVIDED HEREIN ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. COMPANY DOES NOT WARRANT THAT THE SERVICES OR STRUCTURES WILL MEET YOUR REQUIREMENTS OR THOSE OF THE OWNER.**
- For all Structures installed by the Company, Purchaser must sign and return the "Customer Checklist and Sign-off" form to the Company within 10 business days from the construction completion date, or Company will not be held responsible for any warranties under this Section 14 or any damage to the Structure.
- The warranties for the Structures are contained in a separate document between Company and the ultimate Owner of the Structures, which will be provided to Owner at the time of completion of the work.

15) **Indemnification:** To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless the Company and its consultants, agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, related to the installation of the Structure or performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or 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 that would otherwise exist as to a party or person described in this Section 15.

16) **Fabric:**

- **Shadesure®** fabrics carry a 10 years limited manufacturers warranty from the date of installation, against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold, or discoloration with the exception of Red and Red/White stripe and Coolbrella shade structures which carry a 3 year limited warranty. Should the fabric need to be replaced under the warranty, Contractor will manufacture and ship a new fabric at no charge for the first 6 years, thereafter pro-rated at 18% per annum over the last 4 years.
- **Colourshade® FR** fabrics carry a 5-year manufacturer's warranty from the date of installation, against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold, or discoloration with the exception of FR Red and Coolbrella fabrics, which carry a 3-year limited warranty. This warranty shall be void if damage to the shade fabric is caused by contact with chemicals, misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of the applicable building code parameters.
- This warranty shall be void if damage to the shade fabric is caused by contact with chemicals, misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of the applicable building code parameters.

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- All fabric tops are only warranted for winds and gusts up to 90mph and prior to snow or ice accumulation.
- All fabric curtains, valences and flat vertical panels are not covered under the warranty.
- Fabric is not warranted where it is assembled on a structure that is not engineered and built by Contractor.
- The structures have been designed to eliminate any friction between the rafters and the fabric. The warranty will, therefore, be voided if any modification (temporary or permanent) or any attachment (temporary or permanent) is made to the rafter. The fabric will wear or tear should any object be placed between the rafter and the fabric, voiding the fabric warranty.
- Labor for the removal, installation and/or freight charges will be covered in full for a period of 12 Months, where the shade structures supplied and installed by Contractor are defective. In all cases where the shade structures are not installed by Contractor or its agents, all labor for the removal, installation and/or freight will be at the customers' expense and the warranty will only be applicable to the repair or replacement of the defective materials.
- Contractor reserves the right, in cases where certain fabric colors have been discontinued, to offer the customer a choice of available colors to replace the warranted fabric of the discontinued color. The company does not warrant that any particular color will be available for any period of time and reserves the right to discontinue any color for any reason it may determine, without the recourse by the owner of the discontinued fabric color.

NOTE: Shadesure and Colourshade FR fabric warranties cover fabric tops up to 40' in length. Fabric tops over 40' in length are covered by a non-prorated 5-year warranty. Additionally, fabric tops made from other fabric types (ie. Sunbrella) will include their respective manufacturer's warranty.

17) Steel:

- The structural integrity of the steel is warranted for 10 years.
- Workmanship and painted surfaces are warranted for 12 months.
- This warranty shall be void if damage to the steel frame is caused by misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of applicable building code parameters

18) Thread:

- USA Shade & Fabric Structures, Inc. warranties its sewing thread for a period of eight (8) years.
- This warrants that the sewing thread will be free from defects in material and workmanship and will not be damaged by exposure to sunlight, weather or water.
- This warranty does not cover damage from fire, cuts, vandalism, misuse, or any act of God including but not limited to ice, snow or wind in excess of the applicable building code.
- All other warranties are disclaimed.
- Labor for the removal, assembly and / or freight charges, of tops with damage caused by thread, will only be covered in instances where Contractor has assembled the unit. In all cases where units were not assembled by Contractor all labor for the removal, assembly and / or freight will be for the customers account and the warranty will only be applicable to the repair or replacement of defective materials.

19) Assembly/Installation:

- Company will notify Purchaser of the scheduled assembly date. Owner agrees to have an owner representative meet the assembly crew at the job site on the scheduled assembly date to verify the exact location where the Structure(s) is to be placed
- Labor for the removal, assembly and/or freight charges will only be covered by Company in instances where the Structures supplied and installed by Company are determined by the Company to be defective. In all cases where Structures are not installed by Company, all labor for the removal, assembly and/or freight of the Structures will be Purchaser' responsibility.
- Installation prices are based on a single mobilization charge. If additional mobilization is needed, there will be additional charges.
- If the requested Services require Company access to Owner's premises Company will be provided access to the Owner's premises free and clear of debris, automobiles or other interference Monday thru Friday during the hours of 8am to 6pm, and Company will have access to water and electrical facilities during installation. Additional charges will apply if utilities are not easily accessible. All automobiles will be moved prior to Company's crew beginning any installation.
- Company will not be responsible for moving or repairing any underground utility lines such as electrical, telephone, gas, water, or sprinkler lines that may be encountered during installation.
- Any additional costs incurred as a result of hard rock conditions requiring extra equipment, utility removal or repair resulting in delay will result in additional charges unless they are detailed on as-built site drawings provided to Company or marked on the ground and communicated to Company in writing prior to fabrication and installation.

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- 20) **Installation/Assembly on-site:** Where installation/assembly is part of the Services, Purchaser must provide the Company with a detailed drawing prepared by or for the Owner showing exactly where the Structure(s) are to be assembled as well as detailing any obstacles or other impediments that may cause the assembly process to be more difficult. Any fixture(s), e.g., playground, pools etc., that the Structure(s) is/are to be assembled over must also be detailed, along with their peak heights (if applicable).
- 21) **Site/Use Review by Purchaser:** Company relies on the Purchaser to determine that the Structure(s) ordered are appropriate and safe for the Owner's installation site and/or intended use. Company is not responsible for damages or injuries resulting from collisions by moving objects or persons with the structure post. Company can recommend or supply at additional cost, padding for posts from a third party manufacturer.
- 22) **Preparatory Work:** Where installation/assembly is part of the Services and in the event that the foundation or job site is not suitable or ready for assembly to begin on the scheduled day, a delay of order notification must be sent to Company at least 4 working days before in order to allow Company to reschedule the project. In the event that Company is not notified and incurs an expense in attempting to execute the assembly, a re-mobilization charge may be charged to Purchaser before Company will reschedule the assembly.
- 23) **Delegation: Subcontractors:** The Services and the manufacturing and assembly of the Structures may be performed by subcontractors under appropriate agreements with the Company.
- 24) **Force Majeure: Impracticability:** The Company shall not be charged with any loss or damage for failure or delay in delivering or assembling of the shade Structures when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations or orders, or due to any acts of God, strikes, lockouts, slowdowns, wars or shortages in transportation, materials or labor.
- 25) **Dispute Resolution:** Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Dallas, Texas by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgment upon the award may be entered in any court having jurisdiction thereof.
- 26) **Entire Agreement; No Reliance:** This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including. Without limitation any statements as to the Structures, warranties or Services provided hereunder.
- 27) **No Third-Party Beneficiaries:** This agreement creates no third party rights or obligations between Company and any other person, including any Owner who is not also a purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this Agreement.
- 28) **Governing Law:** The agreement will be construed and enforced in accordance with the laws of the State of Texas.
- 29) **Assignment:** Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of Company. The agreement shall be binding upon and inure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.
- 30) **Materially Increased Costs:** Company reserves the right to implement a surcharge for material increases in raw materials, including but not limited to fuel, steel and concrete. Due to the duration of proposals and contracts, Company reserves the right to implement this surcharge when it determines that raw material cost increases warrant it.

Executed to be effective as of the date executed by the Company:

PURCHASER:
City of Allen

COMPANY:
USA SHADE & FABRIC STRUCTURES, INC.

Signature: _____

Signature: _____

By: (Print) _____

By: (Print) **Dot Haymann**

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Title: _____

Title: Executive VP of Sales

Date: _____

Date: _____

NOTE: All purchase orders and contracts should be drafted in the name of USA Shade & Fabric Structures, Inc.



STANDARD FIXED PRICE AGREEMENT

**CITY OF ALLEN, TEXAS
Shade structure at kidMania
Buy Board Contract #: 269-08; 269-07
Vendor Quote #:090233 Amended DHH**

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

City of Allen, Texas

This Agreement is made by and between the **City of Allen, Texas**, a home-rule municipality (hereinafter referred to as the "Owner") and **USA Shade and Fabric Structures; Inc** hereinafter referred to as the "Contractor") for the construction of **Shade structure at kidMania** (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2 THE CONTRACT DOCUMENTS

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

Addendum: None

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 PRIVILEGE WITH OTHERS

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

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

1.5 INTENT AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

1.6 OWNERSHIP OF

CONTRACT DOCUMENTS

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

ARTICLE II

THE WORK

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

2.2 WORK

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

Shade structure at kidMania to include: design and develop engineer drawings, install new shade canopy with poles complete and in place per specifications and plans.

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 (80) calendar days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond

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

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

3.1.2 The Contractor shall pay the Owner the sum of **(\$ 160) per day** for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

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

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

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

3.2 SUBSTANTIAL COMPLETION

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

3.3 TIME IS OF THE ESSENCE

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

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

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

\$62,014.00 (fifty-nine thousand, seven hundred ninety-eight dollars and .00/100 cents.)

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

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

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

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

5.2 PAYMENT PROCEDURE

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

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

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

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

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

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

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

5.3 WITHHELD PAYMENT

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

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

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

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

5.4 UNEXCUSED FAILURE TO PAY

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

5.5 SUBSTANTIAL COMPLETION

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

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

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

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

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

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

5.6 COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

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

ARTICLE VI

THE OWNER

6.1 INFORMATION, SERVICES AND THINGS

REQUIRED FROM OWNER

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

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

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

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

6.2 RIGHT TO STOP WORK

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

6.3 OWNER'S RIGHT TO PERFORM WORK

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

ARTICLE VII

THE CONTRACTOR

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

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

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

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

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

7.4 WARRANTY

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

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

7.6 SUPERVISION

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

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

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

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

7.6.3. The Contractor's authorized superintendent

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

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

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

7.9 SHOP DRAWINGS, PRODUCT

DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

or similar submittals by the Architect's approval thereof.

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

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

7.9.12 Submittals: See Division 1 for additional requirements.

7.10 CLEANING THE SITE

AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property there from. 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, 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 NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

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

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

7.12.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting

from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

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

7.13 NONDISCRIMINATION

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

7.14 PREVAILING WAGE RATES

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

other documents as may be required by the Owner to insure compliance with this provision.

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

7.15 JOB SITE SAFETY PRECAUTIONS

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

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

7.16 WARNING DEVICES AND BARRICADES

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

**7.17 PROTECTION OF UTILITIES
AND OTHER CONTRACTORS**

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged

during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

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

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

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

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

8.2 ARCHITECT'S ADMINISTRATION

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

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

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

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

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

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

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

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

upon compliance with the requirements of this Contract.

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

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

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

8.2.12 Neither the authority of the Architect to reject Work nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. All costs made necessary by such failure, including those of repeated procedures, shall be at Contractor's sole expense, including compensation for Architect's services and expenses.

8.2.13 Review of submittals and action on the part of the Architect is limited to only those submittals required by the Contract Documents. The Architect's action will be taken with such reasonable promptness

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

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

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

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

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Architect shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the

plans and specifications. Any dispute shall be submitted in writing to the Architect within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect's decisions shall be final and binding on the parties. In the event that either party objects to the Architect's determination as to any submitted dispute, that party shall submit a written objection to the Architect and the opposing party within ten (10) days of receipt of the Architect's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

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

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

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

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

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

8.4 FIELD ORDERS

8.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and

not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.5 MEDIATION

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

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

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

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

9.2 AWARD OF SUBCONTRACTS

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

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

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

ARTICLE X

CHANGES IN THE WORK

10.1 CHANGES PERMITTED

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

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

10.2 CHANGE ORDER DEFINED

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

10.3 CHANGES IN THE CONTRACT PRICE

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

Contractor, then, as provided in Subparagraph 10.3.2 below.

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

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

10.4 MINOR CHANGES

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

10.5 EFFECT OF EXECUTED

CHANGE ORDER

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

10.6 NOTICE TO SURETY; CONSENT

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

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

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

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

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as

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

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

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

11.3 OWNER MAY ACCEPT DEFECTIVE

OR NONCONFORMING WORK

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

ARTICLE XII

CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the

Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

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

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

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

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

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

12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for

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

- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
- (d) Contract prices for labor, materials, equipment and other services accepted under this Contract;
- (e) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (f) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

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

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, 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	Statutory Limits: \$100,000 each accident
Commercial General	\$500,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.
Automobile Liability	\$500,000 Combined single limit per occurrence.

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an "All Risks" of Physical Loss form, insuring all work in place and/or materials stored at the building site, including foundations and building equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may

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

13.3 ADDITIONAL INSURED

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

13.4 WRITTEN NOTIFICATION

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

13.5 PREMIUMS AND ASSESSMENTS

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

13.6 CERTIFICATE OF INSURANCE

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

13.7 PRIMARY COVERAGE

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

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

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

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

**REQUIRED WORKERS' COMPENSATION
COVERAGE**

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

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

and

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

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

ARTICLE XIV

MISCELLANEOUS

14.1 LAWS AND ORDINANCES

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

14.2 GOVERNING LAW

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

14.3 SUCCESSORS AND ASSIGNS

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

14.4 SURETY BONDS

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

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

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

14.5 SEVERABILITY

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

14.6 AMENDMENTS

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

14.7 NOTICES

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

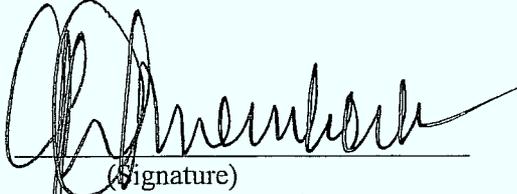
EXECUTED in single or multiple originals, this 2nd day of June, 2009.

CITY OF ALLEN

CONTRACTOR:

APPROVED:

City Manager



(Signature)

J.D. Sarembeck, CFO
(Type/Print Name)

and Title)

ATTEST:

Address)

City Secretary

8505 Chancellor Row
(Street

Dallas, TX 75247
(City/State/Zip)

CORPORATE ACKNOWLEDGMENT

THE STATE OF Texas

COUNTY OF Dallas

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

J.D. Sarembeck

CFo

(Print Name)

(Print Title)

of USA Shade Fabric Structures Inc., 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.

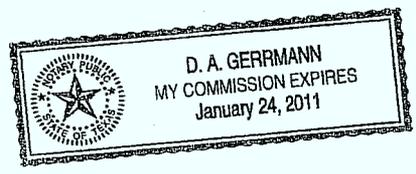
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5 day of June, A.D., 2009.

DA Gerrmann

Notary Public In and For

Dallas County, Texas

My Commission expires: 1-24-11



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 23, 2009

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

STAFF RESOURCE: Shelley B. George, City Secretary

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

BACKGROUND

On June 12, 2009, Frank Brown presented a letter of resignation to the City Secretary's Office for his position on the Board of Adjustment, Place No. 4. Please note that the members of the Board of Adjustment also serve as members of the Building and Standards Commission and Sign Control Board.

STAFF RECOMMENDATION

Staff recommends the City Council accept the resignation of Mr. Brown and declare a vacancy in Place No. 4 of the Board of Adjustment.

MOTION

I make a motion to accept the resignation of Mr. Brown and to declare a vacancy in Place No. 4 of the Board of Adjustment.

ATTACHMENT

Resignation Letter - Brown

BWM
BROWN
WEALTH
MANAGEMENT

Frank P. Brown, Jr.
LPL Branch Manager
LPL Registered Principal

205 West Main Street, Ste A
Allen, TX 75013-2702
Phone (972) 390-2665
Fax: (972) 390-2650

June 10, 2009

TO: Shelly George
City Secretary

FROM: Frank P. Brown, Jr.

SUBJECT: Resignation

Please accept this memo as my resignation as a member and Vice Chair of: The boards of Adjustment/Buildings and Standards/Sign Control Board.

I will be retiring on Friday, June 12th. I have sold my book of business to the Wealth Management Group of the American National Bank.

Our house has been sold and we close on Friday, June 19th and the moving van will load on Monday June 22nd. We are moving to Boerne, TX, which will be our new permanent residence.

These past 11 plus years of serving on the three city boards has given me a keen insight of how city boards are run. Every Allen citizen should have the opportunity to serve on a city board.

Many thanks to Allen city council for allowing me the opportunity to serve our great city via three city boards.

Sincerely,



Frank Brown

RECEIVED

JUN 10 2009

CITY OF ALLEN
CITY SECRETARY

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

Monthly Collection Status Report
May 2009

City of Allen #06

	Collections Month of May	Cumulative Total 10/1/08 thru 5/29/09	% of Collections
Current Tax Year Collections			
Base M&O	\$146,107.64	29,339,231.28	99.96%
Base I&S	45,624.21	9,161,604.43	
Base I&S Bond			
P&I M&O	12,913.51	73,917.24	
P&I I&S	4,032.54	23,082.06	
P&I I&S Bond			
Attorney Fee	2,583.38	7,118.35	
Subtotal	\$211,261.28	\$38,604,953.36	100.23%
Delinquent TaxYears Collections			
Base M&O	\$3,392.89	262,956.23	
Base I&S	1,063.60	84,717.64	
Base I&S Bond			
P&I M&O	993.60	33,433.13	
P&I I&S	319.36	10,949.77	
P&I I&S Bond			
Attorney Fee	1,137.52	46,887.99	
Other>	0.00	0.00	
Subtotal	\$6,906.97	\$438,944.76	1.14%
Combined Current & Delinquent:			
Base M&O	\$149,500.53	\$29,602,187.51	
Base I&S	\$46,687.81	\$9,246,322.07	
Base I&S Bond			
P&I M&O	13,907.11	107,350.37	
P&I I&S	4,351.90	34,031.83	
P&I I&S Bond			
Attorney Fee	3,720.90	54,006.34	
Other>	0.00	0.00	
Total Collections	\$218,168.25	\$39,043,898.12	101.37%
			100.00%
Original 2008 Tax Levy		\$38,516,734.63	

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

Cumulative Comparative Collection Status Report
May 2009

City of Allen #06

	Collections thru May 2009	% Collections	Collections thru May 2008	% Collections
Current Tax Year Collections				
Base M&O + I&S	\$38,500,835.71	99.96%	\$36,219,004.92	98.14%
P&I M&O + I&S	96,999.30		93,073.09	
Attorney Fee	7,118.35		8,691.76	
Subtotal	<u>\$38,604,953.36</u>	100.23%	<u>\$36,320,769.77</u>	98.41%
Delinquent Tax Years Collections				
Base M&O + I&S	\$347,673.87		\$476,637.79	
P&I M&O + I&S	44,382.90		100,403.63	
Attorney Fee	46,887.99		66,902.65	
Other>	0.00		0.00	
Subtotal	<u>\$438,944.76</u>	1.14%	<u>\$643,944.07</u>	1.74%
Combined Current & Delinquent:				
Base M&O + I&S	\$38,848,509.58		\$36,695,642.71	
P&I M&O + I&S	141,382.20		193,476.72	
Attorney Fee	54,006.34		75,594.41	
Other	0.00		0.00	
Total Collections	<u>\$39,043,898.12</u>	101.37%	<u>\$36,964,713.84</u>	100.16%
Adjusted 2007 Tax Levy			<u>\$36,905,892.90</u>	100.00%
Original 2008 Tax Levy	<u>\$38,516,734.63</u>	100.00%		

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

Levy Outstanding Status Report
 May 2009

City of Allen #06

	Current Tax Year	Delinquent Tax Years
Current Month:		
Tax Levy Remaining as of 4/30/09	\$829,022.91	\$239,026.59
Base M&O Collections	191,731.85	4,456.49
Supplement/Adjustments	-1,942.52	-53,537.82
Write-off	0.00	0.00
Remaining Levy as of 5/29/09	<u>\$635,348.54</u>	<u>\$181,032.28</u>
Cumulative (From 10/01/08 thru 5/29/09)		
Original 2008 Tax Levy (as of 10/01/08)	\$38,516,734.63	\$466,141.10
Base M&O + I&S Collections	38,500,835.71	347,673.87
Supplement/Adjustments	619,449.62	62,565.05
Write-off	0.00	0.00
Remaining Levy as of 5/29/09	<u>\$635,348.54</u>	<u>\$181,032.28</u>

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

Monthly Distribution Report
May 2009

City of Allen #06

	Distribution Month of May	Distribution 10/1/08 thru 5/29/09
Weekly Remittances:		
Week Ending 5/1/09	\$3,752.72	\$6,982,814.44
Week Ending 5/8/09	22,628.40	\$3,736,214.02
Week Ending 5/15/09	37,108.43	\$9,534,962.82
Week Ending 5/22/09	\$66,453.18	\$8,029,137.03
Week Ending 5/29/09	84,479.40	\$10,705,942.74
Total Weekly Remittances	<u>\$214,422.13</u>	<u>\$38,989,071.05</u>
Overpayment from Prior Month	\$0.00	\$0.00
Manual Adjustment Refund	\$0.00	\$0.00
Commission Paid Delinquent Attorney	\$3,720.90	\$54,006.34
Entity Collection Fee	\$0.00	\$0.00
Judgement Interest	0.00	\$0.00
5% CAD Rendition Penalty	25.22	\$820.73
Total Disbursements	<u><u>\$218,168.25</u></u>	<u><u>\$39,043,898.12</u></u>
Carryover to Next Month	\$0.00	\$0.00

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

June 23, 2009

SUBJECT:

Receive the Capital Improvement Program
(CIP) Status Report

STAFF RESOURCE:

Kevin Hammeke, Director of Finance

ATTACHMENT

Active CIP Status Report

Closed to Fixed Asset Report



CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Active Status

Date: 6/11/2009

Project Number	Project Description	Funding Sources	Completion Date	Project Estimate	Total Encumbrance & Expenditures	Percent Expended
CD0201	HERITAGE GLD HISTORIC VLG	NON-BONDS, CDC, GRANT	9/30/2009	\$1,202,284	\$1,192,010	99.1%
DR0801	BUCKINGHAM DRAINAGE REHAB	NON-BONDS	9/30/2009	\$23,003	\$17,373	75.5%
DR0802	RIDGEVIEW DRIVE DBSI	NON-BONDS	9/30/2009	\$101,448	\$0	0.0%
DR0803	FOUNTAIN GATE ALLEY DRAIN	NON-BONDS	9/30/2009	\$98,141	\$94,079	95.9%
EC0801	EVENT CENTER BUILDING	CDC BONDS, CDC	10/29/2009	\$43,600,000	\$27,264,539	62.5%
EC0802	EVENT CTR PARKING GARAGE	CDC BONDS	2/20/2010	\$7,000,000	\$7,000,000	100.0%
EC0803	EVENT CTR INFRASTRUCTURE	EDC BONDS	2/20/2010	\$13,095,545	\$13,095,545	100.0%
IT0701	PS DISPATCH & RECORDS SYS	NON-BONDS	9/30/2009	\$1,672,935	\$0	0.0%
IT0801	IT PUBLIC SAFETY WIRELESS	GO BONDS, NON BONDS	9/30/2010	\$569,951	\$569,951	100.0%
LB0601	LIBRARY DONOR WALL	GO BONDS, NON-BONDS	9/30/2009	\$143,000	\$130,000	90.9%
PR0202	HILLSIDE PARK	CDC, GO BONDS, NON-BONDS	9/30/2009	\$569,064	\$15,831	2.8%
PR0204	TREE FARM	CDC	12/31/2009	\$48,000	\$5,341	11.1%
PR0302	JUPITER PARK	GO BONDS	9/30/2009	\$785,156	\$20,990	2.7%
PR0305	ENTRY & MONUMENT SIGNAGE	CDC, GO BONDS	9/30/2009	\$75,304	\$6,039	8.0%
PR0402	DAYSPRING NATURE PRESERVE	CDC,PARK DED FEES,GO BOND	9/30/2009	\$300,330	\$11,787	3.9%
PR0405	TRAILS CONSTRUCTION, PH 3	CDC, GO BONDS, NON-BONDS	9/30/2010	\$651,890	\$342,198	52.5%
PR0408	PUBLIC ART	NON-BONDS	9/30/2009	\$1,127	\$0	0.0%
PR0418	HERITAGE VILLAGE LANDSCAP	NON-BONDS	9/30/2009	\$25,000	\$0	0.0%
PR0504	ALLEN BARK PARK	CDC	9/30/2009	\$247,000	\$25,830	10.5%
PR0508	FOX HOLLOW RECREATION A.	CDC	9/30/2009	\$72,000	\$0	0.0%
PR0509	FORD POOL REDEVLPMNT PLAN	CDC	8/31/2009	\$100,000	\$74,500	74.5%
PR0514	6 CITIES TRL CONNECTION 8	CDC,GO BOND,NON-BONDS,GR	9/30/2009	\$930,422	\$76,300	8.2%
PR0604	COUNTRY MEADOW PARK IMP#2	CDC,PARKLAND,BOND,NON-BON	8/31/2009	\$226,515	\$213,777	94.4%
PR0609	BETHANY LAKES VETERAN'S	CDC	5/30/2010	\$375,000	\$25,000	6.7%
PR0611	PARKS & REC MASTER PLAN	GO BONDS, PARK DEDICATION	9/30/2009	\$59,252	\$0	0.0%
PR0615	CHASE OAKS IMPROVEMENT II	CDC, GO BONDS	9/30/2010	\$1,135,392	\$250,923	22.1%
PR0701	PARK LAND ACQUISITION #3	GO BONDS	9/30/2010	\$3,244,288	\$1,043	0.0%
PR0702	WINDRIDGE NEIGHBORHOOD PK	PARKLAND FEE	12/31/2009	\$160,000	\$144,320	90.2%
PR0703	SHADOW LAKES GREENBELT	CDC	12/31/2009	\$150,000	\$7,500	5.0%
PR0705	PARK COMP SECURITY SYSTEM	CDC	9/30/2009	\$150,000	\$0	0.0%
PR0706	MOLSEN FARM MASTER PLAN	CDC	7/31/2009	\$25,000	\$25,000	100.0%
PR0707	SHADE STRUC @ BALLFIELDS	CDC	9/30/2009	\$234,983	\$215,512	91.7%
PR0709	ASP II BRIDGE DECK	GO BONDS, CDC, NON-BONDS	8/31/2009	\$36,381	\$36,360	99.9%
PR0710	YOUTH CENTER CUST COUNTER	NON-BONDS	9/30/2009	\$6,500	\$0	0.0%
PR0711	WATER FORD PARK PH 5 NP	GO BONDS,PARK DEDICATION	9/30/2010	\$745,350	\$745,349	100.0%
PR0801	SHADE @ CELEBRATION PARK	CDC	9/30/2009	\$100,000	\$0	0.0%
PR0804	MOLSEN FARM DRIVE	CDC	12/31/2010	\$150,000	\$0	0.0%
PR0805	BETHANY LAKES PIER	CDC	9/30/2009	\$85,000	\$41,238	48.5%
PR0806	RAIL/DAM ARCHEOLOGICAL	CDC	9/30/2009	\$30,000	\$0	0.0%
PR0809	SHELLEY FARM NEIGHBH PARK	PARKLAND	12/31/2010	\$6,000	\$6,000	100.0%
PR0810	CELEBRATION PASS PED TRL	CDC, GRANT	12/31/2009	\$91,224	\$48,000	52.6%
PR0812	WATTERS BRANCH BRIDGE	CDC	9/30/2009	\$50,000	\$38,015	76.0%
PR0813	CANCER WALK OF HOPE	NON-BONDS	9/30/2009	\$40,000	\$1,200	3.0%
PR0814	PUBLIC ART BONDS FUND	GO BONDS	9/30/2010	\$88,501	\$0	0.0%



CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Active Status

Date: 6/11/2009

Project Number	Project Description	Funding Sources	Completion Date	Project Estimate	Total Encumbrance & Expenditures	Percent Expended
PR0815	CELEBRATION PARK PHASE II	GO-BONDS, CDC, NON-BONDS	12/31/2009	\$682,352	\$272,995	40.0%
PR0901	PATIENT MOBILE TRANSPORT	CDC	9/30/2009	\$25,000	\$24,930	99.7%
PR0902	IRRIGATION CONTROL	CDC	9/30/2009	\$83,946	\$83,920	100.0%
PR0903	GRAFFITI REMOVAL MACHINE	CDC	9/30/2009	\$54,000	\$0	0.0%
PR0905	STORAGE SHED	CDC	9/30/2009	\$45,000	\$0	0.0%
PR0906	TREE SPADE	CDC	9/30/2009	\$31,819	\$31,819	100.0%
PR0907	STACY RD - VILLAGES TRAIL	CDC	9/30/2009	\$70,680	\$70,680	100.0%
PR0909	WALDEN PARK RENOVATION	PARKLAND	9/30/2009	\$80,000	\$1,200	1.5%
PS0601	FIRE STATION #5	NON-BONDS, GO BONDS	9/30/2010	\$3,743,726	\$574,770	15.4%
PS0701	SERVICE CENTER	NON-BONDS, GO BONDS	9/30/2011	\$2,356,461	\$1,372,598	58.2%
PS0801	JAIL EXPANSION	GO BONDS	9/30/2009	\$746,407	\$742,530	99.5%
PS0802	ANIMAL SHELTER EXPANSION	GO BONDS	2/28/2010	\$147,719	\$143,070	96.9%
PS0803	FIRE STATION #6	GO BONDS	9/30/2012	\$196,501	\$58,899	30.0%
PS0901	PS COMMUNICATION SYSTEMS	GO BONDS	9/30/2011	\$196,502	\$0	0.0%
ST0110	SH5, EXCHANGE-STACY	GO BONDS & NON-BONDS	9/30/2009	\$1,470,518	\$1,361,676	92.6%
ST0312	SIGNAL UPGRADE/COM.SYSTEM	GO BONDS & NON-BONDS	9/30/2009	\$1,334,602	\$1,170,912	87.7%
ST0316	FM 2551	FACILITY AGREEMENT	9/30/2010	\$553,080	\$0	0.0%
ST0317	N BETHANY LAKES-WALL PRJ	FACILITY AGREEMENT	9/30/2009	\$100,000	\$66,000	66.0%
ST0501	EXCHANGE,WATTERS-W.BRANCH	FACILITY AGRMNT, NON-BONDS	9/30/2009	\$2,450,000	\$2,377,549	97.0%
ST0503	EXCHANGE PK,TWN CRK-SH121	FAC AGRM, NON-BONDS, GO BON	9/30/2010	\$5,766,500	\$5,052,980	87.6%
ST0603	STACY RD-US 75 TO GREENVI	NON-BONDS, FCLTY AG	9/30/2009	\$3,050,652	\$2,780,605	91.1%
ST0610	ANGEL PARKWAY, PH III	NON-BONDS, FAC AGR, RD IF	9/30/2009	\$826,734	\$803,964	97.2%
ST0704	STACY PII-GREENV TO ANGEL	NON-BONDS	10/31/2011	\$52,500	\$0	0.0%
ST0709	COUNTRY BROOK LANE	GO BONDS, NON-BONDS	9/30/2009	\$535,000	\$478,024	89.4%
ST0710	RIDGEVIEW- ALMA TO STACY	ROADWAY IMPACT, GO BONDS	9/30/2009	\$84,000	\$44,800	53.3%
ST0713	STREET LIGHTS PHASE II	NON-BONDS	9/30/2009	\$17,752	\$0	0.0%
ST0714	EXCHANGE/STACY RAMP REVER	EDC BONDS, NON-BONDS	2/20/2010	\$1,922,811	\$1,892,812	98.4%
ST0801	RIDGEVIEW-CUSTER TO ALMA	GO BONDS	3/30/2010	\$7,053,279	\$2,650,226	37.6%
ST0802	WATTERS RD BOSSY TO RIDGE	GO BONDS, NON-BONDS, RDW IF	9/30/2010	\$502,141	\$224,863	44.8%
ST0806	ALMA IMP ROWLETT/TATUM	NON-BONDS, FAC AGREEMENTS	9/30/2009	\$253,404	\$4,985	2.0%
ST0810	ALMA/HEDGCOXE TRAFFIC SIG	NON-BONDS	9/30/2009	\$43,740	\$33,097	75.7%
ST0811	2009 TRAFFIC SIGNALS	NON-BONDS, FAC AGR, RDW IF	12/31/2009	\$660,644	\$657,497	99.5%
ST0812	FY09 STREET & ALLEY REPAIR	NON-BONDS, GO BONDS	9/30/2009	\$429,938	\$398,904	92.8%
ST0813	SHALLOWATER DRIVE	GO BONDS	9/30/2009	\$35,000	\$33,685	96.2%
ST0902	RIDGEVIEW ALIGNMENT STUDY	GO BONDS	12/30/2009	\$100,000	\$51,000	51.0%
ST0903	CHELSEA DR & COMMERCE PKY	FA	9/30/2009	\$160,000	\$0	0.0%
ST0904	2010 TRAFFIC SIGNALS	NON-BONDS	9/30/2010	\$17,752	\$0	0.0%
ST9904	CHAPARRAL BRIDGE	GO BONDS, NON-BONDS, FCLTY	9/30/2010	\$1,572,025	\$414,212	26.3%
WA0118	ALLENWOOD SANITARY SEWER	NON-BONDS	9/30/2009	\$1,128,234	\$1,098,732	97.4%
WA0240	CUSTER RD PMP STA#3 EXPNS	W&S BOND, NON-BONDS, IMPACT	8/30/2009	\$5,820,021	\$5,779,058	99.3%
WA0335	WESTSIDE WATERLINE	W&S BOND, NON-BONDS, IMPACT	9/30/2009	\$3,427,426	\$3,377,426	98.5%
WA0401	US75 LIFT STA +12"FRM MN	NON-BONDS	9/30/2011	\$450,054	\$0	0.0%
WA0602	EXCHANGE PARKWAY WATERLIN	NON-BONDS	9/30/2009	\$84,000	\$71,545	85.2%
WA0704	CUSTER ROAD WATERLINE	NON-BONDS	8/31/2009	\$400,000	\$347,213	86.8%



CAPITAL IMPROVEMENT PROJECTS

Prepared by Finance Department

Active Status

Date: 6/11/2009

Project Number	Project Description	Funding Sources	Completion Date	Project Estimate	Total Encumbrance & Expenditures	Percent Expended
WA0803	LIFT STATION IMPROVEMENTS	NON-BONDS	9/30/2009	\$40,000	\$23,197	58.0%
WA0804	PUMP STATION IMPROVEMENTS	NON-BONDS	9/30/2009	\$50,000	\$36,419	72.8%
WA0805	HILLSIDE WATER TOWER	IMPACT FEES, NON-BONDS	6/30/2010	\$5,980,000	\$233,200	3.9%
WA0807	HIGH MEADOWS SEWER LINE	NON-BONDS	9/30/2009	\$800,000	\$695,188	86.9%
WA0808	MAIN ST WATERLINE REPLAC	NON-BONDS	9/30/2009	\$750,000	\$0	0.0%
WA0809	PUMP STATION REHABILITATI	NON-BONDS	9/30/2009	\$25,000	\$0	0.0%
WA0810	LIFT STATION REHABILITATI	NON-BONDS	9/30/2009	\$15,000	\$0	0.0%
WA0901	ROWLETT WATER TOWER FENCE	NON BONDS	9/30/2009	\$140,000	\$117,812	84.2%
WA0902	TIMBERCREEK SANITARY SEWE	NON-BONDS	12/30/2010	\$200,000	\$66,400	33.2%
WA0903	RIDGEVIEW WATERLINE EXT	NON-BONDS	9/30/2009	\$221,175	\$0	0.0%
WA0904	EXCHANGE PKWY WATERLINE	NON-BONDS	9/30/2009	\$362,972	\$362,972	100.0%
WA0905	GREENVILLE WATERLINE REPL	NON-BONDS	9/30/2010	\$317,061	\$0	0.0%
WA0906	SHALLOWATER WATER/SEWER	NON-BONDS	9/30/2010	\$100,000	\$0	0.0%
WA0907	CHELSEA & COMMERCE W/S	NON-BONDS	9/30/2010	\$350,000	\$0	0.0%
WA9996	FUTURE PUMP STATION	NON-BONDS	9/30/2010	\$50,000	\$0	0.0%
WA9997	FUTURE LIFT STATION	NON-BONDS	9/30/2010	\$40,000	\$0	0.0%



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CD0102	88	FIRE & WEATHER SAFETY TRL	9/30/2001	\$39,722	\$39,722
CD0401	628	HISTORICAL VLG LAND	9/30/2004	\$126,549	\$126,549
DR0311	742	TWIN CREEKS DRAINAGE	9/30/2005	\$703,849	\$703,847
DR0401	703	DRAINAGE REPLACEMENTS	9/30/2005	\$72,991	\$72,991
DR0601	1096	FOREST GROVE	9/12/2008	\$18,993	\$18,992
DR0602	1188	BOWLING ALLEY DRAINAGE	4/16/2009	\$439,863	\$439,863
DR0701	1100	ROWLETT CREEK FLOODPLAIN	9/18/2008	\$30,133	\$30,132
DR9301	576	MUSTANG CREEK	9/30/2003	\$1,123,034	\$1,123,034
DR9905	445	HILLSIDE DRAINAGE	9/30/2004	\$252,944	\$252,944
DR9906	339	HISTORIC DAM	9/30/2003	\$333,226	\$333,226
ED0201	322	MILLENIUUM TECH	9/30/2002	\$963,788	\$963,588
ED0301	318	MILLENIUUM TECH, PH 2	6/7/2006	\$1,017,817	\$1,017,817
ED0302	628	CENTURY @ BUTLER LAND	6/7/2006	\$597,488	\$587,361
ED8900	862	RIDGEMONT	9/30/2006	\$547,613	\$547,613
ED8910	768	MILLENIUUM CORPORATE CNTR	6/7/2006	\$3,277,340	\$3,277,340
G05011	697	SW GRAPPLE TRUCK	9/30/2005	\$89,473	\$89,410
IS0305	313	IT CONDUIT/PHONE SYS,PH1	9/30/2005	\$80,240	\$80,240
IS0306	998	IT CONDUIT/PHONE SYS,PH2	12/20/2007	\$83,225	\$83,225
IS0406	388	CIVIC BLDGS IMPRV, PH3	9/30/2005	\$52,666	\$52,666
IS0501	866	SERVICE CTR LAND ACQUISIT	8/31/2006	\$2,451,091	\$2,451,091
IS0503	850	PUMP STATION PWR FACTOR C	9/7/2006	\$27,666	\$27,666
IS0504	313	CITY HALL BLDG IMPROVEMNT	2/28/2006	\$18,802	\$18,800
IS0505	545	NATATORIUM POWER FACTOR C	3/22/2006	\$30,000	\$30,000
IS0601	877	CITY HALL REMODEL 2006	6/20/2007	\$29,700	\$29,700
IS0602	387	CITY HALL ANNEX RMDL 2006	3/22/2007	\$19,722	\$19,720
IS0702	377	FIRE STATION #2 ROOF	9/21/2007	\$50,038	\$50,038
IS0703	1121	IT DATA CENTER @CITY HALL	9/30/2008	\$506,061	\$506,060
IS0704	984	FIRE STATION #1 CARPET	9/21/2007	\$14,535	\$14,534
IS0705	984	FIRE STATION #1 WRK ROOM	9/21/2007	\$2,301	\$2,301
LB0101	693	MAIN LIBRARY	8/31/2006	\$11,855,075	\$11,855,075
LB0401	848	LIBRARY-ADAPTIVE RE-USE	9/30/2007	\$1,162,673	\$1,162,672
LB0501	863	LIBRARY BOOKS	8/25/2006	\$100,000	\$99,999
LB0701	885	MAIN LIBRARY PHASE II	9/6/2007	\$7,533	\$7,532
PR0002	575	NATATORIUM	9/30/2003	\$9,983,369	\$9,983,369
PR0003	357	BETHANY LAKES AMEN.BLDG.	9/30/2003	\$355,158	\$355,146
PR0004	580	CELEBRATION PARK	9/30/2003	\$6,797,817	\$6,797,814
PR0005	743	TRAILS CONSTRUCTION	11/4/2005	\$606,464	\$606,464
PR0006	334	MEDIAN BEAUTIFICATION	9/30/2002	\$131,333	\$131,333
PR0007	561	ALLEN STA PRK PH.1B	9/30/2003	\$640,777	\$640,777



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PR0008	420	GLNDVR,BETHNY,TWNCRK	9/30/2003	\$803,452	\$803,452
PR0009	233	BOLIN/SUNCREEK PRK	9/30/2002	\$866,922	\$866,922
PR0011	227	CITY HALL LANDSCAPE PH2	9/30/2002	\$455,665	\$455,665
PR0101	233	BOLIN PARK FENCE	9/30/2002	\$85,408	\$85,408
PR0102	746	ALLEN STATION PARK, PH 2	6/4/2007	\$6,571,744	\$6,545,273
PR0103	456	HERITAGE HOUSE TRAINDEPOT	9/30/2003	\$605,706	\$605,706
PR0104	864	CIVIC CENTER PLAZA	8/18/2006	\$1,709,740	\$1,701,446
PR0105	987	SPRING MEADOWS PARK	1/2/2008	\$574,240	\$574,238
PR0106	764	COM. PARK ACQUISITION #1	3/30/2006	\$2,860,834	\$2,860,834
PR0107	368	LOST CREEK PARK	9/30/2003	\$310,140	\$310,140
PR0109	566	FORD EAST PARK RENOVATION	9/30/2005	\$232,147	\$232,147
PR0110	566	FORD WEST PLAYGROUND	9/30/2003	\$47,937	\$47,937
PR0111	570	CTTNWOOD BEND PLAYGROUND	9/30/2003	\$58,629	\$58,007
PR0112	432	REED PARK PLAYGROUND	9/30/2003	\$65,847	\$65,846
PR0113	369	CELEBRATION PLAYGROUND	9/30/2003	\$206,276	\$206,277
PR0114	391	PARK ACQUISITION #2	9/30/2003	\$587,080	\$587,080
PR0115	711	STACY RIDGE PARK	9/30/2005	\$557,444	\$557,444
PR0116	359	MAIN ST LANDSCAPING	9/30/2003	\$205,907	\$205,907
PR0117	577	VALCON SYSTEM	9/30/2003	\$130,207	\$130,207
PR0201	896	COLLIN SQUARE GREENBELT	12/14/2006	\$4,700	\$4,700
PR0203	716	STORY PARK	9/30/2005	\$609,312	\$609,312
PR0206	376	FIRE STA #1 REMODEL	9/30/2004	\$123,736	\$123,736
PR0207	336	SIX CITIES TRAIL	9/30/2002	\$7,500	\$7,500
PR0211	301	BLUFF @ LOST CREEK PH 2	9/30/2002	\$300,000	\$300,000
PR0303	1011	PARK SIGNAGE	1/15/2008	\$56,336	\$56,336
PR0304	696	WATTERS CREEK TRAIL	9/30/2005	\$231,979	\$231,979
PR0306	233	BOLIN/SUNCREEK PARK PH2	9/30/2003	\$3,927	\$3,927
PR0307	389	FORD POOL RENOVATION	9/30/2003	\$83,753	\$83,317
PR0308	840	SENIOR CITIZENS CENTER	9/7/2007	\$4,807,328	\$4,804,321
PR0309	660	TWN CRK 3, IRRIGATION	9/30/2004	\$39,723	\$39,723
PR0401	820	LOST CREEK, PH 3	12/30/2005	\$340,000	\$340,000
PR0403	865	CELEBRATION ADDITIONS #1	8/18/2006	\$483,282	\$400,404
PR0406	763	ALLENWOOD PARK DEVELOPMNT	4/14/2009	\$1,031,507	\$1,031,506
PR0407	432	REED PARK, PH 2	9/30/2005	\$10,900	\$10,320
PR0409	904	NATATORIUM PH 1B	1/2/2007	\$5,000	\$4,850
PR0410	456	HERITAGE CNTR,PH1B	9/30/2004	\$21	\$21
PR0412	817	GLENDOVER NP, PH2	12/31/2005	\$277,024	\$277,024
PR0413	818	BETHANY RIDGE NP, PH2	12/31/2005	\$173,514	\$173,514
PR0414	819	DAYSRING NP (TWN CRK)	12/31/2005	\$39,208	\$39,208



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PR0415	740	QUAIL RUN PARK	8/16/2006	\$403,664	\$403,664
PR0419	937	JUPITER RD STORAGE FAC	6/22/2007	\$36,331	\$36,331
PR0420	748	GOLF COURSE-TAX EXEMPT	7/3/2007	\$5,350,272	\$5,350,268
PR0422	765	GOLF COURSE-TAXABLE	9/30/2006	\$919,887	\$919,883
PR0503	821	BETHANY LAKES PLAYGROUND	12/31/2005	\$114,201	\$114,201
PR0505	911	HERITAGE PARK BRIDGE	3/14/2007	\$184,255	\$184,255
PR0507	1012	BRIDGEWATER CROSSING R.A.	1/17/2008	\$120,653	\$120,652
PR0511	390	FORD PARK EAST IMPRVMENTS	9/30/2005	\$2,505	\$2,505
PR0512	383	J FARMER RCQTBL CT REPLCM	9/30/2005	\$51,899	\$51,899
PR0513	744	COTTONWOOD PARK PH 1B	9/30/2005	\$4,750	\$4,750
PR0602	1116	CMPTN CNTRLS/IRRIG+LIGHTS	9/30/2008	\$143,995	\$143,995
PR0603	1135	CELEBRATION #2 SPRAYGRD	12/11/2008	\$125,545	\$125,545
PR0605	870	BETHANY LAKES DISCGOLF EQ	9/7/2006	\$21,071	\$21,070
PR0607	849	CHASE OAKS CLUBHOUSE IMP	12/31/2007	\$175,619	\$175,618
PR0608	859	FORD PARK WEST-HOCKY WALL	8/30/2006	\$24,980	\$24,980
PR0610	1079	HOCKEY STORAGE FACILITY	8/19/2008	\$5,000	\$5,000
PR0612	871	RESERVATION MESSAGE BOARD	9/7/2006	\$4,880	\$4,880
PR0613	1003	CHASE OAKS PAVILION ENCLD	12/14/2007	\$210,800	\$210,799
PR0704	1136	JFRC RENOVATION PHASE 1	12/17/2008	\$22,170	\$22,169
PR0708	989	EX EQUIPMENT @ JFRC & DRN	6/2/2008	\$275,790	\$275,790
PR0722	986	GOLF COURSE-TAXABLE PH 2	12/26/2007	\$19,811	\$19,811
PR0802	1077	FORD SOFTBALL IMPROVEMENT	8/12/2008	\$59,366	\$59,366
PR0803	1047	DRN UV H2O TREATMENT PKG	3/31/2008	\$60,650	\$60,650
PR0807	1076	TWIN CREEK NP	8/7/2008	\$485,000	\$465,190
PR0808	1137	POLICE MONUMENT SIGN	12/11/2008	\$33,750	\$33,750
PR0811	1043	BOLIN PARK ACCESSIBILITY	3/25/2008	\$12,178	\$12,178
PR0816	1132	OUTDOOR CINEMA SYSTEM	1/28/2009	\$19,902	\$19,902
PR0904	0	SCOREBOARDS (ASP/BOLIN)	4/22/2009	\$35,554	\$35,554
PR3S03	0	SUMMER SOUNDS CONCERT SER	9/22/2004	\$105,257	\$117,692
PS0001	388	POLICE BLDG EXPANSION	9/30/2003	\$4,628,393	\$4,628,393
PS0004	546	CENTRAL FIRE STATION	9/30/2003	\$4,300,041	\$4,300,041
PS0201	730	FIRE STA APPARATUS	9/30/2005	\$349,981	\$349,981
PS0301	629	EMERGENCY MGMT WARNG SYST	9/30/2005	\$294,713	\$294,713
PS0302	374	EXHST SYS STA3&4	9/30/2003	\$17,110	\$17,110
PS0304	546	CNTRL FIRE ST GARAGE	9/30/2004	\$143,452	\$143,452
PS0305	630	CNTRL FIRE STA RENVATION	9/30/2004	\$31,902	\$31,902
PS0306	691	FIRE STA 2 3&4 RENVATION	9/30/2005	\$37,700	\$36,975
PS0401	388	POLICE STA ADDITIONS	9/30/2004	\$60,867	\$60,867
PS0402	927	PARKING LOT EXPNSN-POLICE	4/16/2007	\$245,443	\$245,442



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PS0403	546	FIRE STATION IMPRVMENT	9/30/2005	\$11,980	\$11,980
ST0035	574	ANGEL PKWY & MALONE	9/30/2003	\$3,290,404	\$3,290,404
ST0036	574	ANGEL PKWY,BY DVLPR	9/30/2003	\$131,042	\$131,042
ST0101	728	ALLEN HTS,BTHNY-PRKMEDIAN	9/30/2005	\$345,000	\$333,385
ST0111	761	FM2170E, ALLEN HTS-FM2551	9/12/2007	\$7,014,185	\$7,014,185
ST0113	854	BETHANY E, US75-ALLEN HTS	5/8/2006	\$3,915,419	\$3,915,419
ST0123	671	E EXCHANGE,SH5-1378	9/30/2004	\$3,014,641	\$3,014,641
ST0127	367	SGNL LT-CNTRY@MCDRM	9/30/2003	\$445,783	\$445,783
ST0136	672	ALMA DR,TATUM-BELAIR	9/30/2004	\$1,181,982	\$1,181,982
ST0137	330	WATTERS RD, PH I	9/30/2002	\$351,626	\$351,626
ST0141	395	ASPHALT PAVEMENT,PH I	9/30/2003	\$361,382	\$361,381
ST0142	556	CONCRETE ALLEY REPLCMNT	9/30/2003	\$672,824	\$672,823
ST0146	195	MAIN/MALONE INTERSECTION	9/30/2002	\$150,000	\$148,279
ST0148	231	101 S BUTLER,ASBSTS	9/30/2002	\$14,086	\$14,086
ST0201	396	SH 5 SIDEWALKS, PH2	9/30/2003	\$314,059	\$314,059
ST0202	876	ALLEN DRIVE	9/27/2006	\$3,036,182	\$3,036,182
ST0203	674	ST MARY'S DRIVE	9/30/2004	\$550,731	\$550,729
ST0204	360	STREET LIGHT INSTALLATION	9/30/2003	\$425,933	\$425,933
ST0205	361	ASH DRIVE	9/30/2003	\$320,736	\$320,735
ST0206	193	TEN OAKS	9/30/2002	\$58,880	\$58,880
ST0207	670	BETHANY SIGNAL	9/30/2004	\$151,140	\$151,140
ST0249	1089	ALLEN CENTRAL DRIVE	9/10/2008	\$48,116	\$48,116
ST0301	731	RIDGEMONT DRIVE	9/30/2005	\$824,510	\$824,510
ST0302	652	ASPHLT RPLCMNT PH2	9/30/2004	\$648,681	\$648,681
ST0304	364	RIDGEVIEW, US75-STACY RD	9/30/2004	\$228,000	\$227,250
ST0306	895	ANGEL PKWY, LANDSCAPE& LT	11/20/2006	\$418,831	\$418,830
ST0309	664	CONCRETE ALLEY PH 11	9/30/2004	\$476,646	\$476,035
ST0310	766	ALLEN DRIVE, PHASE 2	9/7/2006	\$674,124	\$674,124
ST0311	1058	INTERSECTION IMPROVEMENTS	4/30/2008	\$95,194	\$95,193
ST0313	628	BEL AIR DR ROW	9/30/2004	\$186,099	\$186,099
ST0315	767	BETHANY DRIVE EAST	12/8/2006	\$1,825,519	\$1,825,519
ST0318	351	BTHNY @AYLSBY SGNL	9/30/2004	\$74,840	\$74,840
ST0319	373	RDGVIEW/RWLT CR BRG	9/30/2003	\$74,376	\$74,375
ST0320	673	EXCHNGE PKWY@RVRCST	9/30/2004	\$92,298	\$92,298
ST0321	657	TRAFFIC SIGNALS	9/30/2004	\$130,700	\$130,700
ST0338	703	CONCRETE REPLACEMENTS	9/30/2005	\$835,525	\$835,525
ST0403	812	ST. MARY DRIVE, PH 2	2/10/2006	\$617,417	\$617,417
ST0404	853	HEDGCOXE RD,DCHSS-LNGWOOD	5/2/2006	\$144,283	\$144,282
ST0406	672	BEL AIR - ALMA SIGNAL	9/30/2005	\$106,916	\$106,916



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ST0407	739	TWIN CREEKS 7A1 AND 7A2	9/30/2005	\$133,380	\$133,380
ST0415	720	WATTERS RD,TWN CRK-WTRAIL	9/30/2005	\$244,935	\$244,935
ST0416	940	HILLSIDE/WNDRDGE ST.LIGHT	7/5/2007	\$7,248	\$7,248
ST0504	855	LED SIGNAL LIGHTS	5/11/2006	\$42,027	\$42,026
ST0505	979	RIDGEVIEW/CUSTER INTR SCTN	8/31/2007	\$153,014	\$153,014
ST0506	739	TEN OAKS LANDSCAPE	9/30/2005	\$25,000	\$24,210
ST0507	1090	ST. MARY DRIVE, PH 3	9/10/2008	\$2,007,891	\$2,007,890
ST0508	856	MCDERMOTT/75 INTERSECTION	5/11/2006	\$158,835	\$158,835
ST0509	822	McDRMTT@ALLEN DR INTR SCTN	2/20/2006	\$132,508	\$132,508
ST0601	1101	FIRE STA 2&3 EMERG SIGNAL	9/18/2008	\$130,870	\$130,871
ST0604	935	DUCHESS AND HEDGCOXE	6/21/2007	\$120,958	\$120,958
ST0606	941	CUMBERLAND CROSSING	7/5/2007	\$43,954	\$43,953
ST0607	939	SHALLOWATER BRIDGE	7/2/2007	\$180,000	\$180,000
ST0608	1117	STACY-WATTERS TRAFFIC SIG	9/30/2008	\$146,318	\$140,317
ST0697	892	SIDEWALK	9/30/2006	\$17,308	\$17,308
ST0701	1113	ALLEN DRIVE, PHASE 3	9/30/2008	\$361,098	\$361,098
ST0702	1120	EXCHANGE PKWY SIGNALS	9/30/2008	\$141,638	\$141,638
ST0703	923	WINDRIDGE EXCHANGE PKWY	3/22/2007	\$78,432	\$78,431
ST0705	1091	ALMA/HEDGCOXE	9/9/2008	\$480,000	\$410,322
ST0706	1083	JUPITER RD REPLACEMENT	9/5/2008	\$193,810	\$193,809
ST0707	954	US 75/SH 121 ROW	9/9/2008	\$150,000	\$150,000
ST0708	980	MCDERMOTT TURN LANE	9/12/2007	\$25,044	\$25,044
ST0711	1154	MAIN STREET LANDSCAPING	1/19/2009	\$289,681	\$289,681
ST0712	1092	2551/MAIN ST SIDEWALKS	9/12/2008	\$19,613	\$19,612
ST0715	1093	HEDGCOXE ROAD	9/10/2008	\$400,000	\$370,051
ST0717	1094	MCDERMOTT PAVEMENT REHABI	9/10/2008	\$348,729	\$348,728
ST0805	1167	STREET & ALLEY REPAIR	2/12/2009	\$297,649	\$297,648
ST0809	1119	BETHANY TRAFFIC SIGNALS	9/30/2008	\$8,750	\$8,750
ST9508	719	SH5 MEDIANS,CHP-XCH	9/30/2005	\$1,367,605	\$1,367,605
ST9512	229	MCDERMOTT,CUSTER-US75	9/30/2002	\$11,638,037	\$11,638,037
ST9809	572	COLLECTOR SIDEWALKS	9/30/2003	\$559,631	\$559,225
ST9828	230	ALMA DR, EXCHANGE-SH121	9/30/2002	\$3,566,608	\$3,566,608
ST9829	538	STACY RD,US75-SH121	9/30/2003	\$9,672,319	\$9,672,319
ST9903	541	BETHANY WEST	9/30/2003	\$5,671,564	\$5,671,564
ST9918	366	WATTERS,BETHANY-MCDERMOTT	9/30/2003	\$1,689,394	\$1,689,394
WA0009	228	LOST CREEK LIFT STATION	9/30/2001	\$88,000	\$87,879
WA0016	87	HIGHPOINT WATER LINE	9/30/2001	\$57,271	\$57,271
WA0027	560	ALLEN HTS IMPROVEMENTS	9/30/2003	\$1,170,306	\$1,170,302
WA0030	537	ALLEN HTS,PH II WATERLINE	9/30/2003	\$1,205,493	\$1,205,491



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WA0036	579	STACY RD PUMP STA#2	9/30/2003	\$5,130,942	\$5,130,942
WA0112	872	PRESTIGE CIR WATER TOWER	9/12/2006	\$4,165,604	\$4,165,604
WA0120	632	LOST CREEK RANCH PH2A	9/30/2004	\$348,230	\$348,230
WA0132	557	S.C.A.D.A.	9/30/2003	\$352,456	\$352,456
WA0133	356	HEDGCOXE WATERLINE	9/30/2003	\$255,881	\$255,881
WA0134	356	OVERSIZING W&S	9/30/2003	\$14,654	\$14,654
WA0214	392	WATERLINE REPLACEMENT	9/30/2003	\$124,375	\$124,375
WA0215	677	OLA SEWER/LIFT STA.	9/30/2004	\$936,723	\$936,720
WA0216	578	COTTONWOOD CREEK SEWER	9/30/2003	\$835,838	\$835,838
WA0217	731	RIDGEMONT SEWERLINE	9/30/2005	\$225,000	\$225,000
WA0218	308	STACY RIDGE LIFT STATION	9/30/2002	\$218,550	\$218,550
WA0219	358	BETHANY RIDGE LIFTSTATION	9/30/2003	\$113,616	\$113,616
WA0301	1122	TWN CREEKS 36" WTRLINE 6B	9/30/2008	\$734,100	\$734,099
WA0302	735	WATER TOWER SECURITYLIGHT	9/30/2005	\$423,572	\$423,572
WA0303	676	FAIRVIEW WSTWTR INTR	9/30/2004	\$104,682	\$104,682
WA0305	1194	COVENTRY II OVERSIZING	5/26/2009	\$131,109	\$131,109
WA0402	698	36" WATERLINE TC6A	9/30/2005	\$211,242	\$211,242
WA0403	811	ST. MARY DRIVE, PH 2	2/9/2006	\$83,000	\$82,798
WA0407	739	TWIN CREEKS 7A1 AND 7A2	9/30/2005	\$237,435	\$237,435
WA0415	720	WATTERS RD-QUAIL RUN	9/30/2005	\$29,470	\$29,470
WA0507	936	ST MARY DR PH III WATER	6/20/2007	\$57,000	\$57,000
WA0511	932	EAST MAIN WATER LINE	6/12/2007	\$1,554,666	\$1,554,666
WA0601	950	JUPITER RD SEWER REPLACEM	1/19/2009	\$488,201	\$488,200
WA0701	579	STACY RD GROUND STORAGE	9/12/2007	\$555,816	\$555,816
WA0702	1095	COUNTRY CLUB WATERLINE	9/9/2008	\$97,442	\$96,121
WA0703	1189	BEACON HILL/MCDERMOTT W/L	4/16/2009	\$53,399	\$53,399
WA0801	1084	ALLEN DRIVE PHASE III	9/5/2008	\$161,198	\$161,198
WA0802	1156	FAIR MEADOW SANITARY SEWE	1/19/2009	\$123,876	\$123,876
WA0806	1190	STACY TANK CATHODIC PROTE	4/16/2009	\$9,813	\$9,813
WA9822	226	PUMP STA #3 & 2 TNK	9/30/2002	\$9,552	\$9,552
WA9923	224	LNDSCP 2 ELEV TANK	9/30/2002	\$6,645	\$6,645
WA9925	225	CUSTER PMP ST3 LDSC	9/30/2002	\$89,488	\$89,488
WA9931	636	ALMA, TATUM-BELAIR	9/30/2004	\$20,921	\$20,920
Total Expenditures:				\$183,269,814	

CITY COUNCIL AGENDA COMMUNICATION
--

- AGENDA DATE:** June 23, 2009
- SUBJECT:** Conduct a Public Hearing and Consider an Ordinance to Grant a Change in Zoning to Amend PD Planned Development No. 54, Tract 11, from IT Industrial Technology to MF-18 Multi-Family to Allow for an Active Adult Senior Community on 22± Acres Located North of Watters Road and East of Bray Central Drive
- STAFF RESOURCE:** Ogden "Bo" Bass, AICP
Director of Planning and Development
- BOARD/COMMISSION ACTION:** A Public Hearing was held at the June 2, 2009 Planning and Zoning Commission meeting and the Commission recommended approval of the zoning amendment
- ACTION PROPOSED:** Adopt an ordinance

BACKGROUND

The property is located north of Watters Road and east of Bray Central Drive. The property to the north and east is PD Planned Development No. 54 for IT Industrial Technology. The property to the southwest is zoned PD Planned Development No. 54 for TH Townhome, the property to the west and northwest is zoned PD Planned Development No. 54 for MF Multi-Family, and the property to the south is zoned PD Planned Development No. 54 for CC Corridor Commercial.

The applicant has submitted a zoning amendment for 22± acres from PD IT Industrial Technology to PD MF-18 Multi-Family to allow for an active adult senior community. The Allen Land Development Code does not list "Adult Senior Community" as a use, therefore MF-18 Multi-Family is being used as the base zoning district with the provision the community will be limited to persons over the age of 55. The applicant has provided a deed restriction related to the minimum age requirement and it is included in this communication. The developer will begin with this first phase of an overall 'Senior Village' which is intended to provide additional senior living components for the larger tract of land bounded by Watters Drive, Bray Central Drive and Exchange Parkway.

The overall Concept Plan for the property includes two gated communities in two phases totaling 378 units. Both phases propose a three-story main structure comprised of one and two bedroom units, a clubhouse, a pool/courtyard element, and numerous amenities associated with the operations of an active senior community. Surrounding the three-story structures are ten one-story units. Attached garages are provided for a portion of the one story units. Phase I consists of 180 units and Phase II consists of 198 units.

The proposed amendment includes modifications to the base MF-18 district to provide for active senior adults. The modifications to the MF-18 district are as follows:

1. The proposed height is three-stories not to exceed 55 feet.
2. The front yard setback along Bray Central Drive and Watters Road is proposed as 25 feet.
3. The side and rear yard setbacks are proposed as ten feet.
4. The roof slope is planned as a minimum of 5:12.

Screening and fencing details are included in this communication.

Parking for the active senior adult community is outlined as 1.5 spaces per unit. The Allen Land Development Code requires 2.25 garage parking spaces per unit in the MF-18 district. Staff has researched developments similar to the proposed project, as well as the ordinance requirements of other cities for like projects, and we are recommending a minimum of 1.5 parking spaces per unit. The parking ratio research is included in this communication.

The rear yard along the northern property boundary has been reduced to ten feet with the requirement of retaining the existing off-site tree line as a buffer and setback for future development. The current owner of the subject property is also the owner for the adjacent property and they have offered a Tree Preservation Dedication Restrictive Covenant to guarantee the preservation of the tree line. Also included in this communication is a Concept Master Trail Plan. Details related to locations of City owned trail, private trail and required connections will be addressed at the time of Site Plan.

This item was discussed at the June 2, 2009 Planning and Zoning Commission meeting and a public hearing was held. The Commission recommended approval of the zoning amendment at that meeting.

PUBLIC NOTICE INFORMATION

Notices mailed to property owners within 200 ft. – May 22, 2009.

Newspaper notice was published – June 4, 2009.

Public hearing sign installed – May 8, 2009.

STAFF RECOMMENDATION

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

MOTION

I make a motion to adopt Ordinance No. _____ amending 22± acres of PD Planned Development No. 54 Tract 11 from IT Industrial Technology to MF-18 Multi-Family to allow for an active adult senior community.

ATTACHMENT

Location Map
Parking Comparisons
Master Trail Plan
Tree Preservation Restrictive Covenant
Age Requirement Deed Restrictions
Property Owner List
Draft Minutes from 6-2-09 Planning
Ordinance

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 FROM “IT” INDUSTRIAL TECHNOLOGY TO “MF-18” MULTI-FAMILY FOR A PORTION OF TRACT 11 OF PLANNED DEVELOPMENT NO. 54, AS HERETOFORE AMENDED, FOR 22.036 ACRES IN THE CATHERINE PARSONS SURVEY, ABSTRACT NO. 711, BEING FURTHER DESCRIBED IN EXHIBIT “A,” ATTACHED HERETO; PROVIDING FOR DEVELOPMENT REGULATIONS; PROVIDING FOR A CONCEPT PLAN, BUILDING ELEVATIONS, PROVIDING FOR A SCREENING PLAN ATTACHED HERETO AS EXHIBITS “B,” “C,” and “D” RESPECTIVELY, PROVIDING FOR A REPEALING 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, be amended by granting a change in zoning from “IT” Industrial Technology to “MF-18” Multi-family for a portion of Tract 11 of Planned Development No. 54, Ordinance No. 1172-5-93, as heretofore amended, for 22.036 acres in the Catherine Parsons Survey, Abstract No. 711, City of Allen, Collin County, and being further described in Exhibit “A” attached hereto.

SECTION 2. The Property shall be developed and used only in accordance with the following Development Regulations:

- A. **Base Zoning District:** The portion of Tract 11 included in this PD Amendment shall be developed and used only in accordance with the MF-18 Multi-family District zoning regulations of the Allen Land Development Code contained within Planned Development 54, except as otherwise provided herein.
- B. **Concept Plan:** The Property shall be developed and used only in accordance with the Concept Plan attached hereto as Exhibit “B,” and which is hereby approved.
- C. **Building Elevations:** The Property shall be developed and used only in accordance with the Building Elevations attached hereto as Exhibit “C.”

- D. Screening Plan:** The Property shall be developed and used only in accordance with the Screening Plan attached hereto as Exhibit “D.”
- E. Deed Restriction:** The property shall be deed restricted pursuant to an instrument approved by the City Attorney pursuant to which use of the property shall be limited to residential use by persons 55 years or older consistent with the Federal Fair Housing Act and other applicable law. Such deed restriction shall be recorded the earlier of prior to the approval of the first plat for the property or portion of the property and the issuance of the first building permit.
- F. Maximum Height:** Three stories not to exceed fifty-five (55) feet to the top of roof.
- G. Front Yard Set-back:** Minimum of twenty-five (25) feet from the property line adjacent to the front street. The front yard line is also referred to as the “building line”.
- H. Side Yard Set-back:** Minimum side set-back of ten (10) feet.
- I. Rear Yard Set-back:** Minimum rear yard set-back of ten (10) feet.
- J. Residential parking:** 1.5 spaces per unit
5% of the total required parking spaces shall be marked handicap.
- Covered and Garage parking is included in the required parking calculations.
- Garages: The primary use of all garages shall be for the storage of automobiles. Rules and regulations of the development will not permit the usage of garages for the primary storage of items or vehicles other than automobiles.
- Covered parking: Covered parking spaces shall be available to all residents until a covered space is reserved by a resident. At the time a covered parking space is reserved, a sign will be posted in front of the reserved covered parking space indicating that the space is reserved.
- K. Roof Slope:** Minimum of 5:12 roof slope. Accent roofs may have a 2:12 roof slope.
- L. Screening and Fencing Regulations:** Screening and fencing shall be in accordance with the Perimeter Screening Plan included in the Concept Plan. The east-west tree line on the northern property boundary shall be protected by a separate restrictive covenant.
- M. Use:** The property shall be restricted to residential use by persons 55 years or older consistent with the Federal Fair Housing Act and other applicable law.

SECTION 3. The above-described tract of land shall be used only in the manner and for the purpose provided for by the Allen Land Development Code, Zoning Regulations, as heretofore amended, and subject to the aforementioned development regulations.

SECTION 4. 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 5. 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 6. 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 7. 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 8. 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 23RD DAY OF JUNE, 2009.

APPROVED:

Stephen Terrell, Mayor

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, City Attorney
(36832)

Shelley B. George, City Secretary

EXHIBIT "A"

LEGAL DESCRIPTION

22.036 ACRE TRACT
Part of Lot 1, Block C, Bray Central One
Part of a Vacation Plat of Lots 1, 2, 3 & 4, Block A and
Lots 1 & 2, Block B, Bray Central One and
Part of Bray Central Drive & Benton Drive
Catherine Parsons Survey, Abstract No. 711
City of Allen, Collin County, Texas

DESCRIPTION, of a 22.036 acre tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; said tract being part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Texas according to the plat recorded in Cabinet G, Slide 120 of the Plat Records of Collin County, Texas; part of a Vacation Plat of Lots 1, 2, 3 & 4, Block A and Lots 1 & 2, Block B, Bray Central One, an addition to the City of Allen, Texas according to the plat recorded in Cabinet K, Slide 804 of said Plat Records; all of that certain portion of Bray Central Drive abandoned by the plat of Bray Central Drive & Benton Drive, an addition to the City of Allen, Texas recorded in Cabinet N, Slide 110 of said Plat Records and part of that certain tract of land described as Tract 11 in Special Warranty Deed to Bossy Boots Holdings, Ltd. recorded in Volume 5398, Page 6447 of the Deed Records of Collin County, Texas; said 22.036 acre tract being more particularly described as follows (bearing system for this survey based on a bearing of South 39 degrees, 18 minutes, 43 seconds West for the northwest right-of-way line of Watters Road according to the first referenced plat of Bray Central One):

BEGINNING, at a point for corner (nothing found or set) at the intersection of the said northwest line of Watters Road (a 110-foot wide right-of-way) and the northeast right-of-way line of Bray Central Drive (a variable width right-of-way, 110 feet wide at this point); said point being the southernmost corner of said Tract 11;

THENCE, along the said northeast line of Bray Central Drive and the southwest line of said Tract 11, the following four (4) calls:

North 50 degrees, 41 minutes, 21 seconds West, a distance of 224.79 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 55 degrees, 53 minutes, 01 seconds West, a distance of 110.45 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 50 degrees, 41 minutes, 21 seconds West, a distance of 131.72 feet to a 5/8-inch iron rod with "CARTER & BURGESS" cap found at the beginning of a tangent curve to the right;

In a northwesterly direction, along said curve to the right, having a central angle of 19 degrees, 44 minutes, 57 seconds, a radius of 2,376.00 feet, a chord bearing and distance of North 40 degrees, 48 minutes, 53 seconds West, 814.93 feet, an arc distance of 818.97 feet to a point for corner (nothing found or set); said point being in the approximate centerline of an un-named creek;

THENCE, departing the said northeast line of Bray Central Drive and the said southwest line of Tract 11 and along the said approximate creek centerline, the following three (3) calls:

North 47 degrees, 03 minutes, 13 seconds East, a distance of 66.81 feet to a an angle point (nothing found or set);

North 58 degrees, 48 minutes, 14 seconds East, a distance of 93.29 feet to an angle point (nothing found or set);

North 35 degrees, 47 minutes, 58 seconds East, a distance of 18.86 feet to a point for corner (nothing found or set) in the north terminus of that said portion of old Bray Central Drive abandoned by the said plat recorded in Cabinet N, Slide 110;

THENCE, North 89 degrees, 41 minutes, 04 seconds East, departing the said approximate creek centerline and along the said north terminus of old Bray Central Drive and the north line of the said Lot 1, a distance of 1431.64 feet to a 1/2-inch iron rod with "NELSON CORP" cap found for corner in the west line of said Watters Road and the east line of said tract 11; said point being the northeast corner of said Lot 1;

THENCE, along the said west and northwest lines of Watters Road, the said east line of Tract 11 and the southeast line of said Tract 11, the following three (3) calls:

South 00 degrees, 41 minutes, 17 seconds East, a distance of 0.36 feet to a point (nothing found or set) at the beginning of a tangent curve to the right;

In a southwesterly direction, along said curve to the right, having a central angle of 40 degrees, 00 minutes, 00 seconds, a radius of 545.00 feet, a chord bearing and distance of South 19 degrees, 18 minutes, 43 seconds West, 372.80 feet, an arc distance of 380.48 feet to a 1/2-inch iron rod found at the end of said curve;

South 39 degrees, 18 minutes, 43 seconds West, a distance of 865.18 feet to the POINT OF BEGINNING;

CONTAINING, 959,884 square feet or 22.036 acres of land, more or less.

Building D

01 NORTH ELEVATION (FRONT)
 1/8" = 1'-0"

02 WEST ELEVATION (SIDE)
 1/8" = 1'-0"

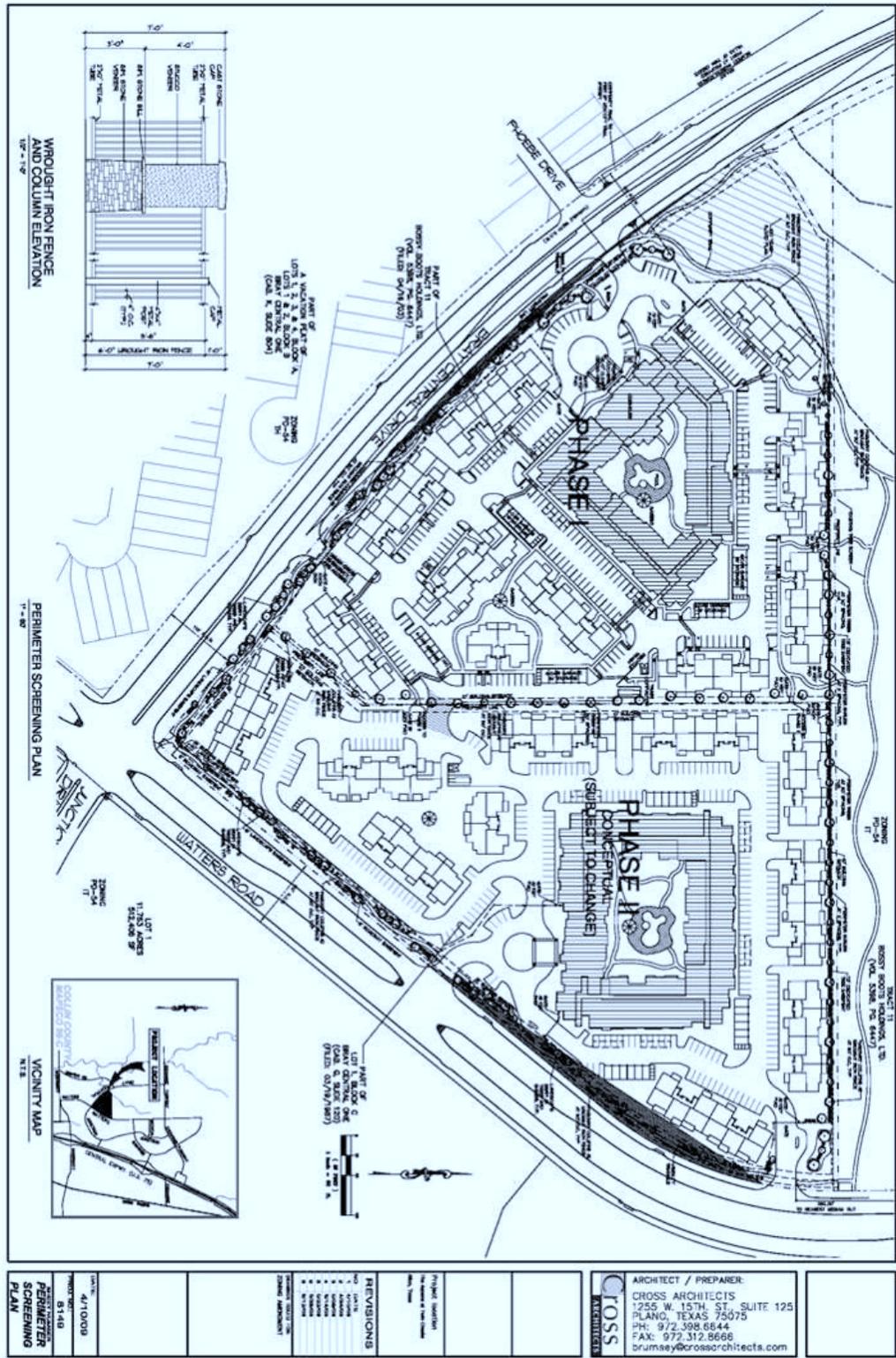
03 EAST ELEVATION (SIDE)
 1/8" = 1'-0"

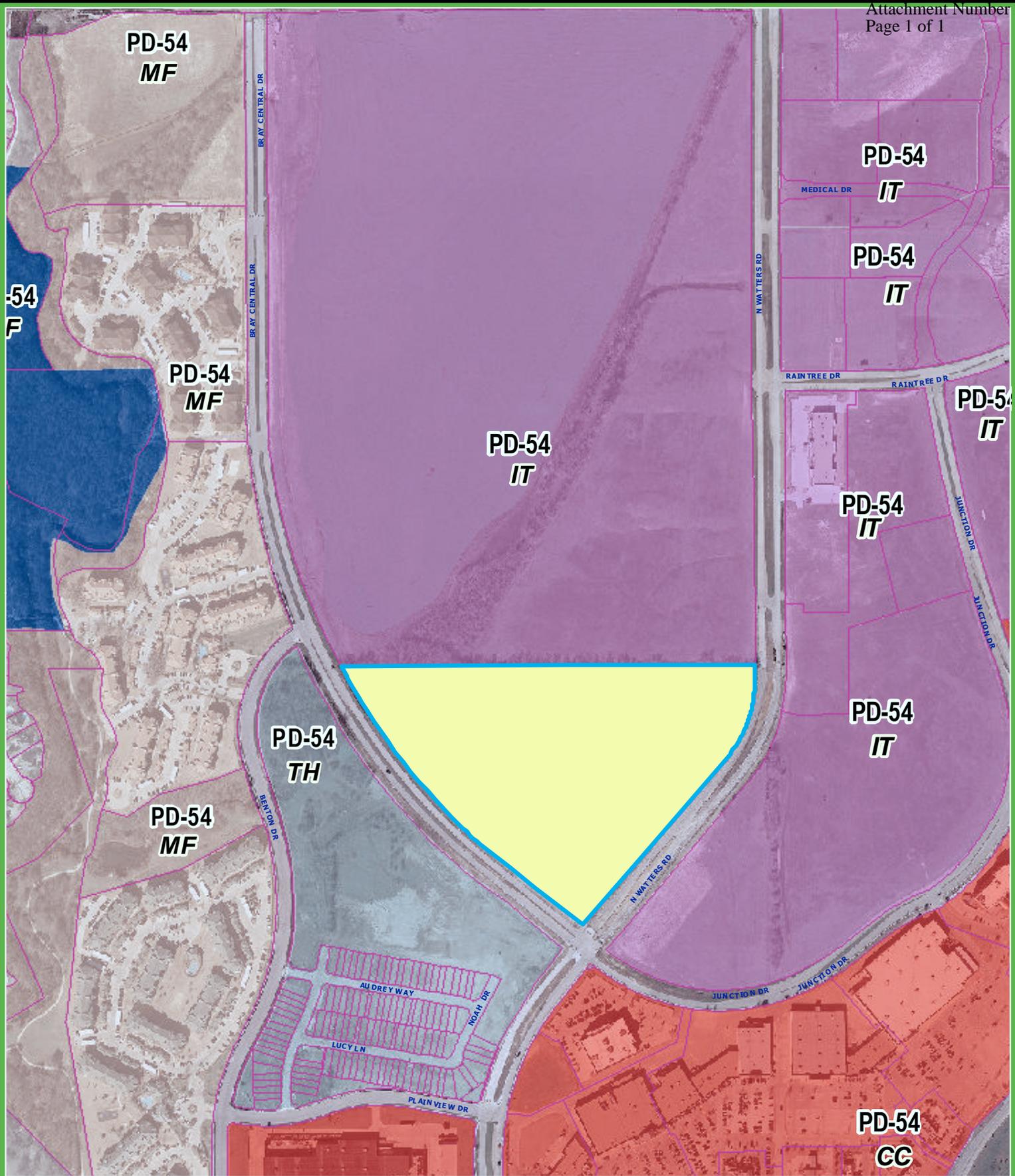
04 SOUTH ELEVATION (REAR)
 1/8" = 1'-0"

E 3 ARCHITECTURAL SHEET	DATE: 4/17/2018 PROJECT: 1514 B	REVISIONS No. Description 1. Initial 2. Change 3. Change 4. Change 5. Change 6. Change 7. Change 8. Change 9. Change 10. Change	PROJECT LOCATION: 1256 W. 15TH ST. SUITE 125 PLANO, TEXAS 75075 PH: 972.398.6644 FAX: 972.312.6666 brumsey@crossarchitects.com
	ARCHITECT / PREPARER: CROSS ARCHITECTS 1256 W. 15TH ST. SUITE 125 PLANO, TEXAS 75075 PH: 972.398.6644 FAX: 972.312.6666 brumsey@crossarchitects.com		



EXHIBIT "D"
SCREENING PLAN





**East of Bray Central Dr./
north of Waters Rd.
- directly across from Phoebe Drive**

Planning & Development - GIS
Revision Date: 05/2019

Map Legend

Property Boundary section	(CF) Community Facilities	(MDR) Medium Density Residential	(OMF) Office/Multi-family	(R-6) Residential <5>
Railroad	(GB) General Business	(MF) Multi-family	(OS) Open Space	(R-8) Residential <8>
City Limit	(GO) Guard Office	(MF-2) Multi-family <2>	(OT) Office Technology	(R-7) Residential <7>
Property Boundary	(IT) Industrial Technology	(MF-12) Multi-family <12>	(SF) Single Family Residential	(SQ) Shopping Center
(AO) Agriculture/Open	(LC) Light Commercial	(MF-18) Multi-family <18>	(R-1) Residential <1>	(TH) Town Homes
(C) Commercial	(LI) Light Industrial	(MF-24) Multi-family <24>	(R-15) Residential <1.5>	
(CO) Commercial/Office	(LJ) Light Industrial Conditional	(MF-48) Multi-family <48>	(R-2) Residential <2>	
(CC) Corridor Commercial	(LR) Local Retail	(O) Office	(R-3) Residential <3>	
	(MDSF) Medium Density Single Family	(OI) Office	(R-4) Residential <4>	
		(OLI) Office/Light Industrial		

LOCATOR MAP

W E
S N

Filepath: F:\Maps\Layout\Planning&Development\Public\Notices\PH39g_Junction_BrayCentral_It.mxd

Active Adult Parking Comparisons

The Aspens Active Senior Community

1.5 Spaces per Unit

Proposal of 270 Parking Spaces

180 Units

City	Ratio
Plano	1 space/unit
The Colony	1.3 spaces/unit
Fort Worth	1 space/bedroom
McKinney	1 space/unit
Frisco	2 spaces per unit



CONCEPTUAL MASTER TRAIL PLAN SYSTEM

(SUBJECT TO REFINEMENT AND APPROVAL BY CITY OF ALLEN PARKS AND RECREATION AND RESPECTIVE PROPERTY OWNERS)

SITE LEGEND

THE ASPENS AT TWIN CREEKS

-  PROPOSED TRAIL SYSTEM
-  EXISTING TRAILS

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

**TREE PRESERVATION DEDICATION
AND RESTRICTIVE COVENANT**

**STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

KNOW ALL MEN BY THESE PRESENTS:

That **Bossy Boots Holdings, Ltd.**, a Texas limited partnership, (“Declarant”), whose address is 5910 North Central Expressway, Suite 1445, Dallas, Dallas County, Texas, 75206, being the owner in fee simple of certain real property located in the City of Allen, Collin County, Texas, said property being a 0.424 acre tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas, said tract being a part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Collin County, Texas, according to the plat recorded in Cabinet G, Slide 120, of the Plat Records of Collin County, Texas, and being more fully described by metes and bounds in Exhibit “A” and depicted in Exhibit “B,” said exhibits being attached hereto and incorporated herein by reference (“the Property”), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by the City of Allen, Texas (“City”), the receipt and sufficiency of which is hereby acknowledged, hereby executes this Tree Preservation Dedication and Restrictive Covenant (“Dedication”) and declares and dedicates the Property as an open area for the purpose of preserving existing trees and vegetation on the Property subject to the provisions of this Dedication. The Property shall be preserved and maintained by Declarant, its successor and assigns, as an open area. No use or development of the Property shall be allowed except as follows:

1. The installation, removal, repair, and/or maintenance of underground utilities, i.e. water sanitary sewer, storm sewer, drainage, etc., as may be authorized by City;
2. The dedication and construction of one public or private street or private drive that bi-sects the tree-line on the Property at a location approved by City; and
3. The construction of a public or private hike-and-bike trail or recreation improvement that bi-sects the tree-line on the Property at a location approved by City.

The Property shall be used in accordance with the following additional restrictions:

1. No living tree with a trunk with a caliper measure of two inches (2.0”) or greater may be removed from the Property.

2. Excess brush and dead or decaying plant material may be removed from the Property to the extent reasonably necessary to reduce the amount of fuel that might be supplied to a brush fire that may affect the Property or adjacent properties.
3. No construction materials, equipment, debris, fill materials, or personal property of any kind, including, but not limited to, vehicles of any kind, may be placed, stored, or otherwise located, either permanently or temporarily, on the Property.
4. No re-grading involving cut and fill shall occur within thirty feet (30.0') of either side of the tree-line on the Property except as may be approved by City.

Each and all of the covenants, restrictions, conditions and provisions contained in this Dedication (whether affirmative or negative in nature) are made for the direct, mutual and reciprocal benefit of the City and constitute covenants running with the land, binding Declarant and each and every subsequent owner and/or occupant of the Property having any fee, leasehold, or other interest in any portion of the Property, any time and from time to time. This Dedication shall be perpetual and may not be amended or terminated without the prior approval of a majority of the City Council of the City of Allen, Texas, voting in a duly called meeting pursuant to the Texas Open Meetings Act, as amended. Declarant hereby declares that City is an intended beneficiary of this Dedication with the right to enforce the provisions contained herein as City may, in its sole discretion, determine, including the right to seek injunctive or other equitable relief to prevent any non-compliance with the provisions contained in this Dedication.

SIGNED this 2nd day of June, 2009.

Bossy Boots Holdings, Ltd., a Texas limited partnership, by and through its general partner, Bossy Boots Investments, Inc. a Texas corporation

By: 

Name: THEODORE M. JONES

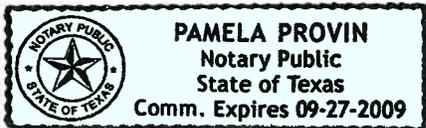
Title: VICE PRES.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 2nd day of June,
2009, by Theodore M. Jones, Vice President
of Bossy Boots Investments, Inc. a Texas corporation, general partner of Bossy Boots Holdings,
Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

Pamela Provin
Notary Public, State of Texas
My Commission expires: 9/27/09



AFTER RECORDING RETURN TO:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard Street
Suite 1800
Dallas, Texas 75201

DESCRIPTION, of an 18,488 square foot (0.424 acre) tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; said tract being part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Texas according to the plat recorded in Cabinet G, Slide 120 of the Plat Records of Collin County, Texas and part of that certain tract of land described as Tract 11 in Special Warranty Deed to Bossy Boots Holdings, Ltd. recorded in Volume 5398, Page 6447 of the Deed Records of Collin County, Texas; said 18,488 square foot tract being more particularly described as follows (bearing system for this survey based on a bearing of North 39 degrees, 18 minutes, 43 seconds East for the northwest right-of-way line of Watters Road according to the said plat of Bray Central One):

COMMENCING, at a point (nothing found or set) at the intersection of the said northwest line of Watters Road (a 110-foot wide right-of-way) and the northeast right-of-way line of Bray Central Drive (a variable width right-of-way, 110 feet wide at this point); said point being the southernmost corner of said Tract 11;

THENCE, along the said northwest line of Watters Road, the west right-of-way line of said Watters Road, the east line of said Lot 1 and the southeast and east lines of said Tract 11, the following two (2) calls:

North 39 degrees, 18 minutes, 43 seconds East, a distance of 865.18 feet to a 1/2-inch iron rod found at the beginning of a tangent curve to the left;

In a northwesterly direction, along said curve to the left, having a central angle of 39 degrees, 14 minutes, 58 seconds, a radius of 545.00 feet, a chord bearing and distance of North 19 degrees, 41 minutes, 14 seconds East, 366.08 feet, an arc distance of 373.34 feet to the POINT OF BEGINNING (nothing found or set);

THENCE, South 89 degrees, 41 minutes, 04 seconds West, departing the said west line of Watters Road, the said east line of Lot 1 and the said east line of Tract 11, a distance of 1250.02 feet to a point for corner (nothing found or set);

THENCE, North 66 degrees, 29 minutes, 59 seconds East, at a distance of 19.05 feet passing the north line of said Lot 1, continuing in all a total distance of 38.10 feet to a point for corner (nothing found or set);

THENCE, North 89 degrees, 41 minutes, 04 seconds East, a distance of 1214.95 feet to a point for corner (nothing found or set) in the said west line of Watters Road and the said east line of Tract 11;

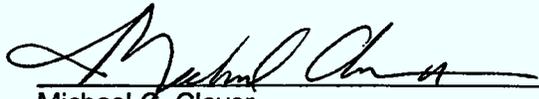
THENCE, South 00 degrees, 41 minutes, 17 seconds East, at a distance 7.50 feet passing the said north line of Lot 1, continuing in all a total distance of 7.86 feet to a 1/2-inch iron rod with "NELSON CORP" cap found at the beginning of a tangent curve to the right;

THENCE, in a southwesterly direction, along said curve to the right, having a central angle of 00 degrees, 45 minutes, 02 seconds, a radius of 545.00 feet, a chord bearing and distance of South 00 degrees, 18 minutes, 47 seconds East, 7.14 feet, an arc distance of 7.14 feet to the POINT OF BEGINNING;

CONTAINING, 18,488 square feet or 0.424 acres of land, more or less.

(A survey plat of even survey date herewith accompanies this description.)

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the easement tract described.


Michael C. Clover Date 05/26/09

Registered Professional Land Surveyor No. 5225
Pacheco Koch Consulting Engineers, Inc.
8350 N. Central Expwy, #1000, Dallas TX 75206
(972) 235-3031
TX Reg. Surveying Firm LS-100080-00



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

DECLARATION OF AGE RESTRICTIONS

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF COLLIN §

THIS DECLARATION OF AGE RESTRICTIONS (this "Declaration") is executed by **BOSSY BOOTS HOLDINGS, LTD.**, a Texas limited partnership ("Declarant").

RECITALS:

A. Declarant is the owner in fee simple of certain real property located in the City of Allen, Collin County, Texas, said property being more fully described by metes and bounds on Exhibit "A," attached hereto and incorporated herein by reference ("the Property");

B. Declarant intends for the Property to be developed as an age-restricted residential community; and

C. Declarant desires to impose certain covenants, conditions and restrictions upon the Property in order to ensure that the Project (as defined herein) is operated as an age-restricted residential community in compliance with all applicable Texas and federal laws.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that (a) all the Property shall be held, sold, transferred and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration; and (b) these covenants, conditions and restrictions shall run with the land in the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner of all or a part of the Property.

1. Definitions. Capitalized terms used in this Declaration and not defined elsewhere herein shall have the meanings assigned to them in this Section 1.

"Age Restrictions" shall mean the restrictions imposed on the Property and the Project pursuant to Section 2 hereof.

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

"Project" shall mean an adult residential community to be developed and constructed on the Property.

“Unit” shall mean each physical portion of the Project that is designated for occupancy as a residential apartment.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the Property.

2. **Age Restrictions.** The Project is intended to provide housing primarily for persons 55 years of age or older. The Project shall be operated as an age-restricted residential community in compliance with all applicable Texas and federal laws. Each Unit, if occupied, must be occupied by at least one person 55 years of age or older. No person under 19 years of age shall occupy or stay overnight in a Unit for more than ninety (90) days during any twelve (12) consecutive months. Declarant shall establish policies and procedures from time to time as necessary to maintain the Project’s status as an age-restricted community under Texas and federal laws; provided, however, such policies and procedures shall in no event amend or terminate the Age Restrictions without the City’s prior approval as required by Section 3.

3. **Amendments to Age Restrictions.** If at any time Declarant or any subsequent Owner desires to amend or terminate the Age Restrictions, Declarant shall so notify the City in writing and submit a proposed form of such amendment or termination for the City’s review and comment. The City may approve or disapprove any proposed amendment or termination in its sole discretion. No amendment or termination of the Age Restrictions shall be effective without the prior approval of a majority of the City Council of the City, voting in a duly called meeting pursuant to the Texas Open Meetings Act, as amended.

4. **General Provisions.**

(a) Each and all of the covenants, conditions and restrictions contained in this Declaration (whether affirmative or negative in nature) are made for the direct, mutual and reciprocal benefit of the City and constitute covenants running with the land, binding Declarant and each and every subsequent Owner and/or occupant of the Property having any fee, leasehold, or other interest in any portion of the Property, any time and from time to time.

(b) This Declaration shall be perpetual.

(c) Declarant hereby declares that the City is an intended beneficiary of this Declaration with the right to enforce the provisions contained herein as the City may, in its sole discretion, determine, including the right to seek injunctive or other equitable relief to prevent any non-compliance with the provisions contained in this Declaration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED on the date of acknowledgment below, but effective as of JUNE 2, 2009 for all purposes.

DECLARANT:

BOSSY BOOTS HOLDINGS, LTD.,
a Texas limited partnership

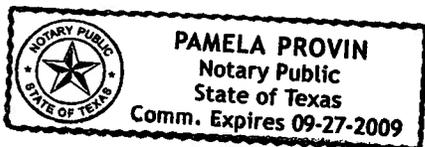
By: Bossy Boots Investments, Inc., a Texas corporation, its General Partner

By: *[Signature]*
Name: THEODORE M. JONES
Title: VICE PRES.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me this 2nd day of June, 2009, by Theodore M. Jones, Vice President of Bossy Boots Investments, Inc., a Texas corporation, on behalf of said corporation in its capacity as general partner of Bossy Boots Holdings, Ltd., a Texas limited partnership.



(PERSONALIZED SEAL)

[Signature]
Notary Public

AFTER RECORDING RETURN TO:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 N. Akard Street
Suite 1800
Dallas, Texas 75201

EXHIBIT A

22.036 ACRE TRACT

Part of Lot 1, Block C, Bray Central One
Part of a Vacation Plat of Lots 1, 2, 3 & 4, Block A and
Lots 1 & 2, Block B, Bray Central One and
Part of Bray Central Drive & Benton Drive
Catherine Parsons Survey, Abstract No. 711
City of Allen, Collin County, Texas

DESCRIPTION, of a 22.036 acre tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; said tract being part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Texas according to the plat recorded in Cabinet G, Slide 120 of the Plat Records of Collin County, Texas; part of a Vacation Plat of Lots 1, 2, 3 & 4, Block A and Lots 1 & 2, Block B, Bray Central One, an addition to the City of Allen, Texas according to the plat recorded in Cabinet K, Slide 804 of said Plat Records; all of that certain portion of Bray Central Drive abandoned by the plat of Bray Central Drive & Benton Drive, an addition to the City of Allen, Texas recorded in Cabinet N, Slide 110 of said Plat Records and part of that certain tract of land described as Tract 11 in Special Warranty Deed to Bossy Boots Holdings, Ltd. recorded in Volume 5398, Page 6447 of the Deed Records of Collin County, Texas; said 22.036 acre tract being more particularly described as follows (bearing system for this survey based on a bearing of South 39 degrees, 18 minutes, 43 seconds West for the northwest right-of-way line of Watters Road according to the first referenced plat of Bray Central One):

BEGINNING, at a point for corner (nothing found or set) at the intersection of the said northwest line of Watters Road (a 110-foot wide right-of-way) and the northeast right-of-way line of Bray Central Drive (a variable width right-of-way, 110 feet wide at this point); said point being the southernmost corner of said Tract 11;

THENCE, along the said northeast line of Bray Central Drive and the southwest line of said Tract 11, the following four (4) calls:

North 50 degrees, 41 minutes, 21 seconds West, a distance of 224.79 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 55 degrees, 53 minutes, 01 seconds West, a distance of 110.45 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 50 degrees, 41 minutes, 21 seconds West, a distance of 131.72 feet to a 5/8-inch iron rod with "CARTER & BURGESS" cap found at the beginning of a tangent curve to the right;

In a northwesterly direction, along said curve to the right, having a central angle of 19 degrees, 44 minutes, 57 seconds, a radius of 2,376.00 feet, a chord bearing and distance of North 40 degrees, 48 minutes, 53 seconds West, 814.93 feet, an arc distance of 818.97 feet to a point for corner (nothing found or set); said point being in the approximate centerline of an un-named creek;

THENCE, departing the said northeast line of Bray Central Drive and the said southwest line of Tract 11 and along the said approximate creek centerline, the following three (3) calls:

North 47 degrees, 03 minutes, 13 seconds East, a distance of 66.81 feet to a an angle point (nothing found or set);

North 58 degrees, 48 minutes, 14 seconds East, a distance of 93.29 feet to an angle point (nothing found or set);

North 35 degrees, 47 minutes, 58 seconds East, a distance of 18.86 feet to a point for corner (nothing found or set) in the north terminus of that said portion of old Bray Central Drive abandoned by the said plat recorded in Cabinet N, Slide 110;

THENCE, North 89 degrees, 41 minutes, 04 seconds East, departing the said approximate creek centerline and along the said north terminus of old Bray Central Drive and the north line of the said Lot 1, a distance of 1431.64 feet to a 1/2-inch iron rod with "NELSON CORP" cap found for corner in the west line of said Watters Road and the east line of said tract 11; said point being the northeast corner of said Lot 1;

THENCE, along the said west and northwest lines of Watters Road, the said east line of Tract 11 and the southeast line of said Tract 11, the following three (3) calls:

South 00 degrees, 41 minutes, 17 seconds East, a distance of 0.36 feet to a point (nothing found or set) at the beginning of a tangent curve to the right;

In a southwesterly direction, along said curve to the right, having a central angle of 40 degrees, 00 minutes, 00 seconds, a radius of 545.00 feet, a chord bearing and distance of South 19 degrees, 18 minutes, 43 seconds West, 372.80 feet, an arc distance of 380.48 feet to a 1/2-inch iron rod found at the end of said curve;

South 39 degrees, 18 minutes, 43 seconds West, a distance of 865.18 feet to the POINT OF BEGINNING;

CONTAINING, 959,884 square feet or 22.036 acres of land, more or less.

THE ASPENS AT TWIN CREEKS

Bossy Boots Holdings LTD
5910 N. Central Expressway
Suite 1445
Dallas, Texas 75206-5127

Creek Villa LTD
8222 Douglas Avenue
Suite 250
Dallas, Texas 75225-5933

Cadence Capital Partners, L.P.
580 Decker Drive
Suite 280
Irving, Texas 75062

Bruce Heller
Watters Corporate Center Two L.P.
1333 W. McDermott Drive
Suite 150
Allen, Texas 75013

Allen Fitness L.P.
1748 W. Katella Avenue
Suite 206
Orange, California 92867

Agenda Item #5: Public Hearing – Conduct a Public Hearing and consider a request to amend 22.036± acres of PD Planned Development No. 54, Tract 11, from IT Industrial Technology to MF-18 Multi-Family to allow for an active adult senior community. The property is 22.036± acres situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; being part of Lot 1, Block C, Bray Central One Addition; located north of Watters Road and east of Bray Central Drive. (Z-3/30/09-27 – The Aspens at Twin Creeks)

Ogden “Bo” Bass, Director of Planning and Development, presented the item to the Commission. The applicant has submitted a zoning amendment for 22.036± acres from PD IT zoning to PD MF-18 Multi-Family to allow for an active adult senior community. The overall Concept Plan for the property includes two gated communities in two phases totaling 378 units. Phase I consists of 180 units and Phase II consists of 198 units.

The MF-18 Multi-Family zoning is being used as the base zoning district with the provision the community will be limited to persons over the age of 55. The City has been made party to deed restrictions to this age limitation.

The proposed amendment includes modifications to the base MF-18 district to provide for active senior adults. One of these modifications to the MF-18 district is a proposed height of three-stories not to exceed 55 feet. Both phases propose a three-story main structure comprised of one and two bedroom units. Surrounding the three-story structures are ten one-story units. Attached garages are provided for a portion of the one story units.

A clubhouse, a pool/courtyard element, and numerous amenities are being proposed with this active senior community.

The rear yard along the northern property boundary has been reduced to ten feet with the requirement of retaining the existing off-site tree line as a buffer and setback for future development. The current owner of the subject property is also the owner for the adjacent property and they have offered a Tree Preservation Dedication Restrictive Covenant to guarantee the preservation of the tree line. Details related to locations of City owned trail, private trail and required connections will be addressed at the time of Site Plan.

Parking for the active senior adult community is outlined as 1.5 spaces per unit. The Allen Land Development Code requires 2.25 garage parking spaces per unit in the MF-18 district. Staff has researched developments similar to the proposed project, as well as the ordinance requirements of other cities for like projects, and we are recommending a minimum of 1.5 parking spaces per unit.

Staff recommends approval.

David Hicks, applicant representative, 401 Woodlake Avenue, Allen, presented to the Commission. There is a long development history between the applicant and the City of Allen. There is also a growing need to address the comprehensive housing needs of the senior

community. The goal is to establish a centralized continuing care retirement community in Allen.

Barry Metcalf, Cadence Capital Partners, 580 Decker Drive, Suite 280, Irving, presented to the Commission. Cadence Capital was selected by the applicant to develop the proposed senior community.

Dean Eldridge, Cadence Capital Partners, 580 Decker Drive, Suite 280, Irving, presented to the Commission. Cadence Capital has experience working with the City on other development projects. The company's current focus is senior housing. The demographics of the City show a need for a senior community.

Chairman Wendland opened the Public Hearing.

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

Commissioner Grimes stated the project was a good fit with the medical trend. He requested rear elevations for the buildings along Bray Central Drive and Watters Road to be included in the PD.

Commissioner Rushing had concerns about changing just a portion of the PD. He stated he would like to see documentation of the plans for the property to the north. He was also concerned about the reduction of commercial land for a residential development.

Commissioner Jones stated the development is compatible with the area.

Commissioner Cocking questioned the safeguards in place to enable the City to enforce the age restriction for this development. In addition, he was concerned about the parking ratio and proximity of parking around the 3-story building. He stated that this type of facility is needed in Allen.

Kevin Laughlin, Attorney, explained the age restrictive covenant to the Commission.

Bryan Rumsey, 1505 Terralinga Court, Allen, spoke to the Commission. He stated the parking ratio and proximity had been considered. The design team felt that seniors living in the 3-story building will have fewer cars.

Commissioner Mangrum stated she supported this item.

Commissioner Dreggors questioned the amount of handicap parking provided. He requested that more than the minimum requirement for handicap spaces be provided and made a part of the PD. He also inquired about the other outdoor activities being provided with the development.

Chairman Wendland stated there is a need for this type of development. He requested the roof material be consistent with surrounding properties.

Motion: Upon a motion by Commissioner Cocking, and a second by Commissioner Mangrum, the Commission voted **5 IN FAVOR, 2 OPPOSED**, to approve **Item 5** with the following stipulations:

- Staff and the applicant review alternative roofing materials prior to the time the item is submitted to City Council for review.
- Handicap parking exceeds minimum standards for the base zoning unit.
- The two deed covenant restrictions are made part of the City Council submission.
- Staff is furnished with street facing elevations prior to the time the item is submitted to the City Council for review.

The motion carried.

DRAFT