



**CITY OF THE COLONY
CITY COUNCIL MEETING AGENDA
TUESDAY, SEPTEMBER 20, 2016
6:30 PM**

TO ALL INTERESTED PERSONS:

Notice is hereby given of a **REGULAR SESSION** of the **CITY COUNCIL** of the City of The Colony, Texas to be held at **6:30 PM** on **Tuesday, September 20, 2016** at **CITY HALL, 6800 MAIN STREET, THE COLONY, TEXAS**, at which time the following items will be addressed:

1.0 ROUTINE ANNOUNCEMENTS, RECOGNITIONS AND PROCLAMATIONS

1. Call to Order
- 1.1. Invocation
- 1.2. Pledge of Allegiance to the United States Flag
- 1.3. Salute to the Texas Flag
- 1.4. Items of Community Interest
- 1.4.1. Receive presentation from Parks and Recreation regarding upcoming events and activities (PARD, Stansell)

2.0 WORK SESSION

The Work Session is for the purpose of exchanging information regarding public business or policy. No action is taken on Work Session items. Citizen input will not be heard during this portion of the agenda.

- 2.1. Council to provide direction to staff regarding future agenda items (Council)

3.0 CITIZEN INPUT

This portion of the meeting is to allow up to five (5) minutes per speaker with a maximum of thirty (30) minutes for items not posted on the current agenda. The council may not discuss these items, but may respond with factual data or policy information, or place the item on a future agenda. Those wishing to speak shall submit a Request Form to the City Secretary.

4.0 CONSENT AGENDA

The Consent Agenda contains items which are routine in nature and will be acted upon in one motion. Items may be removed from this agenda for separate discussion by a Council member.

- 4.1. Consider approving City Council Special Session and City Council Regular Session minutes for September 6, 2016 (City Secretary, Stewart)
- 4.2. Consider approving a resolution authorizing the City Manager to execute a Landlord Estoppel Certificate concerning Hawaiian Falls in The Colony (PARD, Nelson)

¹ These items are strictly public service announcements. Expressions of thanks, congratulations or condolences; information regarding holiday schedules; honorary recognition of city officials, employees or other citizens; reminders about upcoming events sponsored by the City or other entity that are scheduled to be attended by a city official or city employee. No action will be taken and no direction will be given regarding these items.

- 4.3. Consider approving a resolution authorizing the City Manager to execute a third amendment to the Ground and Tower Lease Agreement with Verizon Wireless (Engineering, Scruggs)
- 4.4. Consider approving a resolution authorizing the City Manager to execute a contract between the City of The Colony, Medical Center of Plano and Dr. Brandon Meek for Medical Control Services to The Colony Fire Department (Fire, Stephens)

5.0 REGULAR AGENDA ITEMS

- 5.1. Discuss and consider an ordinance approving a Development Plan to allow The Shacks at Austin Ranch Phase II, where three restaurants approximately 3000 square feet, 5000 square feet and 8000 square feet will be built on 5.976-acre parcel of land located at the Southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) Zoning District (Development Services, Scruggs)
- 5.2. Discuss and consider approving a resolution authorizing the City Manager to execute the proposed Partial Assignment of the LMG Ventures, LLC Contract with Boggs Electric in the amount of \$105,261.00 for the completion of the electrical work on the well and aeration equipment (General Admin, Maurina)
- 5.3. Discuss and consider approving a resolution amending Fiscal Year 2015-16 Master Fee Schedule for Fiscal Year 2016-2017 effective October 1, 2016 (General Admin, Miller)
- 5.4. Discuss and consider approving an ordinance adopting the City of The Colony Fiscal Year Budget beginning October 1, 2016 through September 30, 2017; providing for intra and inter departmental fund transfers; providing for the investment of certain funds; providing that expenditures for said fiscal year to be made in accordance with said budget (General Admin, Miller)
- 5.5. Discuss and consider approving a resolution ratifying the property tax revenue increase reflected in the City of The Colony Budget for Fiscal Year 2016-17 (General Admin, Miller)
- 5.6. Discuss and consider approving an ordinance adopting the City of The Colony tax rate of \$.6675 per \$100 valuation on January 1, 2016. Tax rate is comprised of \$.51254 M&O and \$.15496 of General Fund Debt Service (General Admin, Miller)
- 5.7. Discuss and consider an ordinance levying the Public Improvement District Annual Assessment on properties located within the City of The Colony Public Improvement District No. 1, approving the Service and Assessment Plan for the District for Fiscal Year 2016-2017 and approving an Assessment Roll (General Admin, Miller)

- 5.8. Discuss and consider a variance to the Noise Ordinance regarding Webber Construction for the FM 423 Project (General Admin, Shallenburger)

6.0 EXECUTIVE SESSION

- 6.1. A. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding Austin Ranch building fee issue.
- B. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Atlantic Colony Venture I, LLC and Atlantic Colony Venture II, LLC v. City of The Colony, Texas, et al., Cause No. 16-02219-442.
- C. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.
- 6.2. A. Any action as a result of executive session regarding Austin Ranch building fee issue.
- B. Any action as a result of executive session regarding the pending or contemplated litigation - Atlantic Venture, LLC and Atlantic Colony Venture II, LLC v. City of The Colony, Texas, et al.
- C. Any action as a result of executive session regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

Pursuant to the Texas Open Meeting Act, Government Code Chapter 551 one or more of the above items may be considered in executive session closed to the public, including but not limited to consultation with attorney pursuant to Texas Government Code Section 551.071 arising out of the attorney's ethical duty to advise the city concerning legal issues arising from an agenda item. Any decision held on such matter will be taken or conducted in open session following the conclusion of the executive session.

ADJOURNMENT

Persons with disabilities who plan to attend this meeting who may need auxiliary aids such as interpreters for persons who are deaf or hearing impaired, readers or, large print are requested to contact the City Secretary's Office, at 972-624-3105 at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

CERTIFICATION

I hereby certify that above notice of meeting was posted outside the front door of City Hall by 5:00 p.m. on the 15th day of September, 2016.



A handwritten signature in cursive script that reads "Tina Stewart".

Tina Stewart, TRMC, City Secretary

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Receive presentation from Parks and Recreation regarding upcoming events and activities (PARD, Stansell)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Council to provide direction to staff regarding future agenda items (Council)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Consider approving City Council Special Session and City Council Regular Session minutes for September 6, 2016 (City Secretary, Stewart)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

Special Session Minutes
Regular Session Minutes

**MINUTES OF COUNCIL SPECIAL SESSION
HELD ON
September 6, 2016**

The Special Session of the City Council of the City of The Colony, Texas, was called to order at 6:15 p.m. on the 6th day of September, 2016, at City Hall, 6800 Main Street, The Colony, Texas, with the following roll call:

Joe McCourry	Mayor	Absent (Personal)
Kirk Mikulec	Mayor Pro-Tem	Present (6:20 p.m.)
Richard Boyer	Councilmember	Present
Brian Wade	Councilmember	Present
David Terre	Councilmember	Present
Perry Schrag	Councilmember	Present
Joel Marks	Councilmember	Present (6:20 p.m.)

And with four council members present a quorum was established and the following items were addressed:

- 1. Call to Order**
- 2. City Council to conduct interviews for appointments to the following Advisory Boards:**

Technologies Board

Councilmember Mikulec and Marks arrive at 6:20 p.m.

Council interviewed one applicant.

- 3. Discuss and consider the appointment, evaluation, reassignment, or duties of the following Advisory Boards:**

Technologies Board

Council made appointments as follows:

Technologies:

- a. Motion to appoint David Venable to Place 5- Wade; second by Terre; motion passed with all ayes.*

And with no further business to discuss the meeting was adjourned at 6:36 p.m.

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APPROVED:

Kirk Mikulec, Mayor Pro-Tem
City of The Colony

ATTEST:

Tina Stewart, TRMC
City Secretary

**MINUTES OF COUNCIL REGULAR SESSION
HELD ON
SEPTEMBER 6, 2016**

The Regular Session of the City Council of the City of The Colony, Texas, was called to order at 6:36 p.m. on the 6th day of September, 2016, at City Hall, 6800 Main Street, The Colony, Texas, with the following roll call:

Joe McCourry	Mayor	Absent (Personal)
Kirk Mikulec	Mayor Pro-Tem	Present
Richard Boyer	Councilmember	Present
Brian R. Wade	Councilmember	Present
David Terre	Councilmember	Present
Perry Schrag	Councilmember	Present
Joel Marks	Councilmember	Present

And with six council members present a quorum was established and the following items were addressed:

1.0 ROUTINE ANNOUNCEMENTS, RECOGNITIONS AND PROCLAMATIONS

1. Call to Order – 6:36 p.m.

1.1. Invocation – *The River Church, Pastor Sherman Gardner*

1.2. Pledge of Allegiance to the United States Flag

1.3. Salute to the Texas Flag

1.4. Proclamation recognizing September 5-9, 2016 as "National Payroll Week" (Council)

Mayor Pro-Tem Mikulec recognized September 5-9, 2016 as "National Payroll Week". The proclamation was accepted by Chester Morgan, Government Relations Director of the American Payroll Association, Dallas Chapter.

1.5. Items of Community Interest

Councilmember Terre announced a few important 9/11 events as follows:

- *September 10, 2016 the American Legion to recognize our first responders at 11:00 a.m. at Perryman Park located across from Central Fire Station. Mr. Terre requested citizens to come out for free BBQ and to bring water and a can food item to be donated.*
- *Sunday September 11, 2016 at 8:30 a.m. those who sacrificed their lives on 9/11 will be recognized at the Central Fire Station located on Blair Oaks.*
- *First Methodist Church will recognize and pay tribute to those who sacrificed their lives on 9/11 during both Sunday services.*

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- 1.5.1. Presentation from the Library Director regarding current and upcoming programs, events, and service improvements (Library, Sveinsson)**
Joan Sveinsson provided current and upcoming programs, events and services improvements to the Council.

2.0 WORK SESSION

The Work Session is for the purpose of exchanging information regarding public business or policy. No action is taken on Work Session items. Citizen input will not be heard during this portion of the agenda.

- 2.1. Council to provide direction to staff regarding future agenda items (Council)**
None

3.0 CITIZEN INPUT

This portion of the meeting is to allow up to five (5) minutes per speaker with a maximum of thirty (30) minutes for items not posted on the current agenda. The council may not discuss these items, but may respond with factual data or policy information, or place the item on a future agenda. Those wishing to speak shall submit a Request Form to the City Secretary.

- 1. Racheal Headington spoke on behalf of Sanctity of Life Ministry concerning Human Trafficking and its effects on The Colony and North Texas. Ms. Headington invited Council and residents to their Human Trafficking Walk awareness event on October 22, 2016 10 a.m. located at First Baptist Church, 4800 South Colony Boulevard, The Colony, Texas, 75056.*

4.0 CONSENT AGENDA

The Consent Agenda contains items which are routine in nature and will be acted upon in one motion. Items may be removed from this agenda for separate discussion by a Council member.

- 4.1. Consider approving City Council Regular Session minutes for August 16, 2016 (City Secretary, Stewart)**
- 4.2. Consider approving Council expenditures for the month of July 2016 (Council)**
- 4.3. Consider approving an ordinance to amend the Fiscal Year 2015-16 Budget in the amount of \$25,000 to provide increased funding for adult mosquito treatments (PARD, Nelson)**

Motion to approve all items from consent- Schrag; second by Boyer; motion passed with all ayes.

*****Councilman Marks pulled item 4.4 from the consent agenda for separate discussion*****

- 4.4. Consider approving a resolution authorizing the City Manager to execute a contract with PM AM Corporation for the outsourcing of Burglar Alarm Permitting, Fine and Fee Collection and False Alarm Education (Police, Coulon)**
Police Chief David Coulon introduced Dennis White with PM AM Corporation.

Councilmember Marks asked how this contract will benefit the City.

Chief Coulon explained that the Police Department issue security permits, renewal notices, collection of fees associated with both permit and non-permit holders. The records department spends an average of 20 hours a week working on permits and fee collection. Chief Coulon stated by outsourcing this task it will free up the department. He explains that outsourcing will not create a financial obligation, as PM AM Corporation will retain 39% of what is collecting while the city will retain 61%. By hiring PM AM they will work closely with all alarm companies so they can cross reference any systems installed with the list of permits issued. The company will then contact residents and get all in compliance, as well as collect all required fees. Residents will have the option of applying, paying, and renewing all online or by calling customer service.

Councilmember Marks inquired about client retention.

Mr. White stated that there has not been any substantial decrease in clients. He stated the contract can be canceled at any time with a ninety (90) written notice. Timeline goal is to be up and running January 1, 2017.

City Attorney Jeff Moore referred to the contract stating that all information will be kept confidential and no information will be sold.

Richard Kuether, 4109 Driscoll Drive, The Colony, TX, 75056, spoke regarding this item.

Council provided discussion on this item with concerns of data security. Mr. White stated PM AM Corporation has a service level agreement with Rack Space, one of the largest security providers in the world. He stated in the thirteen years, PM AM has never had a breach in the history of the company.

Motion to approve- Terre; second by Wade; motion passed with all ayes except for Councilman Boyer voted no.

5.0 REGULAR AGENDA ITEMS

- 5.1. Discuss and consider approving a resolution authorizing the City Manager to execute a US Communities proposal in the amount of \$366,047.00 with Trane for installation of a new HVAC and Filtration equipment and controls for the qualification and training of Police Department Personnel in the Shooting Range (Public Works, Gilman)**

Council convened into Executive Session to discuss Item 5.1 at 7:24 p.m. and reconvened at 7:34 p.m.

Environmental Facilities Manager Terry Gilman presented the proposed resolution to Council. He stated the shooting range is currently closed due to design insufficiencies. An engineering company evaluated the designs and it was determined that larger HCAV and Filtration units are needed in order to supply adequate air, and a filtration system inside the shooting range to filter out any toxic lead/vapors into the atmosphere. Mr. Gilman stated the proposed amount for the new equipment and controls would be \$366,470.00.

Motion to approve- Wade; second by Boyer; motion passed with all ayes

5.2. Discuss and consider approving a grant request for funding during fiscal Year 2016-17 Budget in the amount of \$44,701 for Children's Advocacy Center of Denton County (Assistant City Manager. Miller)

Assistant City Manager Tim Miller provided an overview of the proposed grant request to Council.

Councilmember Boyer is an advocate for the Denton County Children's Advocacy Center. He acknowledged services the center provides to children that are victims of sexual abuse. The Colony Police Department worked with the center on 1200 calls this past year.

Mr. Miller stated the grant request is allocated in the proposed budget under the general fund shared by the crossing guards. He explained the monies needed for such an organization is supported by donation/grants throughout Denton County.

Motion to approve- Schrag; second by Wade; motion passed with all ayes

5.3. Conduct the second of two public hearings and discuss the proposed 2016-2017 tax rate not to exceed .6675 cents per \$100 valuation for the taxable value of all property, real and personal, located within the City of The Colony, and announce that the tax rate will be voted on September 20, 2016 at 6:30 p.m. at The Colony City Hall, 6800 Main Street (Assistant City Manager, Miller)

Assistant City Manager Tim Miller briefed Council on this item.

Councilmember Schrag asked if there had been any changes since previous meetings. Mr. Miller stated that there had been a change to the Special Event request. A notification of this change was sent to Council via email.

The public hearing was opened at 7:48 p.m. Dale Moon, 1936 Vista Oaks Drive, Carrollton, Texas, 75007, The Director of Lakeside Community Theater a non-profit Amateur Arts Theater shared upcoming plays/events the center will be hosting now through Summer 2017. There being no others, the public hearing closed at 7:53 p.m.

No Action Taken

- 5.4. **Conduct a public hearing to discuss and consider an ordinance levying the Public Improvement District Special Assessment on properties located within the City of The Colony Public Improvement District No. 1; approving and authorizing the execution of the reimbursement agreement for the City of The Colony Public Improvement District No. 1 on September 20, 2016 at 6:30 p.m. at The Colony City Hall, 6800 Main Street (Assistant City Manager, Miller)**

Assistant City Manager Tim Miller briefed Council on this item. He stated there have been no changes to Grandscape PID No. 1. Mr. Miller added there will be a ninety (90) day escrow of funds in place to cover the gap until this item is approved, and when the properties are assessed for annual cost.

The public hearing was opened and closed at 7:55 p.m. with no one wishing to speak.

Motion to approve- Boyer; second by Wade; motion passed with all ayes

Executive Session was convened at 7:55 p.m.

6.0 EXECUTIVE SESSION

- 6.1. **A. Council shall convene into a closed executive session pursuant to Section 551.087 of the Texas Government Code regarding commercial or financial information the city has received from a business prospect(s), and to deliberate the offer of a financial or other incentive to a business prospect(s).**

B. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Atlantic Colony Venture I, LLC and Atlantic Colony Venture II, LLC v. City of The Colony, Texas, et al., Cause No. 16-02219-442.

C. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

Open Session was reconvened at 9:45 p.m.

- 6.2. **A. Any action as a result of executive session regarding commercial or financial information the city has received from a business prospect(s), and to deliberate the offer of a financial or other incentive to a business prospect(s).**

No Action

B. Any action as a result of executive session regarding the pending or contemplated litigation - Atlantic Venture, LLC and Atlantic Colony Venture II,

LLC v. City of The Colony, Texas, et al.

No Action

C. Any action as a result of executive session regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

No Action

Pursuant to the Texas Open Meeting Act, Government Code Chapter 551 one or more of the above items may be considered in executive session closed to the public, including but not limited to consultation with attorney pursuant to Texas Government Code Section 551.071 and Section 551.074 arising out of the attorney’s ethical duty to advise the city concerning legal issues arising from an agenda item. Any decision held on such matter will be taken or conducted in open session following the conclusion of the executive session.

And with no further business to discuss the meeting was adjourned at 9:45 p.m.

APPROVED:

**Kirk Mikulec, Mayor Pro-Tem
City of The Colony**

ATTEST:

**Tina Stewart, TRMC
City Secretary**

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Consider approving a resolution authorizing the City Manager to execute a Landlord Estoppel Certificate concerning Hawaiian Falls in The Colony (PARD, Nelson)

Background:

The City has been notified by CNL, the current leaseholder of Hawaiian Falls in The Colony, that they are contemplating sale of its interests in the Ground Lease for the park. They need to provide assurances to potential investors that they are in good standing with the City on the Ground Lease, and the Estoppel provides that along with a list of amendments and the current status of the lease.

Hawaiian Falls is currently in compliance on their lease, and the operations of the park would still be managed by Source Capital and the current management team for the company. We have been given assurances this will not affect operations of the park.

Purpose:

CNL is the current leaseholder for Hawaiian Falls in The Colony and is contemplating liquidating some of their investments. In order to do so, they need an Estoppel from the City that states they are currently in compliance with their lease for the waterpark.

Issues:

Alternatives:

Recommendations:

The Estoppel Certificate has been reviewed by the City attorney, and staff recommends approval.

Attachments:

E-mail request from CNL for HF Estoppel
Estoppel Certificate - Hawaiian Falls
Agreement
Proposed Resolution



CNL®

Lifestyle Properties, Inc.

CNL Center at City Commons
450 South Orange Avenue
Orlando, Florida 32801-3336
tel 407.650.1000 800.522.3863
fax 407.540.2544
www.cnllifestylereit.com

Mailing Address:

P.O. Box 4920
Orlando, Florida 32802-4920

August 11, 2016

Dale Cheatham, City Manager
The City of Colony
6800 Main Street
The Colony, Texas 75066

Robert E. Hager, City Attorney
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower 500 N. Akard St
Dallas, Texas 75201

RE: Water Park Ground Lease and Operating Agreement dated the December 1, 2003, by and between Horizon Amusement Southwest, LLC, a Missouri Limited Liability company ("HAS") and the City of The Colony, Texas, a Texas home-rule municipality ("City"); as assigned by HAS to HFE Horizon, L.P., a Texas limited partnership ("HFE") by that certain Assignment and Assumption Agreement of Ground Lease dated September 30, 2004, as further assigned by HFE to CNL Income Colony, L.P, a Delaware limited partnership ("CNL"), by that certain Assignment and Assumption of Ground Lease and Operating Agreement dated April 21, 2006, as amended by that certain Water Park Groundlease and Operating Agreement Amendment No. 1 dated April 16, 2007 between City, HAS and CNL (collectively, the "Ground Lease")

Dear Mr. Cheatham and Mr. Hager,

As you may be aware, CNL is contemplating a sale of its interests in the Ground Lease. While we do not have a formal deal to announce at this time, in connection with the contemplated sale, we have agreed to seek certain assurances from our ground lessors. As such we respectfully request City review and complete the enclosed form of estoppel at your earliest convenience.

Should you have any questions or comments regarding the estoppel, please don't hesitate to contact the undersigned by email at tracey.bracco@cnl.com or by phone at (407) 540-7595.

Thank you in advance for your prompt attention to this matter.

Best regards,



Tracey Bracco
Vice President and Assistant General Counsel
CNL Lifestyle Properties, Inc.

Enclosure (1)

LANDLORD ESTOPPEL CERTIFICATE

THIS LANDLORD ESTOPPEL CERTIFICATE ("Estoppel"), is made and entered into this ___ day of _____, 2016 by the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (the "City") to and in favor of CLP COLONY, LP, a Delaware limited partnership (f/k/a CNL Income Colony, LP), and its successors and assigns ("CNL").

WITNESSETH:

WHEREAS, Horizon Amusement Southwest, LLC, a Missouri Limited Liability company ("HAS"), and City entered into a Waterpark Ground Lease and Operating Agreement dated the 1st day of December, 2003 (as amended and assigned from time to time, the "Ground Lease") whereby the City leased to HAS certain real property located in Denton County, Texas, more specifically described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Leased Premises"); and

WHEREAS, pursuant to the terms and conditions of that certain Assignment and Assumption of Ground Lease dated September 30, 2004 attached hereto, HFE HORIZON, L.P., a Texas limited partnership ("HFE") assumed all of HAS's right, title and interest in and to the Ground Lease;

WHEREAS, pursuant to the terms and conditions of that certain Assignment, Consent to Assignment and Assumption of Ground Lease and Operating Agreement dated April 21, 2006, CNL assumed all of HFE's right, title and interest in and to the Ground Lease;

WHEREAS, pursuant to that certain Sublease Agreement dated as of April 21, 2006 by and between CLP, as landlord, and HFE, as tenant, as amended by that certain First Amendment to Sublease Agreement (Hawaiian Falls – Colony) dated April 25, 2008 between CLP and Harvest Family Entertainment Texas, LP (f/k/a HFE Horizon, LP) ("Harvest"), as affected by that certain Assignment, Assumption and Consent to Assignment and Assumption of Waterpark Sublease Agreement (Hawaiian Falls – Colony) dated as of February 2, 2010, as further amended by that certain Second Amendment to Sublease Agreement (Hawaiian Falls – Colony) dated as of February 2, 2010, and that certain Third Amendment to Sublease Agreement [Hawaiian Falls – Colony] dated as of May 31, 2013 (the "Sublease").

NOW, THEREFORE, in consideration of the Ground Lease and other good and valuable consideration, City hereby represents, warrants and certifies as follows:

a. City represents that the Ground Lease is in full force and effect and has not been further amended or modified;

b. City represents that it has not entered into any agreements of any nature (either written or oral) regarding the Leased Premises except the Ground Lease;

c. City represents that to the best of its knowledge, there is no present default on the part of City under the Ground Lease, and there is no condition existing that could, given the passage of time or the giving of notice, ripen into a default thereunder;

d. All fixed rent, percentage rent or other charges due under the Ground Lease as of the date hereof have been paid through the date hereof;

e. The annual rent currently payable by CNL under the Ground Lease is an amount equal to 6.5% of gross revenues;

f. City represents that no Rent due under the Ground Lease has been paid more than thirty (30) days in advance; and

g. The term of the Ground Lease commenced on December 1, 2003 and is scheduled to expire on December 30, 2043. The Ground Lease provides CNL with two options to extend the term of the lease for a period of five years each.

h. City represents that it has previously consented to the Sublease.

i. City represents that it has no rights of first refusal, options to purchase or other rights to "buy out" CNL's interest in the Ground Lease.

The City acknowledges and agrees that this Certificate will be relied upon by CNL, any purchaser of the direct and/or indirect equity interest in CNL, or all or substantially all of the assets of CNL, and their respective lender(s), successors and assigns. If CNL, any such purchaser or their respective lender(s), successors or assigns so requires, whether currently or at a future date, City hereby acknowledges and agrees that City will execute and deliver, for their benefit, an updated Certificate in the same form as this Estoppel.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, City has executed this Estoppel as of the day and year first above written.

“CITY”

CITY OF THE COLONY, TEXAS, a Texas home-rule municipality

By: _____
Name: _____
Title: _____

STATE OF TEXAS
COUNTY OF DENTON

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as _____ of the City of The Colony, Texas, a Texas home-rule municipality, on behalf of such municipality. He/she is personally known to me or has produced _____ as identification.

Notary Public
Name: _____
Commission No.: _____
My Commission Expires: _____
(SEAL)

Exhibit "A"

Legal Description of Leased Premises

Leasehold Estate created in that certain unrecorded WATERPARK GROUNDLEASE AND OPERATING AGREEMENT dated 12/01/2003, executed by and between the City of THE COLONY, TEXAS, a Texas home-rule municipality, as LESSOR, and HORIZON AMUSEMENT SOUTHWEST, L.L.C., a Missouri Limited Liability Company, as LESSEE (the "Ground Lease"), as affected by an ASSIGNMENT AND ASSUMPTION OF GROUND LEASE AGREEMENT dated 09/30/2004, whereby HFE HORIZON, L.P., assumed all of LESSEE'S right, title and interest in the Ground Lease, and as further affected by an ASSIGNMENT, CONSENT TO ASSIGNMENT AND ASSUMPTION OF WATERPARK GROUND LEASE AND OPERATING AGREEMENT dated 04/21/2006, by and among HFE HORIZON, L.P., a Texas limited partnership (the "Assignor"), and CNL INCOME COLONY, LP, a Delaware limited partnership (the "Assignee"), and the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (the "City"), filed for record on 4/24/2006, recorded in cc#2006-47650, Real Property Records of Denton County, Texas, in and to the following described property, to-wit:

Being part of LOT 1, BLOCK 1, of FIVE STAR EAST, an Addition to the City of The Colony, Denton County, Texas, according to the plat thereof recorded in Cabinet W, Slide 782, Plat Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2-inch rod w/ "Dowdy: cap at the most Southerly Southwest corner of Lot 14, Block J of the Legend Trails Phase II Addition as described by plat in Cabinet T, Page 258-259 of the PRDCT; said point also being in the North or Northeast right of way line of Worley Drive, a 60-foot right-of-way line; thence South 23 degrees 58 minutes 23 seconds West along the North or Northeast right of way line of said Worley Drive for a distance of 60.35 feet to a point at the North end of a corner clip at the intersection of said Worley Drive and Memorial Drive, a 120 foot right-of-way; thence North 59 degrees 51 minutes 33 seconds West, for a distance of 86.48 feet to a point for the intersection of the South or Southwest right of way line of Worley Drive and the West or Northwest line of a 100-foot drainage and utility easement shown on said Lot 1, Block 1, Five Star East; thence South 30 degrees 08 minutes 27 seconds West along the West or Northwest line of said 100 foot drainage and utility easement for a distance of 343.78 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the POINT OF BEGINNING;

THENCE along the West or Northwest line of said 100-foot drainage and utility easement the following calls and distances;

South 30 degrees 08 minutes 27 seconds West for a distance of 88.69 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point

of curvature of a tangent curve to the right having a radius of 1,230.00 feet and whose long chord bears South 52 degrees 00 minutes 12 seconds West a distance of 916.05 feet;

Southwesterly, along said curve to the right through a central angle of 43 degrees 43 minutes 29 seconds and an arc distance of 938.66 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of compound curvature of a tangent curve to the right having a radius of 25.00 feet and whose long chord bears North 73 degrees 40 minutes 24 seconds West a distance of 26.84 feet;

THENCE Northwesterly, departing said 100-foot drainage and utility easement and along said curve to the right through a central angle of 64 degrees 55 minutes 17 seconds and an arc distance of 28.33 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of reverse curvature of a tangent curve to the left having a radius of 125.00 feet and whose chord bears North 59 degrees 17 minutes 53 seconds West a distance of 77.61 feet;

THENCE Northwesterly, along said curve through a central angle of 36 degrees 10 minutes 14 seconds and an arc distance of 78.91 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of reverse curvature of tangent curve to the right having a radius of 25.00 feet and whose chord bears North 45 degrees 45 minutes 54 seconds West a distance of 26.21 feet;

THENCE Westerly along said curve to the right through a central angle of 63 degrees 14 minutes 12 seconds and an arc distance of 27.59 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of reverse curvature of tangent curve to the left having a radius of 970.00 feet an whose chord bears North 16 degrees 39 minutes 18 seconds West a distance of 84.91 feet; said point on the East line of said 100-foot drainage and utility easement;

THENCE along the East line of said 100-foot drainage and utility easement the following calls and distances;

Northerly, along said curve to the left through a central angle of 05 degrees 01 minute 00 seconds and an arc distance of 84.93 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of reverse curvature of tangent curve to the right having a radius of 670.00 feet and whose long chord bears North 15 degrees 57 minutes 36 seconds West a distance of 72.58 feet;

Northerly, along said curve to the right through a central angle of 06 degrees 12 minutes 36 seconds and an arc distance of 72.62 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set; said point on the East line of a 50-foot Lone Star Gas Easement as described in Volume 734, Page 215 of the Deed Records of Denton County, Texas (DRDCT);

THENCE North 17 degrees 12 minutes 16 seconds East departing said 100-foot drainage and utility easement and along the East line of said 50-foot Lone Star Gas Easement for a

distance of 225.78 feet to a "+" cut in concrete set for the point of curvature of non-tangent curve to the left having a radius of 61.50 feet and whose long chord bears North 87 degrees 36 minutes 21 seconds East a distance of 28.32 feet;

THENCE Easterly, along said curve to the left through a central angle of 26 degrees 37 minutes 14 seconds and an arc distance of 28.57 feet to a "+" cut in concrete set for the point of compound curvature of tangent curve to the left having a radius of 183.50 feet and whose long chord bears North 55 degrees 16 minutes 46 seconds East a distance of 119.58 feet;

THENCE Easterly, along said curve to the left through a central angle of 38 degrees 01 minute 56 seconds and an arc distance of 121.80 feet to a "+" cut in concrete set for the point of reverse curvature of a tangent curve to the right having a radius of 29.00 feet and whose long chord bears North 63 degrees 01 minute 03 seconds East a distance of 26.11 feet;

THENCE Northeasterly, along said curve to the right through a central angle of 53 degrees 30 minutes 30 seconds and an arc distance of 27.08 feet to a "+" cut in concrete set;

THENCE North 89 degrees 46 minutes 18 seconds East for a distance of 109.57 feet to a "+" cut in concrete set for the point of curvature of a tangent curve to the left having a radius of 313.50 feet and whose long chord bears North 74 degrees 45 minutes 09 seconds East a distance of 162.48 feet;

THENCE Easterly, along said curve to the left through a central angle of 30 degrees 02 minutes 18 seconds and an arc distance of 164.36 feet to a "+" cut in concrete set;

THENCE North 59 degrees 44 minutes 00 seconds East for a distance of 212.44 feet to a "+" cut in concrete set for the point of curvature of a curve to the right having a radius of 236.50 feet and whose long chord bears North 88 degrees 31 minutes 56 seconds East a distance of 227.86 feet;

THENCE Northeasterly, along said curve to the right through a central angle of 57 degrees 35 minutes 51 seconds and an arc distance of 237.74 feet to a "+" cut in concrete set for the point of compound curvature of tangent curve to the right having a radius of 59.00 feet and whose long chord bears South 46 degrees 09 minutes 23 seconds East a distance of 33.54 feet;

THENCE Southeasterly, along said curve to the right through a central angle of 33 degrees 01 minute 31 seconds and an arc distance of 34.01 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC, RPLS 4804" cap set for the point of reverse curvature of a tangent curve to the left having a radius of 69.00 feet and whose long chord bears South 32 degrees 24 minutes 21 seconds East a distance of 6.65 feet;

THENCE Southeasterly, along said curve to the left through a central angle of 05 degrees 31 minutes 24 seconds and an arc distance of 6.65 feet to the POINT OF BEGINNING and containing 331,111 square feet of 7.601 acres of land, more or less.

CITY OF THE COLONY, TEXAS

RESOLUTION NO. 2016-

A RESOLUTION OF THE CITY OF THE COLONY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE ESTOPPEL CERTIFICATE AND AGREEMENT BY AND BETWEEN THE CITY OF THE COLONY, AND CNL INCOME COLONY, LP, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A"; GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT BY AND BETWEEN THE CITY OF THE COLONY, CNL INCOME COLONY, LP, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A"; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City and Horizon Amusement Southwest, LLC, entered into a Waterpark Ground Lease and Operating Agreement on December 1, 2003; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into an Estoppel Certificate and Agreement with CNL Income Colony, LP, which is attached hereto and incorporated herein by reference as Exhibit "A", under the terms and conditions provided therein.

WHEREAS, the City has determined that it is in the best interest of the City to enter into a Ground Lease Estoppel Certificate and Agreement with CNL Income Colony, LP, which is attached hereto and incorporated herein by reference as Exhibit "A", under the terms and conditions provided therein.

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

Section 1. The Agreements, which are attached and incorporated hereto as Exhibit "A" and Exhibit "A", having been reviewed by the City Council of the City of The Colony, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved, and the City Manager is hereby authorized to execute the Agreement on behalf of the City of The Colony, Texas.

Section 2. That this Resolution shall take effect immediately from and after its adoption and it is so resolved.

PASSED, APPROVED, AND EFFECTIVE this 20th day of September, 2016

Joe McCourry, Mayor

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Consider approving a resolution authorizing the City Manager to execute a third amendment to the Ground and Tower Lease Agreement with Verizon Wireless (Engineering, Scruggs)

Background:

Purpose:

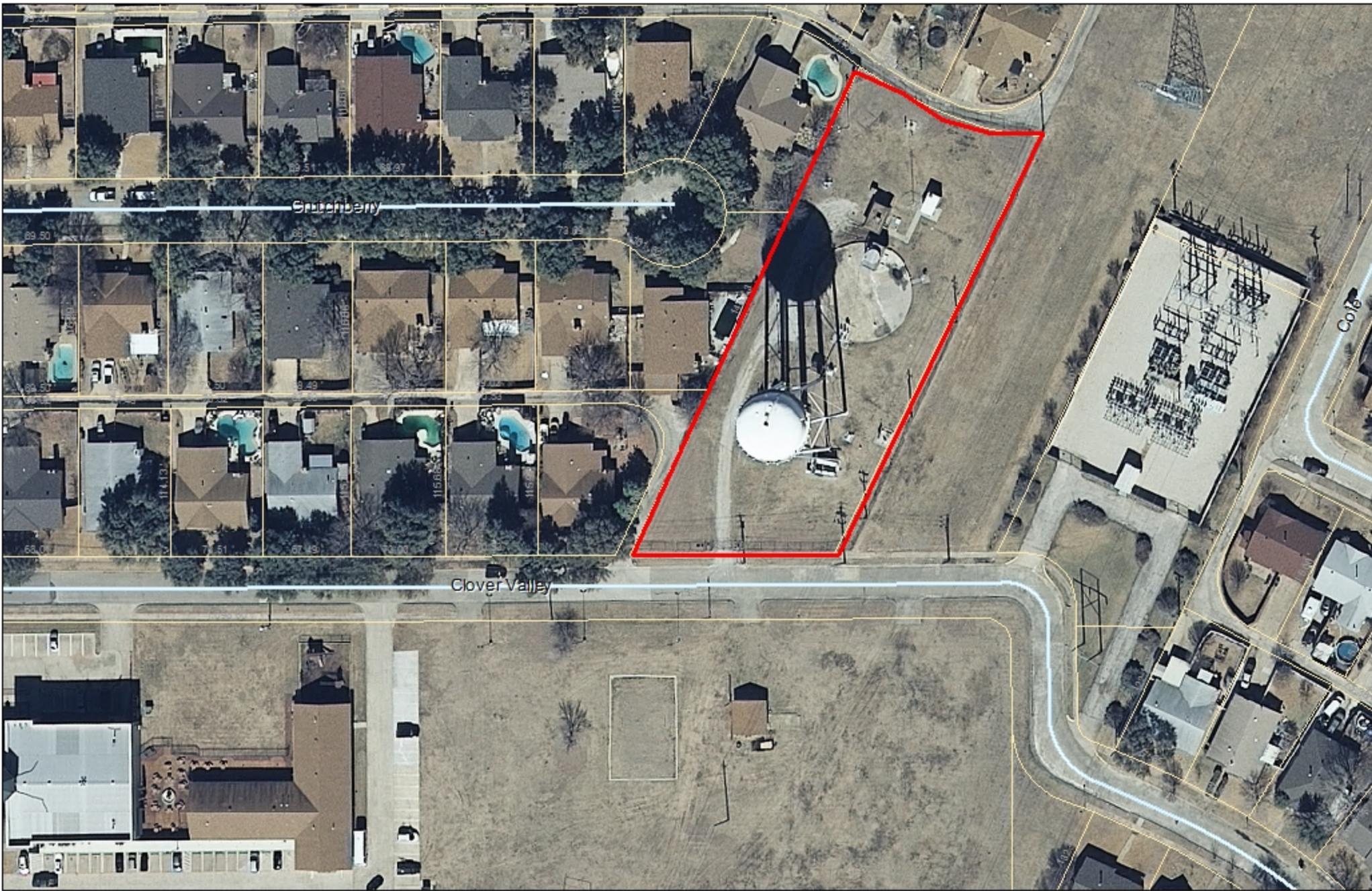
Issues:

Alternatives:

Recommendations:

Attachments:

Location Map
Third Amendment
Proposed Resolution



Location Map



STATE OF TEXAS § **City of The Colony**
 § **Third Amendment to Ground and Tower**
COUNTY OF DENTON § **Lease Agreement**

THIS THIRD AMENDMENT TO GROUND AND TOWER LEASE AGREEMENT (hereinafter referred to as the “Third Amendment”) is made and entered into by and between the City of The Colony, Texas, a Texas home-rule municipality (hereinafter referred to as the “Owner”), and Dallas MTA, L.P. d/b/a Verizon Wireless (hereinafter referred to as the “Tenant”) acting by and through their authorized representatives.

WHEREAS, the parties previously entered into that certain Ground and Tower Lease Agreement dated January 22, 1997, as amended by that certain First Amendment to Ground and Tower Lease Agreement dated December 15, 2009, as amended by that certain Second Amendment to Ground and Tower Lease Agreement dated December 2, 2014 (the “Second Amendment”) (hereinafter collectively referred to as the “Lease”), for a communications facility at the Cougar Water Tower located at 5033 Clover Valley, The Colony, Denton County, Texas; and

WHEREAS, Section 3 of the original Ground and Tower Lease Agreement provides that the term of the Lease, after the Initial Term, as defined in the Lease, is for a five (5) year extension term, with four (4) additional five (5) year term extensions; and

WHEREAS, the fourth five (5) year term extension is from February 22, 2012 to February 21, 2017, and the fifth five (5) year term extension is from February 22, 2017 to February 21, 2022; and

WHEREAS, the Owner and Tenant now desire to amend the Lease to address the term of the Lease and to address the mutual obligations of the parties.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Owner and Tenant agree as follows:

Section 1. That the Lease be, and the same is, hereby amended to delete *Exhibit A-5* in its entirety and replace said exhibit with the attached *Exhibit A-6*, a copy of which is attached hereto and incorporated herein for all purposes, and to include the modifications set forth therein.

Section 2. Term of Lease. Commencing on February 22, 2022, the Lease may be extended for three (3) additional five (5) year periods, and on the terms as required in the Lease, for the following terms:

- (1) February 22, 2022 to February 21, 2027;
- (2) February 22, 2027 to February 21, 2032; and

(3) February 22, 2032 to February 21, 2037.

Commencing on February 22, 2022, the Annual Rent for each additional five (5) year extension period shall equal one hundred fifteen percent (115%) of the Annual Rent for the immediately preceding five (5) year extension period.

Section 3. That the following miscellaneous provisions are a part of this Third Amendment:

- (a) In the event of an inconsistency between this Third Amendment and the terms of the Lease, this Third Amendment shall govern.
- (b) The Lease shall continue in full force and effect except as amended herein.

[The Remainder of this Page Intentionally Left Blank]

EXECUTED this _____ day of _____, 2016.

Owner:

CITY OF THE COLONY, TEXAS,
A Texas home-rule municipality

By: _____
Troy C. Powell, City Manager
Date: _____

ATTEST:

Christie Wilson, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

EXECUTED this _____ day of _____, 2016.

Tenant:

DALLAS MTA, L.P.-d/b/a Verizon Wireless

By: Verizon Wireless Texas, LLC,
Its general partner

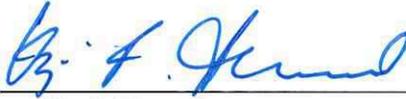
By:  _____
Name: Kazi Ahmed
Title: Director – Network Field Engineering
Date: 08/24/16

Exhibit A-6

[Exhibits]



OTHER UTILITIES NOT INCLUDED IN DIGGERS HOLE AND LOCAL UTILITY DISTRICTS AND COMPANIES SHALL ALSO BE NOTIFIED PRIOR TO EXCAVATION

BUILDING CODES:
CITY OF THE COLONY JURISDICTION: REC 2008 AND REC 2008 TO BE FOLLOWED AS A MINIMUM STANDARD

CD REVIEWER NOTE:
NOTE TO REVIEWER: ANY PLAN SIZE LESS THAN 11" X 17" IS REDUCED IN SIZE AND SHOULD NOT BE SCALED

SCOPE OF WORK:

REMOVE SIX (6) JAMBEAM WIRELESS PDS0409-19-2 ANTENNAS AND SIX (6) AMPHENDU HITCOM31980 ANTENNAS, ALL WITH A RAD CENTER OF 115', TOGETHER WITH THREE (3) AWS 2X60 BRHS, THREE (3) AU 700C BRHS, TWO (2) RXX0C-3315-PF-48 MAIN OVP DISTRIBUTION BOXES, SIX (6) RXX0C-1064-PF-48 SECTOR BOXES AND TWO (2) 1-1/4" HYDRATEX CABLES, SIX (6) 1-5/8" COAX CABLES TO REMAIN. FINAL CONFIGURATION AT 145' RAD CENTER WILL BE: (6) SSMHH-1055C PANELS FOR 700/AWS, (3) WBS-19-R29C-102 PANELS FOR PCS, (6) PDR98004/1C-X DIPLEXERS, (3) 90W BRHS, (3) OVP BOXES, (3) 1-1/4" FIBER LINES, AND (6) LINES OF 1-5/8" COAX.

STRUCTURAL REVIEW NOTE:

AN ANALYSIS OF THE TOWER OR STRUCTURE HAS BEEN PERFORMED BY MALOUF ENGINEERING INTL, INC. WITH ME # TX01671M-191Z, DATED 02/24/16. THE ANALYSIS SHOWS THAT THIS PLAN, HEIGHT, LOCATION, AND MOUNTING SHOULD SUPERSEDE THESE DRAWINGS.

PROJECT SIGNOFF:

REAL ESTATE: _____
REF: _____
CONSTRUCTION: _____
OPERATIONS: _____

VICINITY MAP Google Maps - © 2016 Google



**COUGAR WT
(COLONY WT)**

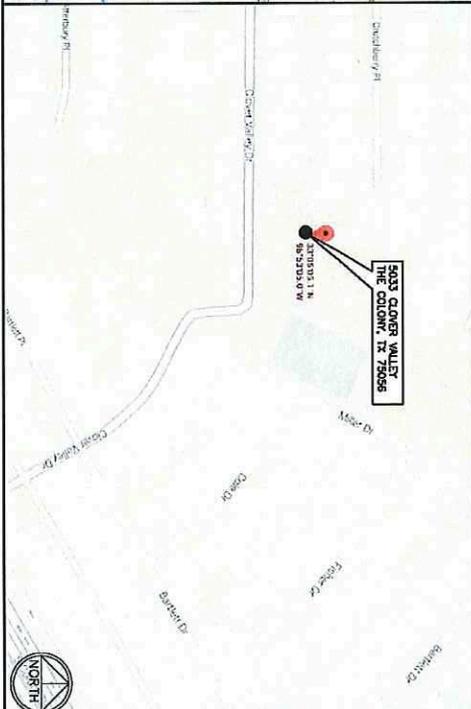
5033 CLOVER VALLEY
THE COLONY, TX 75956
DENTON COUNTY

SITE ID # 104558

NEW AWS UPGRADE ON EXISTING TELECOMMUNICATION SITE

VERIZON WIRELESS
1301 SOVANA BLVD
BLDG 2, SUITE # 2400
WESTLAKE, TX 75086
PHONE: (817) 961-2572

LOCATION MAP Google Maps - ©2016 Google



DRAWING INDEX

SHEET NO.	DESCRIPTION
T-1	TITLE SHEET
B-1	SITE PLAN
C-2	TOWER ELEVATION BEFORE/AFTER
A-1	ANTENNA ORIENTATION PLAN
A-2	ANTENNA DIAGRAM
A-3	ANTENNA NOTES
SO-1	ANTENNA MOUNTING DETAILS

NO.	DATE	DRAWN BY	REVISION
D	07/13/16	B. KIDABE	ISSUED FOR REVIEW
C	07/09/16	B. KIDABE	ISSUED FOR REVIEW
B	06/27/16	B. KIDABE	ISSUED FOR REVIEW
A	02/23/16	S. NONOUJU	ISSUED FOR REVIEW

DATA:	LATITUDE: 33° 09' 05.00" N	POWER COMPANY	TELEPHONE COMPANY
	LONGITUDE: -95° 53' 05.02" W	ONCOR	TIME WARNER CABLE
	ELEVATION: 695' AMSL	214-486-2000	855-651-0946
	(OBTAINED FROM GOOGLE MAPS)		

SITE INFORMATION	LANDLORD	SITE REP
5033 CLOVER VALLEY THE COLONY DENTON COUNTY, TEXAS 75956	OTY OF THE COLONY 6900 MAIN ST. THE COLONY, TEXAS 75956	C.A. BASS LLC RUSTIN FOWLER (803) 589-8464
CONSTRUCTION TYPE: UPGRADE	972-623-1755	CONSTRUCTION CONTACT LARRY FOWLER (214) 475-1475

PROFESSIONAL ENGINEER ALLPRO CONSULTING GROUP, INC 9221 LYNDON B. JOHNSON FRESHWATER, STE 204 SUITE 204 DALLAS, TX 75243 PHONE: (972) 231-8893	STRUCTURAL ENGINEER MALOUF ENGINEERING INTL, INC 17950 PRESTON ROAD, SUITE 200 DALLAS, TX 75242 PHONE: (972) 785-2578	APPLICANT VERIZON WIRELESS 1301 SOVANA BLVD BLDG 2, SUITE # 2400 WESTLAKE, TX 75086 PHONE: (817) 961-2572
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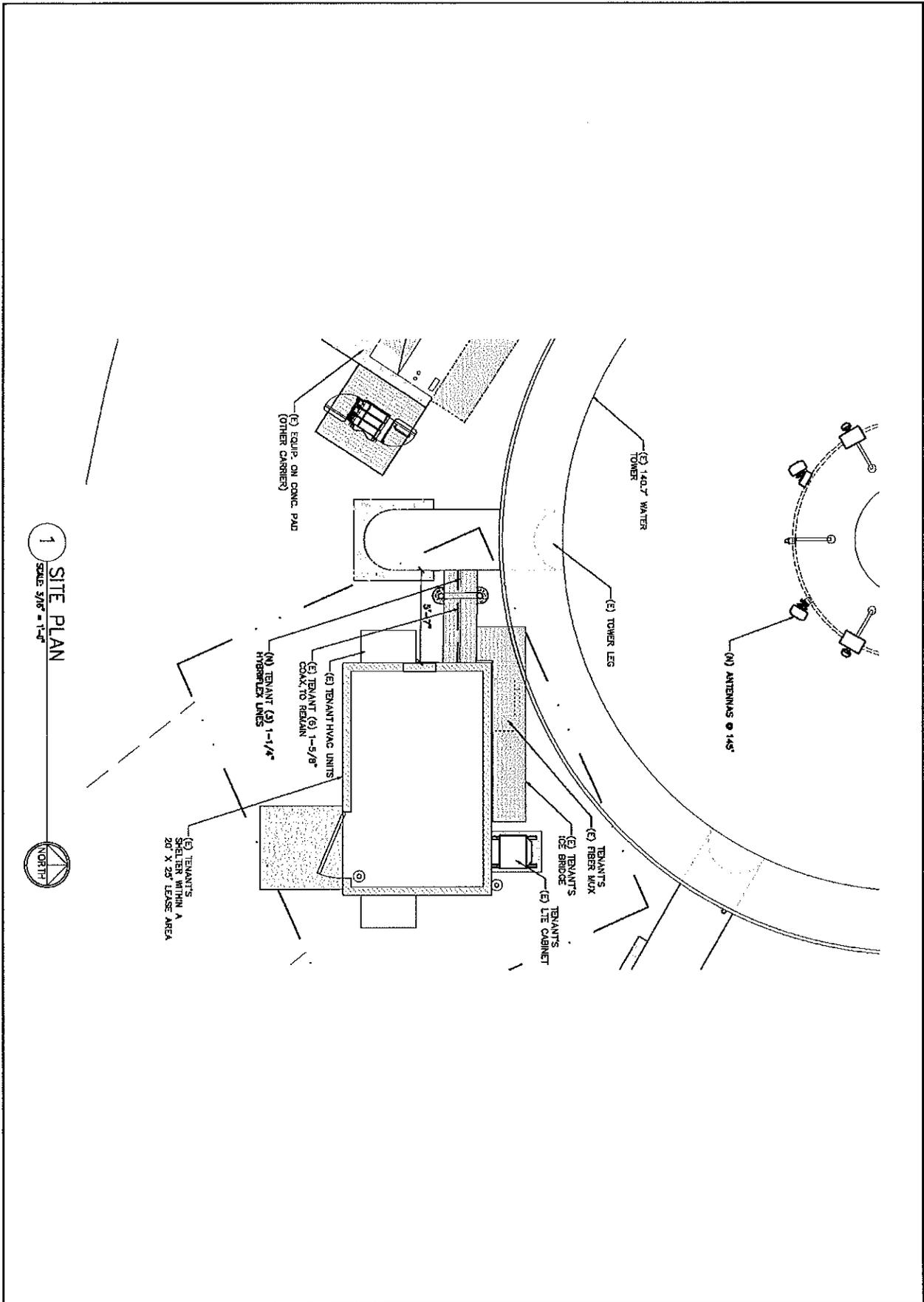
ALLPRO
CONSULTING GROUP, INC.

9221 LYNDON B. JOHNSON
SUITE 204, DALLAS, TX 75243
PHONE: 972-231-8893
FAX: 972-231-8893
WWW.ALLPROCG.COM

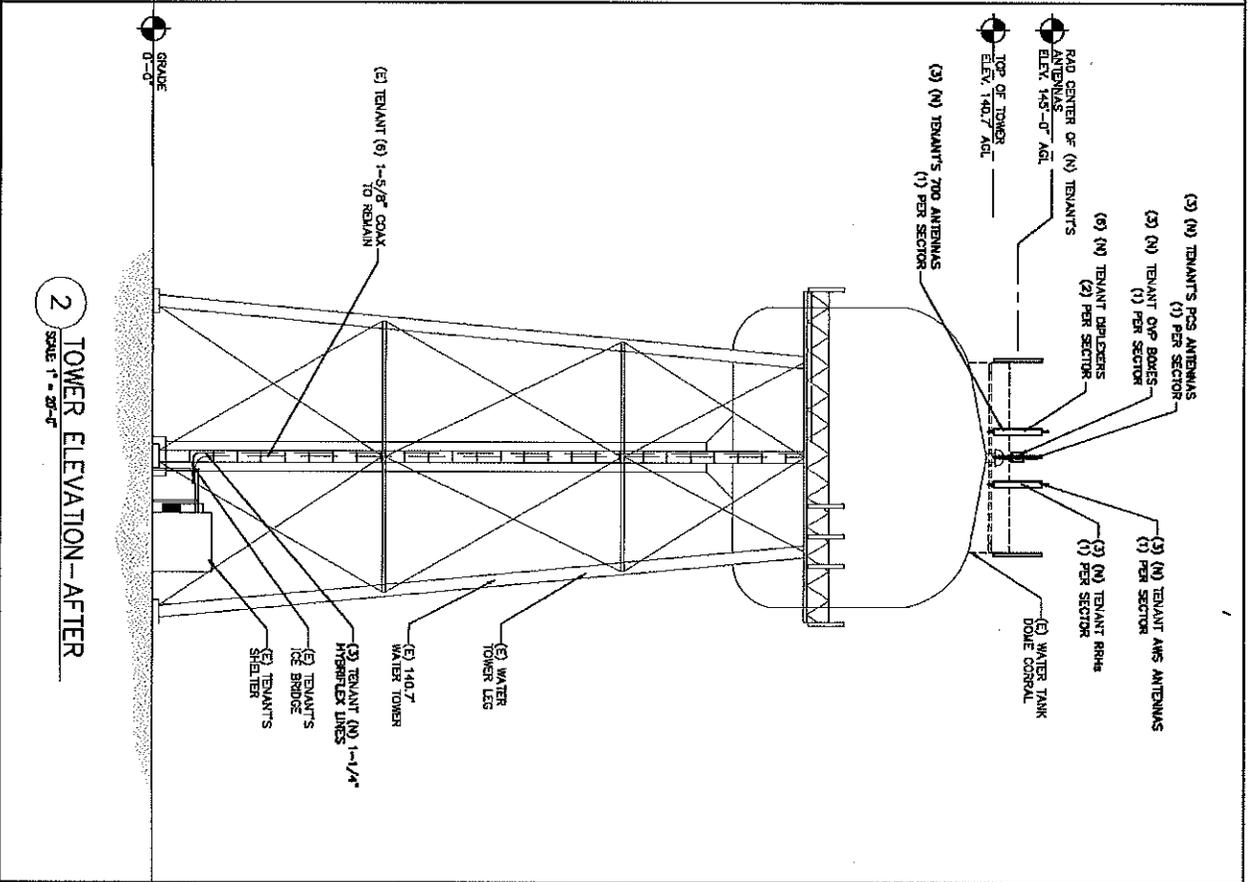
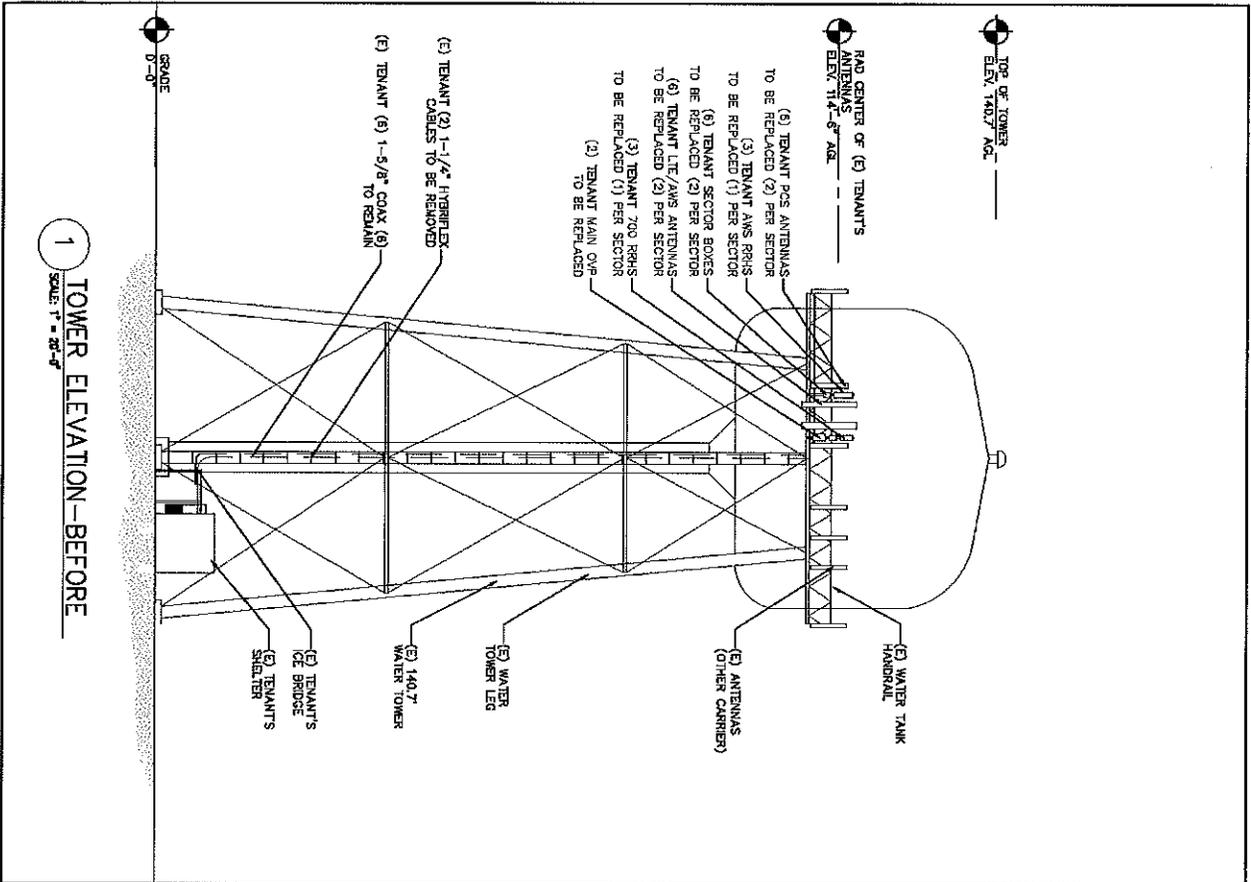
FIRM REGISTRATION # 8242
ACSR# 163818

COUGAR WT (COLONY WT)

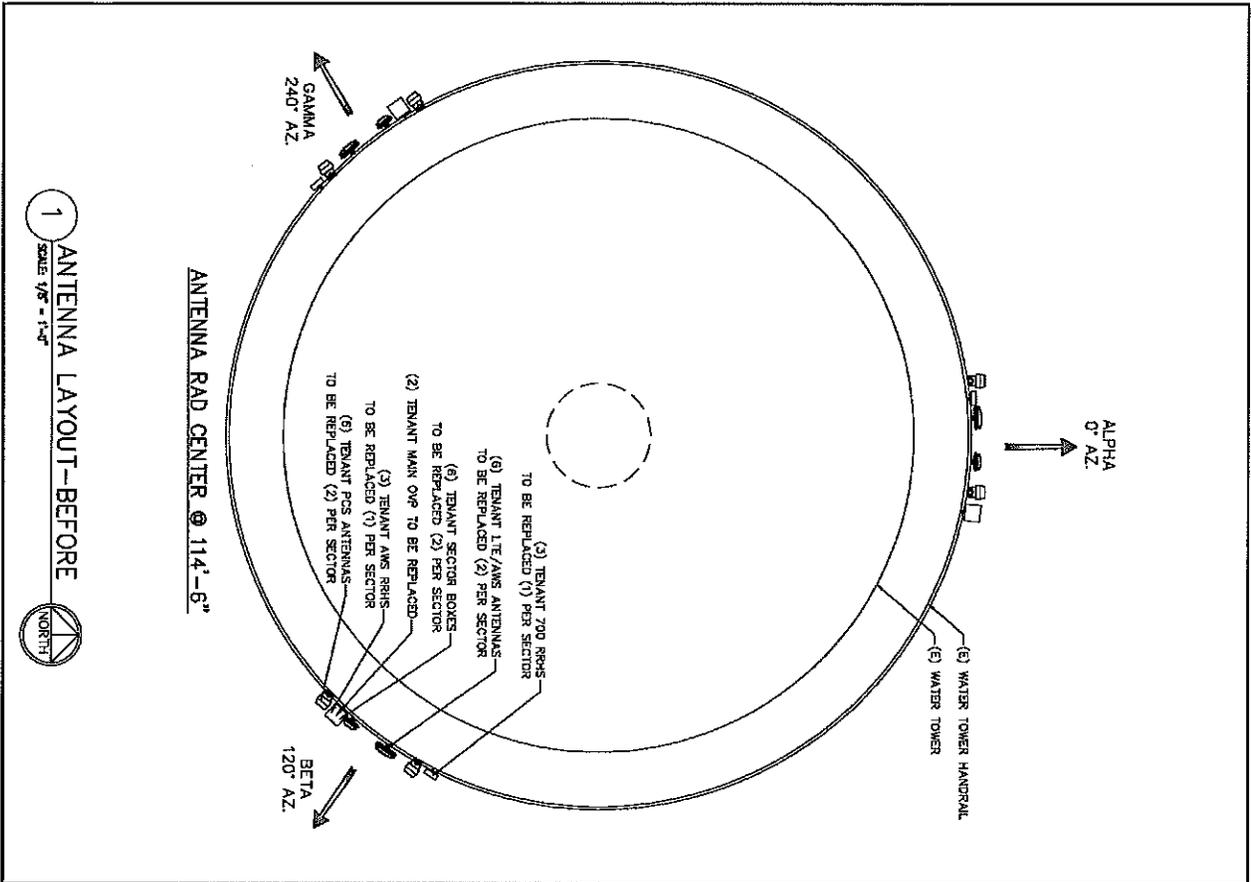
DATE DRAWN: 02/23/16	DRAWN BY: S. NONOUJU
CHECKED BY: J. GEORGE	ACG NO. 16-0318
SITE ID # 104558	
SHEET: T-1	



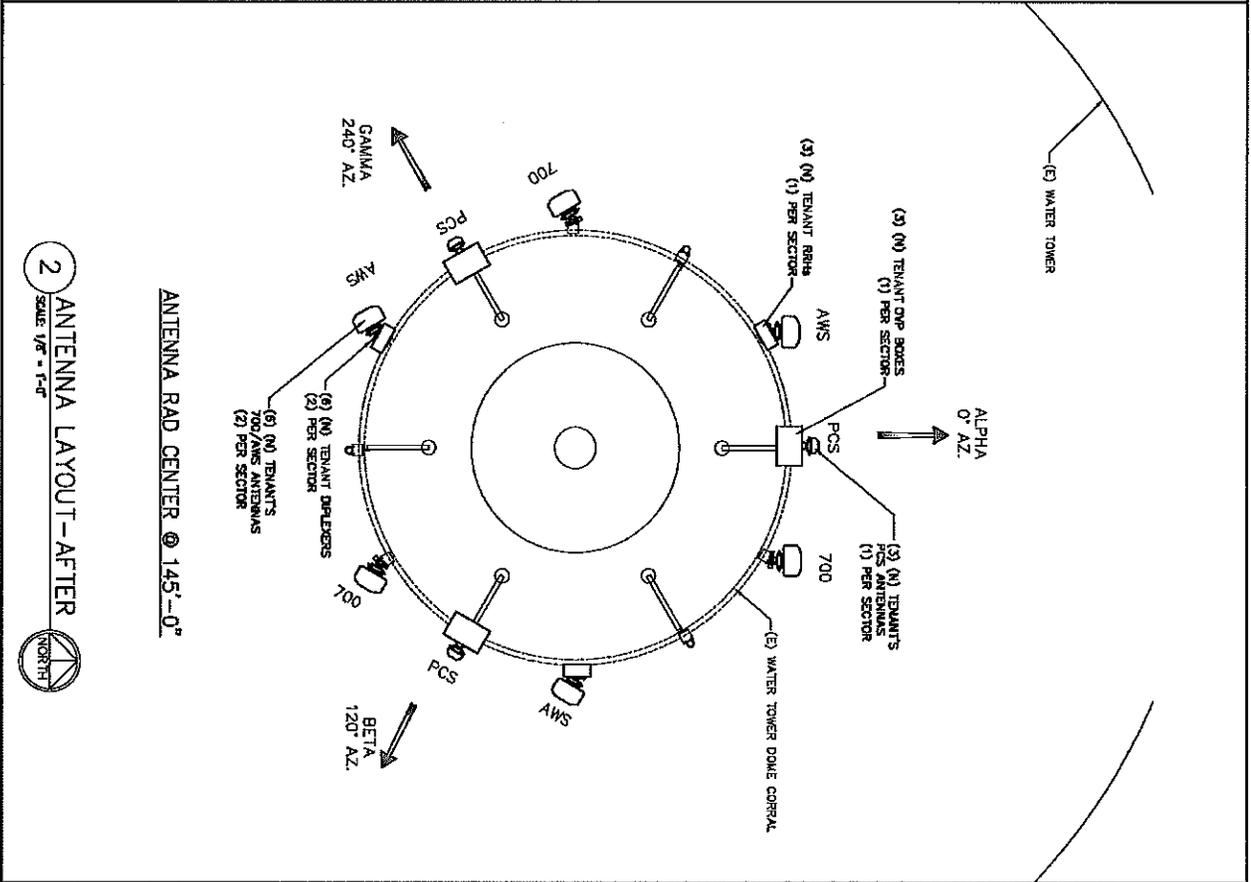
<p>ALPRO CONSULTING GROUP, INC. 4811 LITTLETON BLVD. SUITE 100 DALLAS, TEXAS 75228 PH: 972.987.9999 WWW.ALPROCONSULTING.COM ALPRO 11.2009</p>	<p>DATE DRAWN: 02/23/16</p>	<p>verizon[✓] 1301 SOLANA BLVD BLDG 2, SUITE # 2400 WESTLAKE, TEXAS 76282</p>	<p>D 07/13/16 ISSUED FOR REVIEW</p>
	<p>DRAWN BY: BN</p>		<p>C 07/28/16 ISSUED FOR REVIEW</p>
<p>APPROVED BY: J. GEORGE</p>	<p>AWMS UPGRADE COUGAR WT (COLONY WT) SITE ID # 104558 WEST COLONY VALLEY THE COLONY, TX 76288</p>	<p>APPROVED BY: J. GEORGE</p>	<p>W 06/27/16 ISSUED FOR REVIEW</p>
<p>ACCI NO.: 10-0310 SHEET NAME: SITE PLAN</p>	<p>NO. DATE REVISION</p>	<p>A 09/23/16 ISSUED FOR REVIEW</p>	<p>NO. DATE REVISION</p>
<p>SHEET NUMBER C-1</p>			



<p>DATE DRAWN: 02/23/18</p> <p>DRAWN BY: BN</p> <p>APPROVED BY: J. GEORGE</p>	<p>AMS UPGRADE COUGAR WT (COLONY WT) SITE ID # 104558 683 CLOVER VALLEY THE COLONY, TX 77086</p>	<p>ALPRO CONSULTING GROUP, P.C. 10000 W. UNIVERSITY BLVD., SUITE 1000 DALLAS, TEXAS 75243 TEL: 214-343-7000 WWW.ALPROGROUP.COM</p>	<p>1301 BOLANA BLVD BLDG 2, SUITE # 2400 WESTLAKE, TEXAS 76222</p>	<p>D 01/15/18 ISSUED FOR REVIEW</p>
				<p>C 02/02/18 ISSUED FOR REVIEW</p>
<p>1301 BOLANA BLVD BLDG 2, SUITE # 2400 WESTLAKE, TEXAS 76222</p>				<p>B 02/02/18 ISSUED FOR REVIEW</p>
<p>AMS UPGRADE COUGAR WT (COLONY WT) SITE ID # 104558 683 CLOVER VALLEY THE COLONY, TX 77086</p>				<p>A 02/23/18 ISSUED FOR REVIEW</p>
<p>ALPRO CONSULTING GROUP, P.C. 10000 W. UNIVERSITY BLVD., SUITE 1000 DALLAS, TEXAS 75243 TEL: 214-343-7000 WWW.ALPROGROUP.COM</p>				<p>NO. DATE REVISION</p>
<p>AGC NO: 94-0118</p> <p>SHEET NAME: TOWER ELEVATION BEFORE / AFTER</p> <p>SHEET NUMBER: C-2</p>		<p>DATE DRAWN: 02/23/18</p> <p>DRAWN BY: BN</p> <p>APPROVED BY: J. GEORGE</p>		



1 ANTENNA LAYOUT-BEFORE
SCALE 1/8" = 1'-0"
NORTH



2 ANTENNA LAYOUT-AFTER
SCALE 1/8" = 1'-0"
NORTH

 <p>1301 SOLANA BLVD BLDG 2, SUITE # 2400 NESTLAK, TEXAS 76262</p>		<p>DATE DRAWN: 02/23/16</p> <p>DRAWN BY: SN</p> <p>APPROVED BY: J. GEORGE</p>	<p>ALPRO CONSULTING GROUP, INC. 100 LINDEN & SCIMITAR BLVD SUITE 1000 DALLAS, TEXAS 75242 TEL: 972.967.9900 WWW.ALPROGROUP.COM</p>	<p>AMS UPGRADE COUGAR WT (COLONY WT) SITE ID # 104558 5003 CLOVER VALLEY THE COLONY, TX 77886</p>	<table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>REVISION</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>02/23/16</td> <td>ISSUED FOR REVIEW</td> </tr> <tr> <td>B</td> <td>02/23/16</td> <td>ISSUED FOR REVIEW</td> </tr> <tr> <td>C</td> <td>02/23/16</td> <td>ISSUED FOR REVIEW</td> </tr> <tr> <td>D</td> <td>02/23/16</td> <td>ISSUED FOR REVIEW</td> </tr> </tbody> </table>	NO.	DATE	REVISION	A	02/23/16	ISSUED FOR REVIEW	B	02/23/16	ISSUED FOR REVIEW	C	02/23/16	ISSUED FOR REVIEW	D	02/23/16	ISSUED FOR REVIEW
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A	02/23/16	ISSUED FOR REVIEW																		
B	02/23/16	ISSUED FOR REVIEW																		
C	02/23/16	ISSUED FOR REVIEW																		
D	02/23/16	ISSUED FOR REVIEW																		
<p>ASST NO. 16-0616</p> <p>SHEET NAME: ANTENNA ORIENTATION BEFORE / AFTER</p> <p>SHEET NUMBER: A-1</p>																				

VERIZON WIRELESS SCOPE OF WORK

- VERIZON WIRELESS IS TO SUPPLY ALL RAYCAP MAIN DISTRIBUTION BOXES AND SECTOR BOXES AS REQUIRED. SEE PROPOSED EQUIPMENT SCHEDULE FOR MODEL NUMBERS AND QUANTITIES.
- VERIZON WIRELESS IS TO SUPPLY ALL REMOTE RADIO HEAD UNITS (RRH) AS REQUIRED. SEE PROPOSED EQUIPMENT SCHEDULE FOR MODEL NUMBERS AND QUANTITIES.
- VERIZON WIRELESS IS TO SUPPLY THE PROPOSED EQUIPMENT WITH E-NODE B EQUIPMENT. THE PROPOSED -48V CONVERTER AND THE PROPOSED -48V DISTRIBUTION PANEL.
- VERIZON WIRELESS IS TO SUPPLY ALL HYBRIFLEX 1X1 CABLE, 2X4 CABLE AND 6X12 CABLE AS REQUIRED. SEE PROPOSED HYBRIFLEX CABLE SCHEDULE FOR MODEL NUMBERS, QUANTITIES AND LENGTHS.

LUCENT SCOPE OF WORK

- LUCENT CONTRACTOR IS TO INSTALL A PROPOSED EQUIPMENT RACK WITH E-NODE B EQUIPMENT INSIDE OF THE EXISTING VERIZON WIRELESS EQUIPMENT.
- LUCENT CONTRACTOR IS TO INSTALL A PROPOSED -48V CONVERTER IN THE PROPOSED EQUIPMENT RACK OF THE EXISTING EQUIPMENT.
- LUCENT CONTRACTOR IS TO INSTALL A PROPOSED NETSURE -48V DISTRIBUTION PANEL IN THE PROPOSED EQUIPMENT RACK OF THE EXISTING EQUIPMENT.
- LUCENT CONTRACTOR IS TO INSTALL ALL BREAKERS REQUIRED IN THE EXISTING POWER PLANT FOR THE PROPOSED E-NODE B EQUIPMENT.
- LUCENT CONTRACTOR IS TO SUPPLY AND INSTALL (6) PAIR (RED AND BLACK WIRES) OF #8 AWG DC WIRE FROM THE PROPOSED 15 AMP BREAKERS IN THE NETSURE -48V DISTRIBUTION PANEL TO THE PROPOSED MAIN DISTRIBUTION BOX (BOTTOM).
- LUCENT CONTRACTOR IS TO SUPPLY AND INSTALL THE JUMPERS FROM THE E-NODE B TO THE PROPOSED MAIN DISTRIBUTION BOX (BOTTOM).
- LUCENT CONTRACTOR IS TO INSTALL ALL WIRING REQUIRED FROM THE EXISTING POWER PLANT TO THE -48V CONVERTER.

LUCENT SCOPE OF WORK

- VERIZON WIRELESS CONTRACTOR IS TO INSTALL ALL HYBRIFLEX CABLE AND DISTRIBUTION BOXES ON SITE AS SHOWN.
- LUCENT CONTRACTOR IS TO INSTALL A PROPOSED EQUIPMENT RACK WITH E-NODE B EQUIPMENT. THE PROPOSED -48V CONVERTER AND THE -48V DISTRIBUTION PANEL INSIDE OF THE EXISTING VERIZON WIRELESS EQUIPMENT.
- LUCENT CONTRACTOR IS TO COMPLETE ALL ELECTRICAL WIRING FROM THE PROPOSED NETSURE -48V DISTRIBUTION PANEL TO THE PROPOSED MAIN DISTRIBUTION BOX AS NOTED IN THE SCOPE OF WORK.
- VERIZON WIRELESS CONTRACTOR IS TO VERIFY POWER FROM THE PROPOSED NETSURE -48V DISTRIBUTION PANEL THROUGH THE ENTIRE HYBRIFLEX CABLE SYSTEM TO THE REMOTE RADIO HEAD UNITS (RRH).
- VERIZON WIRELESS CONTRACTOR IS TO COMPLETE THE SCHEDULE INSTALLATION OF THE PROPOSED AWS ANTENNAS, MOUNTS AND HYBRIFLEX CABLE SYSTEM.

VERIZON WIRELESS SCOPE OF WORK

- VERIZON WIRELESS CONTRACTOR IS TO SUPPLY AND INSTALL THE PROPOSED CABLE JUMPER (WITH LC TO LC CONNECTORS) FROM THE PROPOSED E-NODE B TO THE PROPOSED MAIN DISTRIBUTION BOX (BOTTOM).
- VERIZON WIRELESS CONTRACTOR IS TO SUPPLY AND INSTALL ALL MOUNTING HARDWARE AND 1/2" ANTENNA JUMPER CABLES AS REQUIRED DURING CONSTRUCTION.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL THE PROPOSED MAIN DISTRIBUTION BOX (BOTTOM) INSIDE OF THE EXISTING EQUIPMENT SHELTER OR ROOM. THE CONTRACTOR IS TO VERIFY THE LOCATION ON THE EQUIPMENT ROOM PRIOR TO CONSTRUCTION.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL THE PROPOSED MAIN DISTRIBUTION BOX (TOP) IN THE GAMMA SECTOR ON THE BACK OF ANTENNA PIPE MOUNT.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL THE PROPOSED REMOTE RADIO HEAD UNITS IN ALL THREE SECTORS ON THE ANTENNA PIPE MOUNT BEHIND THE PROPOSED AWS ANTENNA.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL (1) RUN OF HYBRIFLEX 6X12 CABLE FROM THE PROPOSED MAIN DISTRIBUTION BOX (BOTTOM) TO THE MAIN DISTRIBUTION BOX (TOP) FOLLOWING THE PATH OF THE EXISTING COAXIAL CABLE.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL (3) RUN OF HYBRIFLEX 2X4 CABLE FROM THE PROPOSED MAIN DISTRIBUTION BOX (TOP) TO THE SECTOR DISTRIBUTION BOX FOLLOWING THE PATH OF THE EXISTING COAXIAL CABLE.
- VERIZON WIRELESS CONTRACTOR IS TO MAKE ALL ALARM CONNECTIONS TO THE DISTRIBUTION BOXES AND LEAVE A 40' COIL FOR OTHERS TO PUNCH INTO ALARM BLOCK.
- VERIZON WIRELESS CONTRACTOR IS TO INSTALL (1) RUN OF HYBRIFLEX 1X1 CABLE FROM THE PROPOSED SECTOR DISTRIBUTION BOX TO THE REMOTE RADIO HEAD UNITS IN ALL THREE SECTORS ON THE ANTENNA PIPE MOUNT BEHIND THE PROPOSED ANTENNAS IN POSITION #1. CONNECT 1X1 TO OPTI SLAVE CONNECTOR.
- VERIZON CONTRACTOR IS TO SUPPLY AND INSTALL (2) 1/2" ANTENNA JUMPERS FROM EACH PROPOSED REMOTE RADIO HEAD UNITS (RRH) TO THE PROPOSED AWS ANTENNAS IN POSITION #1 IN ALL THREE SECTORS (6 TOTAL 1/2" ANTENNA JUMPERS).
- VERIZON CONTRACTOR IS TO GROUND ALL REMOTE RADIO HEAD UNITS (RRH) AND DISTRIBUTION BOXES TO THE EXISTING GROUND BARS AS REQUIRED DURING CONSTRUCTION.
- VERIZON WIRELESS CONTRACTOR IS TO SEAL ALL DISTRIBUTION BOXES AS REQUIRED DURING CONSTRUCTION.
- VERIZON CONTRACTOR IS TO COMPLETE THE INSTALLATION OF THE PROPOSED AWS ANTENNAS AND HYBRIFLEX CABLE SYSTEM.
- VERIZON WIRELESS CONTRACTOR IS TO PERFORM THE FOLLOWING OPTICAL SWEEP TESTS: OTR AND OPTICAL LOSS. RECOMMENDED UNITS-- ANRITSU M19090, JDSU, EXFO FTB-1/7TB-720 OTR.
- VERIZON WIRELESS CONTRACTOR IS TO PERFORM THE FOLLOWING ANTENNA SYSTEM SWEEP TESTS: SYSTEM ZNR/DB RL.
- VERIZON WIRELESS CONTRACTOR IS TO PROVIDE ALL CLOSE OUT DOCUMENTS AS REQUIRED BY VERIZON WIRELESS.

NO.	DATE	REVISION
B	07/17/18	ISSUED FOR REVIEW
A	07/09/18	ISSUED FOR REVIEW
B	08/27/18	ISSUED FOR REVIEW
A	08/23/18	ISSUED FOR REVIEW

verizon
1301 SOLARIA BLVD BLDG 2, SUITE # 2400
WESTLAKE, TEXAS 75225

DATE DRAWN: 02/23/18
DRAWN BY: BN
APPROVED BY: J. GEORGE

**AMS UPGRADE
COUGAR WT
(COLONY WT)
SITE ID # 104558
GREEN CLOVER VALLEY
THE COLONY, TX 77206**

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WWW.ALP.COM

ACID NO: 16-0211
SHEET NAME: ANTENNA NOTES
SHEET NUMBER: A-3

**CITY OF THE COLONY, TEXAS
RESOLUTION NO. 2016-_____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE GROUND AND TOWER LEASE AGREEMENT BY AND BETWEEN THE CITY OF THE COLONY AND VERIZON WIRELESS; PROVIDING AN EFFECTIVE DATE

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

Section 1. That the City Council of the City of The Colony, hereby authorizes the Third Amendment to the Ground and Tower Lease Agreement by and between the City of The Colony and Verizon Wireless for a communications facility at the Cougar Water Tower located at 5033 Clover Valley, The Colony, Denton County, Texas.

Section 2. That this Third Amendment, attached hereto as Exhibit "A" and Exhibit "A-6", is found to be acceptable and in the best interest of the City and its citizens, and the City Manager is hereby authorized to execute the Amendment on behalf of the City of The Colony, Texas, with the terms and conditions as stated therein.

Section 3. That this resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 20th day of **September, 2016**.

Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Consider approving a resolution authorizing the City Manager to execute a contract between the City of The Colony, Medical Center of Plano and Dr. Brandon Meek for Medical Control Services to The Colony Fire Department (Fire, Stephens)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

Business Associate/Facility Agreement
Professional Services Agreement
Proposed Resolution

BUSINESS ASSOCIATE AGREEMENT

(Facility Agreement)

This Business Associate Agreement (“**Agreement**”) dated, 20 (“**Effective Date**”), is entered into by and between Columbia Medical Center of Plano Subsidiary, L.P. d/b/a Medical Center of Plano (“**Facility**”) and (“**Business Associate**”), each a “**Party**” and collectively, the “**Parties**.”

WHEREAS, Facility is a covered entity (“**Covered Entity**”) as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the “**Privacy Standards**”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“**HITECH**”);

WHEREAS, pursuant to HIPAA and HITECH the U.S. Department of Health & Human Services (“**HHS**”) promulgated the Privacy Standards and the security standards at 45 C.F.R. Parts 160 and 164 (the “**Security Standards**”) requiring certain individuals and entities subject to the Privacy Standards and/or the Security Standards to protect the privacy and security of certain individually identifiable health information (“**Protected Health Information**” or “**PHI**”), including electronic protected health information (“**E PHI**”);

WHEREAS, the Parties wish to comply with Privacy Standards and Security Standards as amended by the HHS regulations promulgated on January 25, 2013, entitled the “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act,” as such may be revised or amended by HHS from time to time;

WHEREAS, in connection with Business Associate’s performance under its agreement(s) and/or other documented arrangements between Facility and Business Associate (collectively “**Business Arrangements**”), Business Associate may provide services for, or on behalf of, Facility that require Business Associate to use, disclose, access, create, maintain and/or transmit health information that is protected by state and/or federal law; and

WHEREAS, Facility desires that Business Associate use and disclose PHI and/or E PHI in accordance with the terms specified herein, and the Parties desire to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Business Associate Obligations.** Business Associate may use, disclose, access, create, maintain and/or transmit health information that is protected under applicable state and/or federal law, including without limitation, PHI and E PHI. Business Associate acknowledges and agrees it meets the definition of a “**business associate**” at 45 C.F.R. §160.103. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the “**Confidentiality Requirements**”). All references to PHI herein shall be construed to include E PHI. PHI shall mean only that PHI Business Associate uses, discloses, accesses, creates, maintains and/or transmits for or on behalf of Facility

pursuant to the Business Arrangements. The Parties hereby acknowledge that the definition of PHI includes “**Genetic Information**” as set forth at 45 C.F.R. § 160.103. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Facility in the same manner. To the extent the Business Associate is to carry out Facility’s obligations under the Confidentiality Requirements, the Business Associate shall comply with the provision(s) of the Confidentiality Requirements that would apply to the Facility in the performance of such obligation(s).

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Business Associate agrees not to use (or permit the use of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by the Facility in the same manner. Furthermore, Business Associate shall use PHI: (i) solely for Facility’s benefit and only for the purpose of performing services for, or on behalf of, Facility as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Facility shall retain all rights in the PHI not granted herein. Except as necessary to perform services for Facility under the Business Arrangements, Business Associate may not de-identify PHI or other identifiable data without the express written authorization of Facility. All de-identification of PHI must be performed in accordance with the Confidentiality Requirements, specifically, 45 C.F.R. § 164.514(b).

3. **Disclosure of PHI.**

3.1. Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party as necessary to perform its obligations under the Business Arrangements and as permitted or required by applicable federal and state law. Business Associate agrees not to disclose (or permit the disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI was disclosed by the Facility in the same manner. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that: (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Business Associate shall report to Facility any use or disclosure of PHI not permitted by this Agreement of which it becomes aware. Such report shall be made within five (5) business days of the Business Associate becoming aware of such use or disclosure.

3.2. If Business Associate uses or contracts with any agent, including a subcontractor (collectively, “**Subcontractors**”) that uses, discloses, accesses, creates, receives, maintains, or transmits PHI on behalf of Facility, Business Associate shall require its Subcontractors to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement; specifically, Business Associate agrees to enter into business associate agreements with its Subcontractors that

meet the requirements of the Confidentiality Requirements; including but not limited to 45 C.F.R. §§164.314, 164.410, 164.502 and 164.504(e). In addition to Business Associate's obligations under **Section 9**, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Facility in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or any Subcontractors in violation of this Agreement. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "**minimum necessary use and disclosure**," (i.e., in accordance with 45 C.F.R. §164.502(b), only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed).

4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Facility, Business Associate shall: (i) provide access to, and permit inspection and copying of, PHI by Facility under conditions and limitations required under 45 C.F.R. §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Facility. Business Associate shall respond to any request from Facility for access by an Individual within five (5) business days of such request and shall make any amendment requested by Facility within ten (10) business days of such request. Any information requested under this **Section 4** shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Business Associate shall notify Facility within five (5) business days of receipt of any request for access or amendment by an Individual. Facility, not Business Associate, shall determine whether to grant or deny any access or amendment requested by the Individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set when requested by Facility.

5. **Accounting of Disclosures.** Business Associate shall make available to Facility in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual in accordance with 45 CFR §164.528 (or such shorter time as may be required by state or federal law). Business Associate shall provide to Facility such information necessary to provide an accounting within thirty (30) days of Facility's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the Individual or to Facility if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Facility and the Facility informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive expiration or termination of this Agreement and shall continue as long as Business Associate maintains PHI.

6. **Withdrawal of Authorization.** If the use or disclosure of PHI under this Agreement is based upon an Individual's specific authorization regarding the use of his or her PHI, and: (i) the Individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the authorization is found to be defective in any manner that renders it invalid for whatever reason, then

Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such Individual's PHI except to the extent Business Associate has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.

7. **Records and Audit.** Business Associate shall make available to HHS or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Facility for the purpose of determining Facility's compliance with the Confidentiality Requirements, in a time and manner designated by HHS. Except to the extent prohibited by law, Business Associate agrees to notify Facility immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will comply with the Security Standards and, by way of example and not limitation, use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. In accordance with the Security Standards, Business Associate will implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of the PHI that it uses, discloses, accesses, creates, receives, maintains or transmits. To the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009) or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Business Associate will promptly report to Facility any Security Incident of which it becomes aware; provided, however, that Facility acknowledges and shall be deemed to have received notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks. At the request of Facility, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, Business Associate's response to the Security Incident, and to the extent permitted by law, the identification of the party responsible for causing the Security Incident, if known.

9. **Data Breach Notification and Mitigation.**

9.1. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. § 164.402 (hereinafter a "**HIPAA Breach**"). The Parties acknowledge and agree that 45 C.F.R. §§ 164.404 and 164.410, as described below in this **Section 9.1**, govern the determination of the date of a HIPAA Breach. In the event of any conflict between this **Section 9.1** and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Facility immediately and in no event later than five (5) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. § 164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Facility, the discovery of a

HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Facility with sufficient information to permit Facility to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. § 164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Facility with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Facility may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Facility of new information learned by Business Associate regarding the HIPAA Breach; including but not limited to, the information described in items (i) through (v), above. This **Section 9.1** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

9.2. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of **Section 9.1**, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI and referred to hereinafter as “**Individually Identifiable Information**”) that, if misused, disclosed, lost or stolen, would trigger an obligation under one or more State data breach notification laws (each a “**State Breach**”) to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) notify the Facility within five (5) business days of such misuse, disclosure, loss or theft; (ii) cooperate and assist Facility with any investigation into any State Breach or alleged State Breach; (iii) cooperate and assist Facility with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iv) cooperate with Facility regarding the Facility’s and Business Associate’s obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (v) assist with the implementation of any decision by any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach. This **Section 9.2** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business

Associate maintains PHI or Individually Identifiable Information.

9.3. Breach Indemnification. Business Associate shall indemnify, defend and hold Facility, and each of its officers, directors, employees, agents, successors and assigns harmless from and against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively "**Information Disclosure Claims**") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law; and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information. If Business Associate assumes the defense of an Information Disclosure Claim, Facility shall have the right, at its expense, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Facility. To the extent permitted by law, Business Associate shall be fully liable to Facility for any acts, failures or omissions of Business Associate's Subcontractors and agents in furnishing the services as if they were Business Associate's own acts, failures or omissions. For purposes of this **Section 9.3**, PHI and Individually Identifiable Information shall refer to PHI and Individually Identifiable Information used, disclosed, accessed, created, maintained, received or transmitted by and/or under the direction or control of Business Associate and/or its Subcontractors at the time of any HIPAA Breach and/or State Breach. This **Section 9.3** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI or Individually Identifiable Information.

10. **Term and Termination**.

10.1. Termination. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this **Section 10**; *provided, however*, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

10.2. Termination without Cause. Facility shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

10.3. Termination for Cause. Either Party may immediately terminate this Agreement as set forth in this **Section 10.3** ("**Terminating Party**") and shall have no further obligations to the other Party ("**Terminated Party**") hereunder if either of the following events have occurred and are continuing to occur:

- i. The Terminated Party fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Terminated Party; or
- ii. The Terminated Party materially violates any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Terminated

Party under this Agreement.

10.4. Facility May Terminate Business Arrangements in Event of for Cause Termination.

Termination of this Agreement for either of the two reasons set forth in **Section 10.3** above shall be cause for Facility to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Facility.

10.5. Termination Upon Conclusion of Business Arrangements. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.

10.6. Return of PHI Upon Termination. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Facility or to destroy all PHI received from Facility or otherwise through the performance of services for Facility, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to return or destroy, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This **Section 10.6** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Subcontractor maintains PHI.

11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN “AS IS” BASIS. FACILITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

12. **Ineligible Persons.** Business Associate represents and warrants to Facility that Business Associate, its directors, officers, and key employees: (i) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) or any state healthcare program (collective, the “**Healthcare Programs**”); (ii) have not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) are not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs (collectively, the “**Warranty of Non-exclusion**”). Business Associate’s representations and warranties underlying the Warranty of Non-exclusion shall be ongoing during the term, and Business Associate shall immediately notify Facility of any change in the status of the representations and warranties set forth in this **Section 12**. Any breach of this **Section 12** shall give Facility the right to terminate this Agreement immediately for cause.

13. **Miscellaneous.** This **Section 13** shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Subcontractor maintains PHI.

13.1. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by: (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither Party shall refuse delivery of any notice hereunder.

FACILITY:

BUSINESS ASSOCIATE:

Medical Center of Plano
3901 W 15th Street
Plano, Texas 75075

Attention: Bonnie R Mockler
Tel. No.: 972-519-1523
Fax No.: _____

Attention: _____
Tel. No.: _____
Fax No.: _____

Copy to FACILITY Counsel:

Copy to:

HCA Legal Department
PO Box 550
Nashville, TN 37202-0550

Attention: _____
Tel. No.: _____
Fax No.: _____

Attention: _____
Tel. No.: _____
Fax No.: _____

13.2. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

13.3. **Assignment.** Neither Party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Facility shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Facility, whether by merger, acquisition, change in control, or other transaction involving the sale of all or substantially all of Facility's assets, without the prior approval of Business Associate.

13.4. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

13.5. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Facility relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. This Agreement

constitutes the complete agreement between Business Associate and Facility relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party to this Agreement; *provided, however*, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that Facility believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Facility may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) calendar days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns.

13.6. **Governing Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the state in which Facility is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Facility is located.

13.7. **Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Facility irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Facility shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Facility shall deem appropriate. Such right of Facility is to be in addition to the remedies otherwise available to Facility at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Facility.

13.8. **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor and not an agent of Facility. This Agreement does not express or imply any commitment to purchase or sell goods or services.

13.9. **Counterparts.** This Agreement and any amendments hereto may be executed by the Parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the document by facsimile transmission or electronic mail in “portable document

format” (“.pdf”) or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process and executed or adopted by a Party with the intent to execute this Agreement (i.e., “electronic signature” through a process such as DocuSign®).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

FACILITY:

Medical Center of Plano
3901 W 15th Street
Plano, Texas 75075

By: _____

Melissa McLeroy
(Print or Type Name)

CFO
(Title)

Date: _____

BUSINESS ASSOCIATE:

By: _____

(Print or Type Name)

(Title)

Date: _____

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF THE COLONY, TEXAS AND COLUMBIA MEDICAL CENTER OF
PLANO SUBSIDIARY, L.P., DBA MEDICAL CENTER OF PLANO
70-16-09_Medical

THIS AGREEMENT is made and entered by and between the **CITY OF THE COLONY, TEXAS**, a home-rule municipal corporation, hereinafter referred to as "City", and **COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY, L.P., DBA MEDICAL CENTER OF PLANO**, a Texas limited partnership, hereinafter referred to as "Professional" to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to contract with Professional for Medical Advisory Services, including the services of a licensed physician to serve as Medical Director with all its attendant duties, hereinafter referred to as the "Project", and

WHEREAS, Professional desires to render such services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

The City hereby agrees to retain Professional to perform professional services in connection with Medical Advisory Services and Professional agrees to perform such services in accordance with the terms and conditions of the Agreement.

II. SCOPE OF SERVICE

The parties agree that professional shall perform such services as are further described in the Solicitation 70-16-09_Medical RFQ for Medical Advisory Services attached hereto and incorporated herein as **Exhibit "A"** and with the Professional's response to RFQ No. 70-16-09_Medical Request for Qualifications for Medical Advisory Services also attached hereto and incorporated herein as **Exhibit "B"**. The parties understand and agree that deviations or modifications in the Solicitation 70-16-09_Medical RFQ for Medical Advisory Services may be authorized from time to time by the City, but said authorization must be made in writing.

III. TERM OF AGREEMENT

The initial term of this agreement shall be a period of two (2) years commencing on October 1, 2016 for Continuing Education Services and beginning November 1, 2016 for On Line Medical Control Services. The initial contract period will end on October 1, 2018; provided however, that the City shall have the right and option to extend the term hereof by up to three (3) additional twelve (12) month periods by giving written notice to Professional of City's election to extend the term hereof, such notice to be given not more than ninety (90) days prior to the expiration of the initial term or the immediately preceding term.

IV. PAYMENT

Payments hereunder shall be made to Professional following City's acceptance of the work and within thirty (30) days of receiving Professional's invoice for the services delivered. Compensation for services provided are outlined in Exhibit "C".

Professional recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions.

V. INSURANCE

Professional agrees to meet all insurance requirements, and to require all consultants who perform work for Professional to meet all insurance requirements, as set forth in Exhibit "D", which is attached hereto and hereby made a part of this agreement.

VI. INDEMNIFICATION

PROFESSIONAL AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGEMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY PROFESSIONAL'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL OR STRICTLY LIABLE ACT OR OMISSION OF THE PROFESSIONAL, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVE, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PROFESSIONAL IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

PROFESSIONAL AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE. HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF PROFESSIONAL'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF PROFESSIONAL'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. PROFESSIONAL SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF PROFESSIONAL FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND PROFESSIONAL SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VII. COMPLIANCE WITH APPLICABLE LAWS

Professional shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions hereto, with in any manner affect Professional or the services, and **SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIM RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES AND REGULATIONS WHETHER BY PROFESSIONAL, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES.** If professional observes that the services are at variance therewith, Professional shall promptly notify City in writing.

VIII. INDEPENDENT CONTRACTOR

Professional covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the act and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Professional its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Professional.

IX. ASSIGNMENT AND SUBLETTING

Professional agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. Professional further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Professional from its full obligations to the City as provided by this Agreement.

X. AUDITS AND RECORDS

Professional agrees that at any time during normal business hours and as often as City may deem necessary, Professional shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and with permit such representative of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payroll, records of personnel, conditions of employment and other data relating to all matters covered by the Agreement, all for a period of here (3) years following the expiration of this Agreement, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

XI. CONTRACT TERMINATION

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Agreement, terminate further work under this agreement, in whole or in part by giving at least thirty (30) days prior written notice thereof to Professional with the understanding that all services being terminated shall cease upon the date such notice is received unless otherwise indicated in writing by the City.

In the event of such termination, Professional shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items

prepared by Professional in connection with this Agreement. Professional shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. OWNERSHIP OF DOCUMENTS

Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event, Professional hereby assigns all right, title and interest to said material to City for the fees specified herein.

XIII. TRADE SECRETS

In conducting business and in anticipation of conducting business with Professional it may be necessary for the City to share trade secrets and/or other confidential and/or proprietary information or matter with Professional. The parties agree that such information and the materials referenced in the Agreement, the results and developments therefrom are confidential and/or proprietary information belonging to the City. Professional agrees not to disclose to any third party any such trade secrets and/or confidential or proprietary information for its own separate benefit. Professional will be responsible for its employees or agents complying with the provisions of this Agreement.

Similarly the City agrees that the Project created by this Agreement is intended solely for the use and benefit of Plano, Texas and any distribution to another destination marketing organization without the written consent of Professional is prohibited unless required by law or court order. The City will be responsible for its employees or agents complying with the provisions of this Agreement.

XIV. COMPLETE AGREEMENT

This Agreement, including the Exhibits lettered "A" through "D", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written Instrument.

XV. MAILING OF NOTICES

Unless instructed otherwise in writing, Professional agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City agrees that all notices or communications to Professional permitted or required under this agreement shall be addressed to Professional at the following address:

Columbia Medical Center of Plano Subsidiary, L.P., dba Medical Center of Plano
Attn: Melissa McLeroy, Senior Vice President and Chief Financial Officer
3901 W. 15th Street
Plano, TX 75075

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XVII. MISCELLANEOUS

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Professional and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

SIGNED on the date indicated below:

**COLUMBIA MEDICAL CENTER OF PLANO
SUBSIDIARY, L.P., DBA MEDICAL CENTER OF PLANO, a Texas limited partnership**

**BY: COLUMBIA NORTH TEXAS SUBSIDIARY
GP, LLC, A Texas limited liability
Company, its General Partner**

Date: _____

By: _____

Name: _____

Title: _____

CITY OF THE COLONY, TEXAS

Date: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____,
2015 by _____, (*Authorized representative*) _____ (*Title*)

of **COLUMBIA NORTH TEXAS SUBSIDIARY GP, LLC**, a Texas limited liability company, as General Partner of **COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY, L.P., DBA MEDICAL CENTER OF PANO**, a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the ____ day of _____, 2015
by _____, _____ (*Title*) **CITY OF THE COLONY, TEXAS**, a
home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

CITY OF THE COLONY, TEXAS

RESOLUTION NO. 2016-_____

A RESOLUTION OF THE CITY OF THE COLONY, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT BETWEEN THE CITY OF THE COLONY, MEDICAL CENTER OF PLANO, AND DOCTOR BRANDON MEEK TO PROVIDE MEDICAL CONTROL SERVICES TO THE EMS PERSONNEL OF THE COLONY FIRE DEPARTMENT; PROVIDING AN EFFECTIVE DATE.

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

Section 1. That the City Manager of the City of The Colony, Texas, is hereby authorized and empowered to execute a contract with Medical Center of Plano and Doctor Brandon Meek to provide medical control services to the EMS personnel of The Colony Fire Department.

Section 2. That a true and correct copy of the agreements is attached hereto and incorporated herein.

Section 3. That this resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 20th day of September, 2016.

Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider an ordinance approving a Development Plan to allow The Shacks at Austin Ranch Phase II, where three restaurants approximately 3000 square feet, 5000 square feet and 8000 square feet will be built on 5.976-acre parcel of land located at the Southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) Zoning District (Development Services, Scruggs)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

Council Staff Report

Location Map

Proposed Development Plan

Proposed Landscape Plan

Proposed Elevation/Perspective

Proposed Ordinance

Minutes of August 23, 2016 P&Z Meeting

CITY COUNCIL REPORT

AGENDA DATE: September 20, 2016

DEPARTMENT: Engineering/Development Services Department

SUBJECT *SP16-0010, The Shacks at Austin Ranch Ph II – Development Plan*

Discuss and consider a request for Development Plan to allow The Shacks at Austin Ranch Ph II, where three restaurants approximately 3000 sf, 8000 sf and 5000 sf will be built on 5.976-acre parcel of land located at the southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) zoning district.

OWNER/ENGINEER

Owner/Developer:	Trammell Crow Co No 33 Ltd	Dallas, Texas
Engineer/Surveyor:	Binkley & Barfield C&P.	Richardson, Texas

EXISTING CONDITION OF PROPERTY

The property is currently undeveloped.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

August 23, 2016 – The Planning and Zoning Commission voted (6-0) to recommend approval for The Shacks at Austin Ranch Ph II, where three restaurants approximately 3000 sf, 8000 sf and 5000 sf will be built on 5.976-acre parcel of land located at the southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) zoning district.

DEVELOPMENT REVIEW COMMITTEE (DRC) REVIEW

The Development Review Committee (DRC) finds the Development Plan meets the requirements of the PD-22 Ordinance as outlined in the Staff Report.

OPTIONS

1. Approve as submitted.
2. Approve with conditions.
3. Postpone consideration.
4. Table item.

ATTACHMENTS

1. Staff Analysis
2. Location Map
3. Proposed Development Plan
4. Proposed Landscape Plan
5. Proposed Elevation
6. Proposed Ordinance
7. Minutes of August 23, 2016 Planning and Zoning Commission meeting

ATTACHMENT 1

Staff Analysis

Summary of Request

The property at southeast corner of Windhaven and Plano Parkway is being platted into 3 lots. The proposed Lot 1 will be developed as Phase I and will include three retail/restaurant buildings. A dog park is also proposed on common area lot (Lot 3X) that will be part of Phase 1 development. Phase I of The Shacks at Austin Ranch Development Plan was approved by City Council in May 3, 2016. The applicant is now proposing three retail/restaurant buildings approximately 3000 sf, 8000 sf and 5000 sf in size as the Ph II development of The Shacks at Austin Ranch project. One of the restaurants will have 10 volley ball courts build on Lot 3X.

Existing Condition of Property

The subject property is undeveloped.

Platting Status

The final plat for The Shacks at Austin Ranch was approved by Planning and Zoning Commission on August 23, 2016.

Adjacent Zoning/Land Use

North - Planned Development 22 (PD 22) – 7-Eleven store across Windhaven Parkway

South - Planned Development 22 (PD 22) – Austin Waters subdivision

East- Planned Development 22 (PD 22) – Austin Waters subdivision

West- Planned Development 22 (PD 22) – Boathouse Retail across Plano Parkway

Land Use Analysis

The proposed use is allowed within the Planned Development 22 (PD-22) zoning district.

Infrastructure Improvements

No additional public infrastructure improvements are planned for this area.

Circulation and Parking

The property will have direct access from Plano Parkway through a driveway. Mutual access easements have been planned across proposed Lot 1 and thus future access through Windhaven Parkway is also planned.

Table 13-100 Off Street Parking Schedule requires following parking spaces for restaurant uses. Also for the volley ball courts and patio seating additional parking requirements are shown. The parking proposed meets the specific requirements of Table 13-100 of Parking Section.

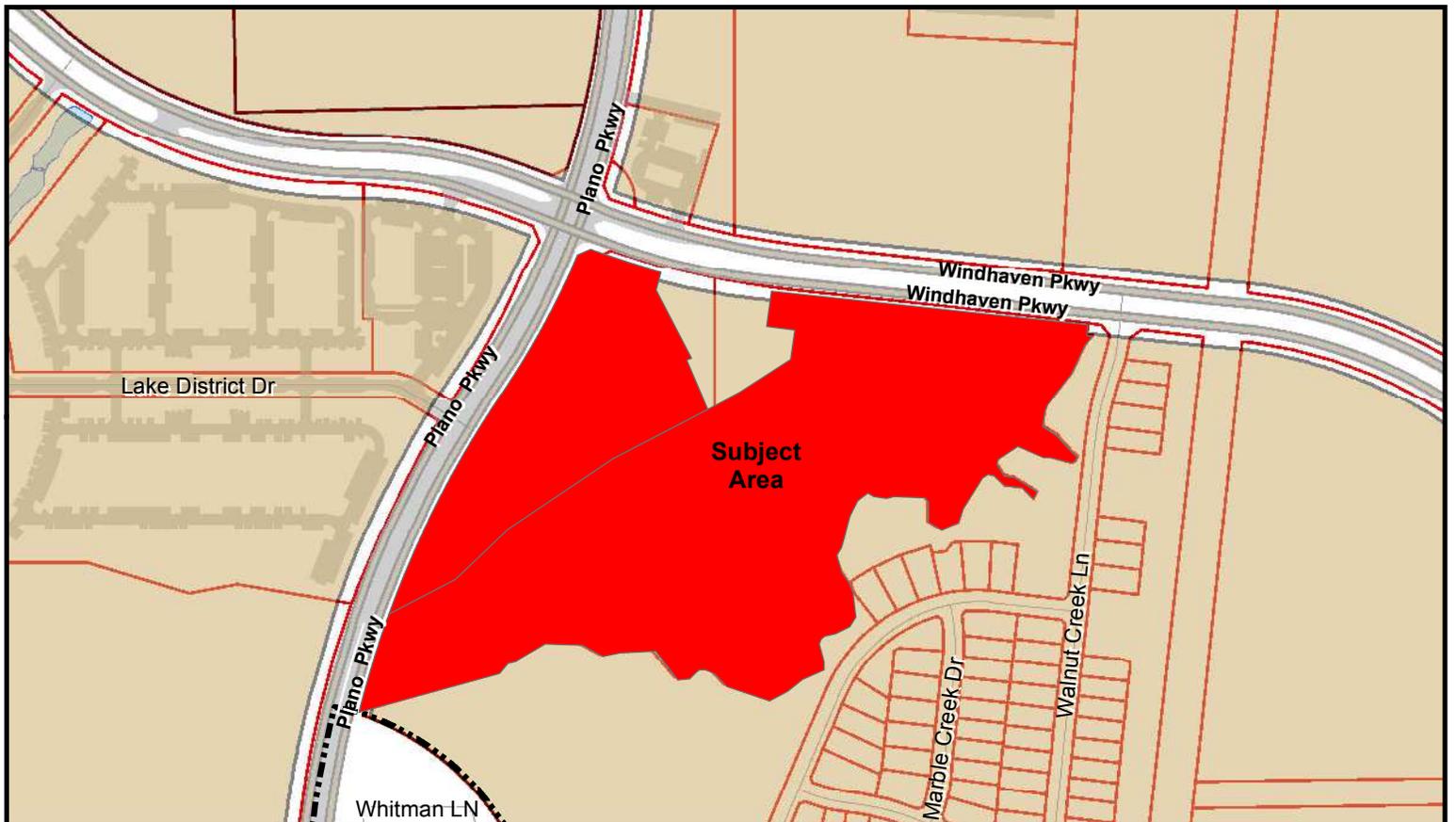
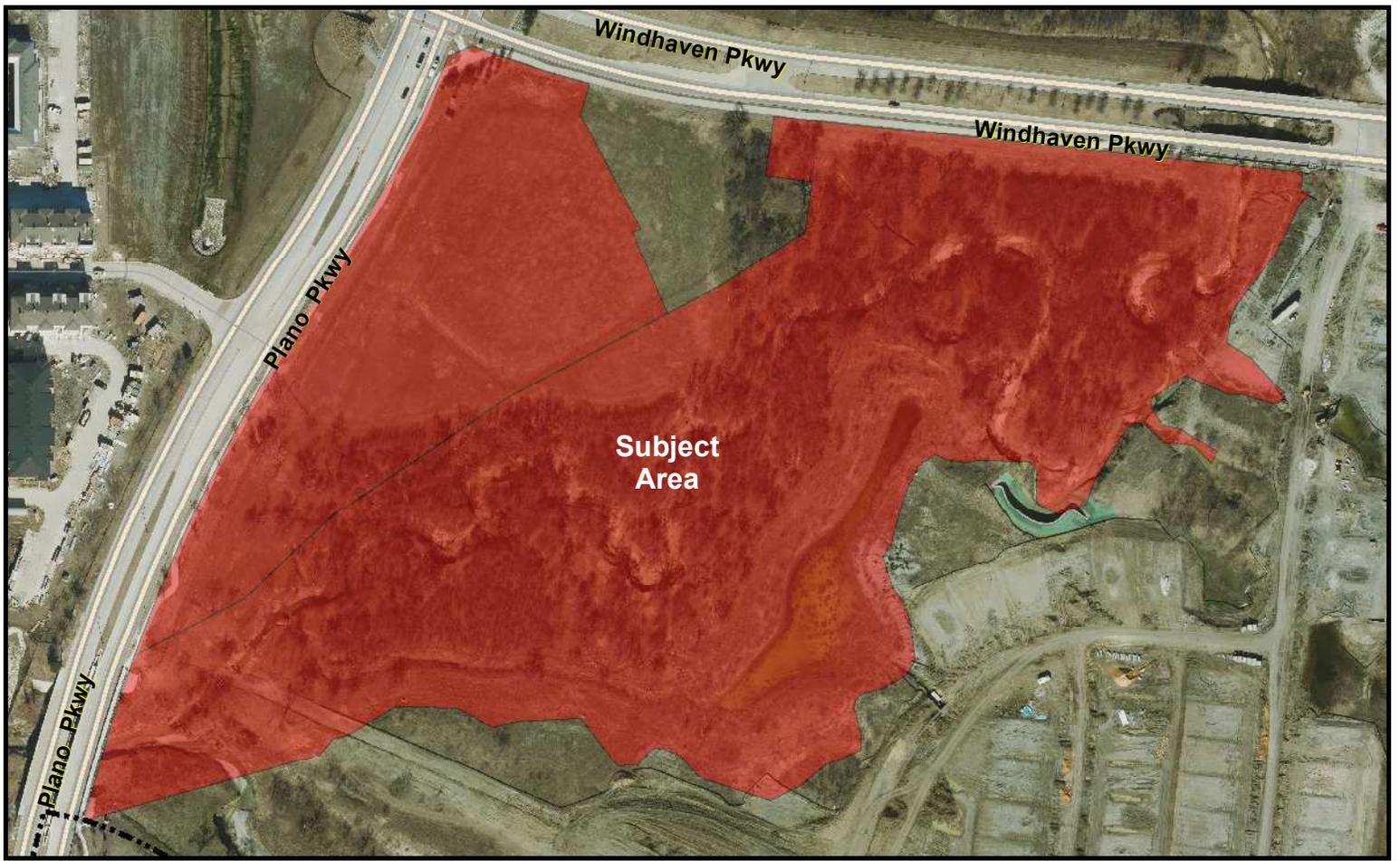
PARKING REQUIRED	
RESTAURANT - SIT DOWN (>1 HR)	1 SPACE PER 100 SF
BUILDING 1 (3000 SF)	30 SPACES REQD
BUILDING 2 (8000 SF)	80 SPACES REQD
BUILDING 3 (5000 SF)	50 SPACES REQD
PATIO	1 SPACE PER 100 SF
BUILDING 1 (2400 SF)	24 SPACES REQD
BUILDING 2 (2000 SF)	20 SPACES REQD
BUILDING 3 (2000 SF)	20 SPACES REQD
VOLLEYBALL COURTS	3.6 SPACES PER COURT
10 COURTS	36 SPACES REQD
TOTAL PARKING REQUIRED	260
REGULAR PARKING PROVIDED	352
ACCESSIBLE PARKING SPACES REQUIRED	7 TOTAL / 2 VAN
PARKING SPACES PROVIDED	2 STD AND 5 VAN
TOTAL PARKING SPACES	359

Landscaping and Irrigation

The site is proposed to be landscaped with Red Oak, Live Oak, Cedar Elm and shrubs of various types. Minimum 20% of street yard area must be landscaped. Applicant has proposed 23.5% or 40,245 sf of street yard landscaping. As per PD 22, 1 tree per 40 LF of street frontage or 30 trees are required. Applicant has proposed 40 trees and 401 shrubs along Plano Parkway. Parking lot interior landscaping has been proposed. Existing vegetation on common area lot and along Indian Creek are planned to remain mostly intact.

Development Review Committee Review

The Development Review Committee finds that the Development Plan meets all applicable requirements of the PD-22 Ordinance and therefore recommends approval.



Project No. SP16-0010 - Project Name: The Shacks at Austin Ranch Ph II



- | | | | | |
|------------------------------|--------------------------|------------------|----------------------|------------------------|
| Shacks at Austin Ranch Ph II | Business Park/Industrial | Heavy Commercial | Mobile Home | Planned Development |
| Agricultural | Duplex Dwelling | Industrial | Neighborhood Service | Shopping Center |
| Business Park | General Retail | Light Commercial | Office District 1 | Single Family Dwelling |



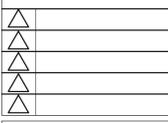
This map was generated by GIS data provided by The Colony GIS Department. The City of The Colony does not guarantee the correctness or accuracy of any features on this map. These digital products are for illustration purposes only and are not suitable for site-specific decision making.



Issue For:

- Design Development
- Progress
- Bidding
- Permit
- Construction

Original Issue Date:
30 JUNE 2016



LANDSCAPE PLAN

Drawn By: BDA
Checked By: BDA
Current Date: 16 AUG 2016

Drawing #
L1.01

LANDSCAPE NOTES

- Contractor shall verify all existing and proposed site elements and notify Architect of any discrepancies. Survey data of existing conditions was supplied by others.
- Contractor shall locate all existing underground utilities and notify Architect of any conflicts. Contractor shall exercise caution when working in the vicinity of underground utilities.
- Contractor is responsible for obtaining all required landscape and irrigation permits.
- Contractor to provide a minimum 2% slope away from all structures.
- All planting beds and lawn areas to be separated by steel edging. No steel to be installed adjacent to sidewalks or curbs.
- All landscape areas to be 100% irrigated with an underground automatic irrigation system and shall include rain and freeze sensors.
- All lawn areas to be Solid Sod Bermudagrass, unless otherwise noted on the drawings.

HYDROMULCH NOTES

- All lawn areas to be Hydromulch Bermudagrass, unless noted otherwise on drawings.
- Contractor shall scarify, rip, loosen all areas to be hydromulched to a minimum depth of 4" prior to topsoil and hydromulch installation.
- Bermudagrass seed shall be extra hulled and treated lawn type and shall be delivered to the site in its original unopened container, and shall meet Texas State Law requirements.
- Fiber: Shall be one hundred (100%) percent Wood Cellulose Fiber, delivered to the site in its original unopened container. "Conweb" or equal.
- Fiber Tack: Shall be delivered to the site in its original unopened container, and shall be "Terra-Tack one", as manufactured by Growers, Inc., or equal.
- Hydromulch with Bermudagrass seed at a rate of two (2) pounds per one thousand (1000) square foot.
- Use a 4'x8' batter board against all beds areas.
- If installation occurs between September 1 and April 1, all hydromulch areas to be Winter Ryegrass, at a rate of four (4) pounds per one thousand (1000) square feet. Contractor shall be required to re-hydromulch with Bermudagrass the following growing season.
- In the event ryegrass is necessary due to time of year installation, it shall be the responsibility of the contractor to scalp existing grass, bag clippings, and scarify soil to a depth of 1" prior to permanent lawn grass installation.
- All lawn areas to be hydromulched, shall have one hundred (100%) percent coverage prior to final acceptance.
- Contractor shall maintain all lawn areas until final acceptance. This shall include but not be limited to: mowing, watering, weeding, cultivating, cleaning, and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
- Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply as necessary.

GENERAL LAWN NOTES

- Fine grade areas to achieve final contours indicated on civil plans.
- Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
- All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
- Imported topsoil shall be natural, friable soil from the region, known as bottom and soil, free from lumps, clay, toxic substances, roots, debris, vegetation, stones, containing no salt and black to brown in color.
- All lawn areas to be fine graded, irrigation trenches completely settled, and finish grade approved by the Owner's Construction Manager or Architect prior to installation.
- All rocks 3/4" diameter and larger, dirt clods, sticks, concrete spoils, etc. shall be removed prior to placing topsoil and any lawn installation.
- Contractor shall provide (1") one inch of imported topsoil on all areas to receive lawn.

MAINTENANCE NOTES

- The Owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscape.
- All landscape shall be maintained in a neat and orderly manner at all times. This shall include mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to landscape maintenance.
- All landscape areas shall be kept free of trash, litter, weeds and other such material or plants not part of this plan.
- All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
- All plant material which dies shall be replaced with plant material of equal or better value.
- Contractor shall provide separate bid proposal for one year's maintenance to begin after final acceptance.

IRRIGATION REPAIR SPECIFICATIONS

- Contractor shall perform site visit prior to bidding and construction, to review extent of existing irrigation system.
- Contractor shall be responsible for verifying conditions of existing irrigation system. Contractor shall be responsible for maintaining the integrity of existing irrigation where possible, and if not, repair as needed, including but not limited to irrigation controller, meter, steering, etc.

WEEPING LOVEGRASS NOTES

- Installation of native grasses to be performed by hydro-seeding.
- Provide a hydromulch cap per Hydromulch Notes Sheet L1.01
- Final grades to be smooth and level free of debris, rocks over 1" and shall have no ruts or depressions.
- Install at the specified rate: 6lbs/acre

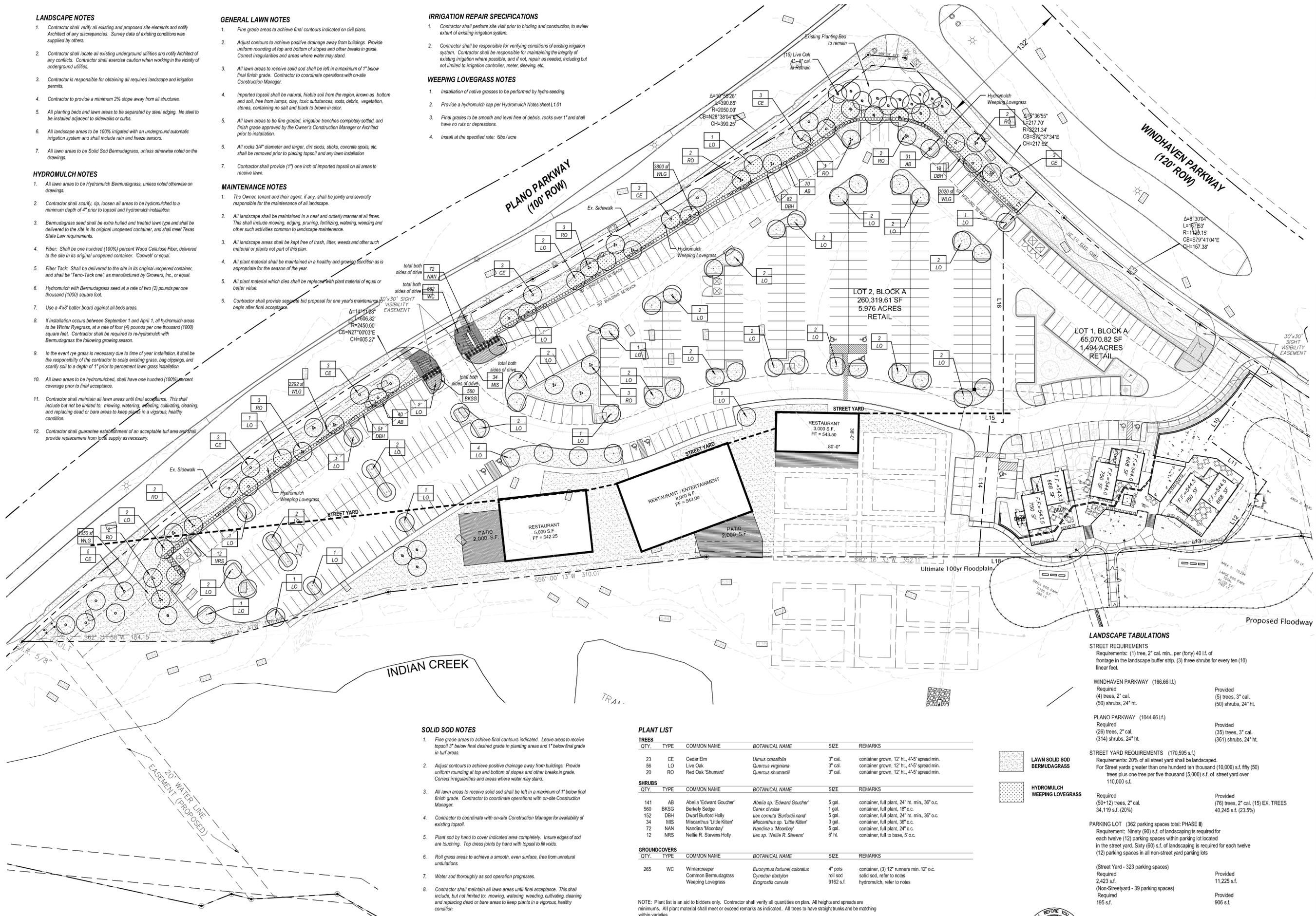
SOLID SOD NOTES

- Fine grade areas to achieve final contours indicated. Leave areas to receive topsoil 3" below final desired grade in planting areas and 1" below final grade in turf areas.
- Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
- All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
- Contractor to coordinate with on-site Construction Manager for availability of existing topsoil.
- Plant sod by hand to cover indicated area completely. Insure edges of sod are touching. Top dress joints by hand with topsoil to fill voids.
- Roll grass areas to achieve a smooth, even surface, free from unnatural undulations.
- Water sod thoroughly as sod operation progresses.
- Contractor shall maintain all lawn areas until final acceptance. This shall include, but not limited to: mowing, watering, weeding, cultivating, cleaning and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
- Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply if necessary.
- If installation occurs between September 1 and March 1, all sod areas to be over-seeded with Winter Ryegrass, at a rate of (4) pounds per one thousand (1000) square feet.

PLANT LIST

TREES						
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS	
23	CE	Cedar Elm	<i>Ulmus crassifolia</i>	3" cal.	container grown, 12" hl, 4'-5' spread min.	
56	LO	Live Oak	<i>Quercus virginiana</i>	3" cal.	container grown, 12" hl, 4'-5' spread min.	
20	RO	Red Oak 'Shumard'	<i>Quercus shumardii</i>	3" cal.	container grown, 12" hl, 4'-5' spread min.	
SHRUBS						
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS	
141	AB	Abelia 'Edward Goucher'	<i>Abelia sp. 'Edward Goucher'</i>	5 gal.	container, full plant, 24" ht. min., 36" o.c.	
560	BKSG	Berkely Sedge	<i>Carex divisa</i>	1 gal.	container, full plant, 18" o.c.	
152	DBH	Dwarf Burford Holly	<i>Ilex cornuta 'Burfordii nana'</i>	5 gal.	container, full plant, 24" ht. min., 36" o.c.	
34	MIS	Miscanthus 'Little Kitten'	<i>Miscanthus sp. 'Little Kitten'</i>	3 gal.	container, full plant, 36" o.c.	
72	NAN	Nandina 'Moonbay'	<i>Nandina v. 'Moonbay'</i>	5 gal.	container, full plant, 24" o.c.	
12	NRS	Nellie R. Stevens Holly	<i>Ilex sp. 'Nellie R. Stevens'</i>	6" ht.	container, full to base, 5 o.c.	
GROUNDCOVERS						
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS	
265	WC	Wintercreeper Common Bermudagrass	<i>Elymus forunei coloratus</i>	4" pots	container, (3) 12" runners min. 12" o.c.	
		Weeping Lovegrass	<i>Cynodon dactylon</i>	9162 s.f.	solid sod, refer to notes	
			<i>Eragrostis curvula</i>		hydromulch, refer to notes	

NOTE: Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. All plant material shall meet or exceed remarks as indicated. All trees to have straight trunks and be matching within varieties.



LANDSCAPE TABULATIONS

STREET REQUIREMENTS	Requirements:	Provided
WINDHAVEN PARKWAY (166.66 l.f.)	Required (4) trees, 2" cal. (50) shrubs, 24" ht.	Provided (5) trees, 3" cal. (50) shrubs, 24" ht.
PLANO PARKWAY (1044.66 l.f.)	Required (26) trees, 2" cal. (314) shrubs, 24" ht.	Provided (35) trees, 3" cal. (361) shrubs, 24" ht.
STREET YARD REQUIREMENTS (170,595 s.f.)	Requirements: 20% of all street yard shall be landscaped. For Street yards greater than one hundred ten thousand (10,000) s.f. fifty (50) trees plus one tree per five thousand (5,000) s.f. of street yard over 110,000 s.f.	Required (50+12) trees, 2" cal. 34,119 s.f. (20%)
PARKING LOT (362 parking spaces total: PHASE II)	Requirement: Ninety (90) s.f. of landscaping is required for each twelve (12) parking spaces within parking lot located in the street yard. Sixty (60) s.f. of landscaping is required for each twelve (12) parking spaces in all non-street yard parking lots	Required (Street Yard - 323 parking spaces) 2,423 s.f. (Non-Streetyard - 39 parking spaces) 906 s.f.



01 SITE LANDSCAPE PLAN
SCALE: 1"=40'-0"



THE SANDBAR

THE COLONY, TEXAS

PRELIMINARY DESIGN PACKAGE

06.21.2016

O'BRIEN
ARCHITECTS



PERSPECTIVE 01

THE SANDBAR

THE COLONY, TEXAS
06.21.2016





PERSPECTIVE 02

THE SANDBAR

THE COLONY, TEXAS
06.21.2016





PERSPECTIVE 03

THE SANDBAR

THE COLONY, TEXAS
06.21.2016





PERSPECTIVE 04

THE SANDBAR

THE COLONY, TEXAS
06.21.2016



CITY OF THE COLONY, TEXAS

**ORDINANCE NO. 2016-
DEVELOPMENT PLAN**

THE SHACKS AT AUSTIN RANCH PH II

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, APPROVING A DEVELOPMENT, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, THE SHACKS AT AUSTIN RANCH PH II, WHERE THREE RESTAURANTS APPROXIMATELY 3000 SF, 8000 SF AND 5000 SF WILL BE BUILT ON 5.976-ACRE PARCEL OF LAND LOCATED AT THE SOUTHEAST CORNER OF PLANO PARKWAY AND WINDHAVEN PARKWAY IN THE PLANNED DEVELOPMENT 22 (PD-22 – AUSTIN RANCH) ZONING DISTRICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the City Council of the City of The Colony, Texas, in compliance with the laws of the State of Texas, and the Code of Ordinances of the City of The Colony, Texas, and the City Council of the City of The Colony, Texas, is of the opinion and finds that Development Plan Application No. SP16-0010 The Shacks at Austin Ranch Ph II, where three restaurants approximately 3000 sf, 8000 sf and 5000 sf will be built on 5.976-acre parcel of land located at the southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) zoning district is approved.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS:

SECTION 1. That the findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. That the City Council of the City of The Colony, Texas, does hereby approve the Development Plan, a copy of which is attached hereto as *Exhibit A* of this Ordinance.

SECTION 3. That it is hereby declared to be the intention of the City Council of the City of The Colony, Texas, that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4. That any provision of any prior ordinance of the City whether codified or uncodified, which are in conflict with any provision of this Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 5. That this Ordinance shall become effective immediately upon its passage.

DULY PASSED by the City Council of the City of The Colony, Texas, this the 20th day of September , 2016.

Joe McCourry, Mayor

ATTEST:

Tina Stewart, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

**MINUTES
CITY OF THE COLONY
PLANNING AND ZONING COMMISSION
AUGUST 23, 2016**

After determining that a quorum was present, the Planning and Zoning Commission of the City of The Colony, Texas convened into Regular Session which was held on Tuesday, August 23, 2016 at 6:30 PM in the City Council Chambers located in City Hall, 6800 Main Street, The Colony, Texas, at which time the following items were addressed:

Board Members Present: Karen Hames, Chairman, Detrick DeBurr, Vice Chairman, Cesar Molina Jr., Shannon Hebb, Brian Buffington, and Shawn Rockenbaugh.

Board Members Absent: Janece Pool

City Council Liaison: David Terre, City Council Place 4

Staff Present: Gordon Scruggs, P.E. Director of Engineering and Development Services, Surupa Sen, AICP, Senior Planner, Brian Mcnuely, Engineering Technician, and David Ritter, City Attorney.

1.0	CALL REGULAR SESSION TO ORDER
------------	--------------------------------------

Chairman Hames called the meeting to order at 6:30 p.m.

1.1	CITIZEN INPUT
------------	----------------------

No citizen came forward for input.

2.0	CONSENT AGENDA
2.1	Consider approval of the minutes of the July 26, 2016 Regular Session.
2.2	<i>FP16-0005, The Shacks at Austin Ranch Final Plat</i> Consider approval of Final Plat for Lots 1, 2, & 3X, Block A, The Shacks at Austin Ranch, being 26.565 acres of land out of David Andrews Survey, Abstract No. 18, and B. Schoonover Survey, Abstract No. 1208, an addition to the City of The Colony, Denton County, Texas in Planned Development 22 (PD-22) aka Austin Ranch PD zoning district.

Chairman Hames read the Consent Agenda items into the record.

Commissioner Molina moved to approve Item 2.1, 2.2 Commissioner Hebb seconded the motion. Motion carried (6-0).

3.0	DISCUSSION ITEMS
3.1	<i>SP16-0010, The Shacks at Austin Ranch Ph II – Development Plan</i> Discuss and consider making a recommendation to City Council on a request for Development Plan to allow The Shacks at Austin Ranch Ph II, where three restaurants approximately 3000 sf, 8000 sf and 5000 sf will be built on 5.976-acre parcel of land located at the southeast corner of Plano Parkway and Windhaven Parkway in the Planned Development 22 (PD-22 – Austin Ranch) zoning district.

Chairman Hames read the discussion item 3.1 into record.

Ms. Sen presented the staff report.

Commissioner Buffington asked that some of the volley ball courts are on Lot 3X and appears to be in flood plain, will that be an issue?

Ms. Sen answered that as there are no structures being built in flood plain it should not cause any problem.

Commissioner Buffington wanted to confirm that the volley ball courts are crossing the lot line between lots 2 and 3X.

Ms. Sen answered affirmative.

Commissioner Rockenbaugh moved to approve Item 3.1 Commissioner Hebb seconded the motion. Motion carried (6-0).

There being no further business to come before the Commission, Chairman Hames adjourned the Regular Session of the Planning and Zoning Commission at 6: 37 p.m.

Karen Hames, Chairman

Surupa Sen, AICP, Senior Planner

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider approving a resolution authorizing the City Manager to execute the proposed Partial Assignment of the LMG Ventures, LLC Contract with Boggs Electric in the amount of \$105,261.00 for the completion of the electrical work on the well and aeration equipment (General Admin, Maurina)

Background:

Purpose:

As part of the PID # 1 improvement plan a well and aeration equipment were installed for the publicly owned boardwalk lake. Electrical Work to energize both the well and aeration equipment (known as Phase III and IV) was added to LMG Ventures Contract with Boggs Electric for Electrical work in the Boardwalk area. To facilitate the Phase III and IV electrical work is funded from the appropriate source (PID#1) a partial assignment of the master contract is proposed. The assignment is limited to the electrical work necessary to energize the well and aerators.

The total amount of the proposed Contract assignment is \$105,261.00 and is within the amount budgeted in the approved PID#1 Service Assessment Plan as approved at the May 5, 2015 City Council Meeting.

This electrical work will provide the necessary electrical enclosure, conduit, wiring and labor to make the well and aeration equipment operational. Staff has reviewed Phase III and Phase IV of the LMG Ventures Contract with Boggs Electric and is recommending this work be completed as stated in the Master Contract.

Issues:

Alternatives:

Recommendations:

It is recommended that Council authorize staff to execute the proposed Partial Assignment of the LMG Ventures, LLC Contract with Boggs Electric in the amount of \$105,261.00 for the completion of the electrical work on the well and aeration equipment.

Attachments:

NFM - Boardwalk Partial Assignment Contract
Partial Assignment Contract
Proposed Resolution

PARTIAL ASSIGNMENT OF CONTRACT

This Partial Assignment of Contract (“Partial Assignment”) is made effective as of the ____ day of September, 2016, from **LMG Ventures, LLC**, a Texas limited liability company (the “Assignor”), with an address of 700 S. 72nd Street, Omaha, NE 68114, to **THE CITY OF THE COLONY, TEXAS**, a Texas home-rule municipality (the “Assignee”), with an address of 6800 Main Street, The Colony, Texas 75056.

A. Pursuant to that certain Contract dated as of August 5, 2015, as per (the “Site Work Contract”) by and between Assignor and Boggs Electric Inc., Assignor engaged Boggs Electric Inc. to construct certain site work within the “Boardwalk District” of the Grandscape project located near the intersection of State Highway 121 and S. Colony Boulevard in The Colony, Texas (the “Project”), all as more particularly described in the Contract.

B. A portion of the work to be completed by Boggs Electric Inc. pursuant to the Site Work Contract relates to certain public infrastructure to be completed by Assignee on property owned by Assignee (the “City Improvements”) in accordance with the terms and conditions of the Contract relating to the City Improvements.

C. In connection with construction of the City Improvements, Assignor and Assignee intend and agree that all of Assignor’s right, title and interest in and to the Contract shall be assigned to Assignee, insofar and only insofar as the terms and conditions relate to the City Improvements.

NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby conveys and assigns to Assignee all of Assignor’s rights, title and interests in, to and under the Contract with respect to the City Improvements, together with any and all rights relating thereto from and after the effective date hereof, insofar and only insofar as the Contract relates to the City Improvements. Specifically, the parties acknowledge and agree that the terms and conditions of the Contract and as shown in Phase III and IV of the Bid Document totaling \$105,261.00, all as more particularly described on ***Exhibit A*** attached hereto and incorporated herein by reference relate solely to the City Improvements and are hereby assigned to Assignee.

2. Assumption. Assignee hereby accepts this partial assignment of the Contract, including without limitation Phase III and IV of the Bid Document, and assumes and agrees to keep, perform and fulfill all of the duties, covenants, provisions, conditions and obligations of Assignor under the Contract, including without limitation Phase III and IV of the Bid Document, arising from and accruing from and after the effective date hereof, insofar and only insofar as such duties, covenants, provisions, conditions and obligations pertain to Assignee’s ownership, use or activities related to the City Improvements.

3. Indemnification. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) arising from and against or relating to the Contract prior to the effective date hereof. To the extent allowed by law, Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) arising from or against or relating to the Contract insofar and only insofar as such liabilities, claims, damages, costs or expenses pertain to Assignee's ownership, use or activities related to the City Improvements on or after the effective date hereof.

4. Binding Effect. This Partial Assignment shall be binding upon and insure to the benefit of the parties hereto and their successors and assigns.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Partial Assignment as of the day and year first set forth above.

ASSIGNOR:

LMG Ventures, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

THE CITY OF THE COLONY, TEXAS,
A Texas home-rule municipality

By: _____
Name: _____
Title: _____

EXHIBIT A

Bid Document and Contract

PARTIAL ASSIGNMENT OF CONTRACT

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NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

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3. Indemnification. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) arising from and against or relating to the Contract prior to the effective date hereof. To the extent allowed by law, Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) arising from or against or relating to the Contract insofar and only insofar as such liabilities, claims, damages, costs or expenses pertain to Assignee's ownership, use or activities related to the City Improvements on or after the effective date hereof.

4. Binding Effect. This Partial Assignment shall be binding upon and insure to the benefit of the parties hereto and their successors and assigns.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Partial Assignment as of the day and year first set forth above.

ASSIGNOR:

LMG Ventures, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

THE CITY OF THE COLONY, TEXAS,
A Texas home-rule municipality

By: _____
Name: _____
Title: _____

EXHIBIT A

Bid Document and Contract



PROJECT MANUAL
PROPOSAL, CONTRACT, BOND FORMS,
AND SPECIFICATIONS

FOR

BOARDWALK SITE PLAN ELECTRICAL
LAKE EDGE AND WATER FEATURE IMPROVEMENTS
GRANDSCAPE ADDITION

CITY OF THE COLONY
DENTON COUNTY, TEXAS

JOE MCCOURRY, MAYOR

CITY COUNCIL

KIRK MICULEC
JEFF CONNELLY
PERRY SCHRAG

RICHARD BOYER
DAVID TERRE
JOEL MARKS

TROY C. POWELL
CHRISTIE WILSON

CITY MANAGER
CITY SECRETARY

TOD MAURINA
GORDON SCRUGGS, P.E.

ASSISTANT CITY MANAGER
DIRECTOR OF ENGINEERING

Owner:
LMG Ventures, LLC
700 S, 72nd Street
Omaha, Nebraska 68114

May 2015

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For this project, the Standard Specifications for Public Works Construction - North Central Texas, (Fourth Edition) as prepared by the North Central Texas Council of Governments and the City of The Colony Standard Construction Details shall govern all work to be done, together with any additional Special Specifications or Specific Project Requirements included herein.



**SECTION 1
BIDDING
DOCUMENTS**

BIDDING AND CONTRACT DOCUMENTS

INSTRUCTIONS TO BIDDERS

1.0 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the Contract, the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

- A. *Bidder*--The individual or entity who submits a Bid directly to OWNER.
- B. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- C. *Successful Bidder*--The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

2.0 - COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be obtained from Yaggi Engineering, Inc.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3.0 - QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of OWNER's request Bidder shall submit written evidence including but not limited to a current certified financial statement; previous experience; present commitments; and list of available equipment. Bidder must be a licensed contractor in the State of Texas.

4.0 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

- A. The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
 - 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site that ENGINEER has used in preparing the Bidding Documents.

- B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others. Contractor shall verify information provided. All abandoned utility lines shall be verified for inactivity prior to removal.

4.03 *Hazardous Environmental Condition*

- A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ENGINEER has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to the Bidder. Those reports and drawings are not part of the Contract Documents. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with face conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in the Contract Documents. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in the Contract Documents.

- 4.05 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

- 4.06 Reference is made to the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by OWNER or others that relates to the Work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

- 4.07 It is the responsibility of each Bidder before submitting a Bid to:

- A. Examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;

- D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Supplementary Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions;
 - E. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 - F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. Become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. Promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.
- 4.09 The Bidder acknowledges by submission of the Bid that Bidder is solely responsible for the trench excavation safety system as prescribed by the Occupational Safety and Health Administration.

5.0 - PRE-BID CONFERENCE

- 5.01 Based on the scope of the project and the familiarity of the site by the bidding contractors, a pre-bid conference will not be held for this project.

6.0 - SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.
- 6.02 Coordination of staging within the site area will be required with the other active construction projects. The Contractor shall coordinate with the Owner's Representative to determine locations available access and staging.

7.0 - INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

8.0 - BID SECURITY

- 8.01 A Bid security shall not be required for the bid of this project.

9.0 - CONTRACT TIMES

- 9.01 It is understood and agreed between the parties that time is of the essence of the Contract Documents. The contractor shall provide all required resources as needed to complete the project per the program schedule in accordance with the Contract Documents, as the owner will not entertain or grant time extensions for weather or delays.

10.0 - LIQUIDATED DAMAGES

- 10.01 It is understood and agreed between the parties hereto that time is of the essence for the Contract. The contractor shall pay to the OWNER as liquidated damages \$1,000 for each calendar day beyond the completion date specified in Section 2: Standard Form Construction Contract of this document for failure to 100% complete and deliver the constructed project. It being understood between the parties hereto that such sum shall be treated as liquidated damages and not as penalty, and the OWNER may withhold from the Contractor's compensation such sums as liquidated damages.

11.0 - SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or

equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions.

12.0 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.
- 12.02 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.
- 12.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

13.0 - PREPARATION OF BID

- 13.01 The Bid form is included with the Bidding Documents. Additional copies may be obtained from ENGINEER.
- 13.02 All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item] listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.

- 13.07 A Bid by a joint venture shall be executed by each joint venture in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.
- 13.08 All names shall be typed or printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.
- 13.10 The address and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number for the state of the Project, if any, shall also be shown on the Bid form.

14.0 - BASIS OF BID; EVALUATION OF BIDS

14.01 Lump Sum Contract

- A. Bidders shall submit a Lump Sum Price based on and inclusive of all materials and labor to complete the work as per the specifications.

15.0 - SUBMITTAL OF BID

- 15.01 Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Bid form. The unbound copy of the Bid form is to be completed and submitted with the Bid security and the following data:
- A. Acknowledgement of Receipt of Addendums.
- B. Bid Bond.
- C. Work plan including narrative and descriptive exhibits describing sequencing and approach to completing the work per the program schedule.
- 15.02 A Bid shall be submitted by email and mailed no later than Friday, May 22nd, 2015 at 2:00pm as indicated in the invitation to Bid with hard copies enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by other required documents. The Bid shall be emailed (mpeterson@grahamecivil.com) and sent by Federal Express or other delivery system for next day delivery. A sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". The mailed Bid shall be addressed to LMG Ventures, LLC c/o Mike Peterson; Graham Associates, Inc., 600 Six Flags Dr., Suite 500, Arlington, TX 76012.

16.0 - MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

17.0 - OPENING OF BIDS

- 17.01 There will not be a public opening of bids. The Owner's Representative will evaluate the submitted bids.

18.0 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for 180 Calendar Days, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

19.0 - AWARD OF CONTRACT

- 19.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid the OWNER believes will be most advantageous to the OWNER and result in the best and most economical completion of the project.
- 19.07 In the case of ambiguity or lack of clearness in stating prices in the Proposal, the OWNER reserves the right to adopt the most advantageous construction thereof to the Owner or to reject the Proposal.

20.0 - CONTRACT SECURITY AND INSURANCE

- 20.01 Prior to commencing the Work, the Contractor shall furnish to OWNER and DEVELOPER proof of satisfactory carriage of insurance in accordance with the Contract Documents.

A performance bond and a payment bond each for one hundred (100%) percent of the Contract Price will be required in accordance with V.T.C.A., Government Code, Chapter 2253. Each bond must have an attached power of attorney. At least one copy must contain originals. Contractor shall be certified and qualified to complete the Work.

Prior to commencing the work, the Contractor shall furnish to OWNER AND DEVELOPER proof of satisfactory carriage of insurance in accordance with the requirements of the Contract Documents. The following shall be listed as additionally insured: LMG Ventures, LLC; The City of The Colony, Texas; Collett & Associates (Charlotte, NC); Graham Associates, Inc.; Yaggi Engineering, Inc.; NFM Services, LLC; and TXFM,

21.0 - SIGNING OF AGREEMENT

- 21.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 7 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER. Within ten days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification

22.0 - SALES AND USE

- 22.01 The bidder shall include sales tax in accordance with local regulations.

23.0 - RETAINAGE

- 23.01 Retainage in the amount of 10% of the amount invoiced up to the time of payment will be withheld until final payment. Final payment will be made once all Work is verified substantially complete by the Engineer in accordance with the Contract Documents, delivery of contractor prepared as-built construction drawings, delivery of warranties, delivery of lien waivers, and after acceptance by the Owner.

24.0 - CONTRACTORS JOB OFFICE AND STAGING AREAS

- 24.01 The locations of the site of work will be designated by the Owner for use by the Contractor(s) for job site trailers, material and equipment storage, construction ingress and egress, etc. No deviation from these locations shall be allowed without prior approval by the Owner.

25.0 - RESPONSIBILITY FOR DEFECTS DUE TO MATERIALS AND/OR WORKMANSHIP

- 25.01 The Contract Documents specify the Contractor's responsibility for defects in materials and/or workmanship.

26.0 – EMPLOYMENT REQUIREMENTS AND WAGE RATES

- 26.01 The Contract shall be based upon payment by the CONTRACTOR and his subcontractors of wage rates not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed (i.e.-Denton County), and not less than the general prevailing rate of per diem wages for legal holiday and overtime work. The CONTRACTOR shall comply with the requirements of the prevailing wage law of the State of Texas, Revised Civil Statutes, V.T.C.A., Government Code, 2258-001 et seq., including the latest amendments thereto. The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.
- 26.02 The CONTRACTOR and each subcontractor shall keep accurate record showing the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by a representative of the OWNER.
- 26.03 In case the CONTRACTOR or any subcontractor fails to comply with the prevailing wage law, by statutory authority the CONTRACTOR shall forfeit to the OWNER \$10.00 per day for each laborer, workman, or mechanic who is paid less than the specified rate.
- 26.04 The CONTRACTOR shall comply with all requirements of the hours or work on public works law of the State of Texas, V.T.C.A., Government Code 605.001 and 605.003, including the latest amendments thereto.
- 26.05 Pursuant to V.T.C.A., Government Code, 657-001 et seq., the CONTRACTOR shall give preference to employment of honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five years.

PROPOSAL

TO: LMG Services, LLC
700 S. 72nd Street
Omaha, Nebraska 68114

FOR: Boardwalk Site Plan Electrical
Lake Edge and Water Feature Improvements
Grandscape Addition
The Colony, Texas

Pursuant to the foregoing "Notice to Contractors", the undersigned bidder, having thoroughly examined the Contract Documents, including plans, specifications, the site of the project and understanding the scope of the work, proposes to furnish all labor, equipment, and materials, necessary to fully complete all of the Work as provided in the plans and Contract Documents and subject to the inspection and approval of the Owner and the City of The Colony, Texas, and binds himself upon acceptance of this Proposal to execute a Contract and furnish an approved Performance Bond, if required and /or Payment Bond if required by the Owner, provide evidence of insurability, and all other information as may be required by the Contract Documents for the performing and completing of said work. Contractor proposes to do the Work within the time stated and for the lump sum:

LUMP SUM TOTAL CONTRACT AMOUNT

\$ 2,018,441.00

The undersigned acknowledges receipt of the following addendum:

Addendum No. 1 N/A

Addendum No. 2 N/A

Addendum No. 3 N/A

BIDDER

Boggs Electric Co., Inc.
Company

By 
Signature

Michael H. Boggs
Printed or typed Name and Title

5303 Buford Jett Lane
Address

Balch Springs TX 75180
City State Zip

1. BIDDER agrees that all work awarded will be completed based on the phasing represented in the project schedule, and based upon a completion date to be mutually agreed upon following OWNER acceptance of this proposal. Contract time will commence to run as provided in the Contract Documents.
2. Communications concerning this Bid shall be addressed to the address of BIDDER indicated on the applicable signature page.
3. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

SUBMITTED ON May 22, 2015

LMG Ventures, LLC

Contract

~~NFM Contract~~ City

Phase I - Electrical - Boardwalk	\$ 1,317,925.00	
Phase II - Electrical - Site Lighting	\$ 595,255.00	
Total	<u>\$ 1,913,180.00</u>	
Phase III - Electrical - Well		\$ 8,284.00
Phase IV - Electrical - Areators		\$ 96,977.00
		<u>\$ 105,261.00</u>

Total: \$ 2,018,441.00

LUMP SUM SCHEDULE OF VALUES (Each line item shall include sales tax)

(Revised 6/26/15 for accounting purposes only)

PHASE I

A. General Conditions

Construction Staking/ As-Builts	<u>\$9,900.00</u>
Supervision and Management	<u>\$49,600.00</u>
Site Setup/ Job Trailer	<u>\$11,880.00</u>
Insurance	<u>Included</u>
Coordination with other Contractors	<u>Included</u>
SWPPP Protection	<u>\$6,900.00</u>
Performance, Payment and Maintenance	<u>\$17,600.00</u>
Subtotal	<u>\$95,780.00</u>

B. Electrical Services and Switchgear - Base Bid

Electrical Services	
(conduit, wiring, pads, enclosures, switchgear, all breakers)	<u>\$238,492.00</u>
Electrical Services Conduits to Future Pad Sites	<u>\$24,869.00</u>
Subtotal	<u>\$263,361.00</u>

C. Miscellaneous Power - Base Bid

Sign/Digital Screens to be Installed	
(conduit, wiring, receptacles)	<u>\$30,063.00</u>
Sign/Digital Screens to be installed as future	
(rough-in only)	<u>\$12,192.00</u>
Subtotal	<u>\$42,255.00</u>

D. Boardwalk Lighting Pedestrian Poles/ Fixtures - Alternate Bid

Pedestrian Poles and Fixtures at Pilasters	
(poles, fixtures, 24" mounting bolts on pilasters)	<u>\$184,704.00</u>
Pedestrian Poles and Fixtures at Pilasters	
(conduit, wiring, installation)	<u>\$ 200,407.00</u>
Pedestrian Poles and Fixtures	
(6 poles not on pilasters, poles P38, P39, P40, P41, P42, P43, fixtures)	<u>\$ 29,790.00</u>
Pedestrian Poles and Fixtures	
(6 poles not on pilasters, poles P38, P39, P40, P41, P42, P43, conduit, wiring, and footings)	<u>\$ 30,543.00</u>
Subtotal	<u>\$445,444.00</u>

E. Boardwalk Lighting - Base Bid

Fixture Type A	
(rough-in only)	Removed
Fixture Type B	
(connections, conduit, wiring)	<u>\$26,994.00</u>
Lighting Controls (Type A, B, and Pedestrian Poles)	<u>\$24,681.00</u>
Subtotal	<u>\$51,675.00</u>

F. IT Rough-in - Base Bid

IT Conduit and Pull Boxes (Boardwalk)	<u>\$ 81,562.00</u>
IT Enclosures	
(DDB Unlimited, Pre-wired, Model #20d-50ddc-pop2-1)	<u>\$ 60,585.00</u>
(conduit, wiring, and enclosure pads)	<u>\$ 76,697.00</u>
IT Pathway Conduits and 36" x 36" pullboxes	<u>\$ 173,245.00</u>
between IT Enclosures	<u>\$ 17,202.00</u>
IT conduit to Sign/Digital Screens	<u>\$ 6,065.00</u>
IT Conduit to Pad Sites	<u>\$ 4,064.00</u>
Speaker Conduits (Boardwalk)	
Subtotal	<u>\$419,420.00</u>

TOTAL PHASE I - (WITH ALTERNATE BIDS) \$1,317,925.00

LUMP SUM SCHEDULE OF VALUES (Each line item shall include sales tax)

(Revised 8/18/15 for accounting purposes only)

PHASE III

A. General Conditions

Construction Staking/ As-Builts	Included
Supervision and Management	Included
Site Setup/ Job Trailer	Included
Insurance	Included
Coordination with other Contractors	Included
SWPPP Protection	Included
Performance, Payment and Maintenance	\$2,750.00

Subtotal \$2,750.00

B. Well Pump

Conduit, Wiring, and Connections \$5,534.00

Total \$8,284.00

LUMP SUM SCHEDULE OF VALUES (Each line item shall include sales tax)

(Revised 8/18/15 for accounting purposes only)

PHASE IV

A. General Conditions

Construction Staking/ As-Builts	Included
Supervision and Management	Included
Site Setup/ Job Trailer	Included
Insurance	Included
Coordination with other Contractors	Included
SWPPP Protection	Included
Performance, Payment and Maintenance	\$2,750.00

Subtotal \$2,750.00

B. Aerators

Electrical Services
(conduit, wiring, pads, enclosures, switchgear, al \$49,553.00

Aerators
(connections to aerator control panel, all final coi \$44,674.00

Total \$96,977.00

Phase III - Well \$8,284.00

Phase IV - Aerators \$96,977.00

\$105,261.00

*SECTION 2
CONTRACT
DOCUMENTS*

STANDARD FORM CONSTRUCTION CONTRACT

This Construction Contract ("Contract") is made and entered into this 5th day of August, 2015, by and between LMG Ventures, LLC, (hereinafter "Company" or "Owner") and Boggs Electric Co., Inc. (hereinafter "Contractor"). Company and Contractor hereby agree as follows:

I. CONTRACT DOCUMENTS; WORK

This Contract, the Instructions to Bidders (if any), the Invitation to Bidders (if any), the Contractor's Proposal, the drawings and specifications, performance, payment and other bonds, if any, required by this Contract, General Conditions and Supplemental Conditions, if any, the attached exhibits and Change Orders collectively constitute the "Contract Documents".

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

The project for which the Work under the Contract Documents is located is in the County of DENTON, State of TEXAS and is generally situated on a 13.4 Acre tract of land immediately South of the Sam Rayburn Tollway East of Nebraska Furniture Mart Drive and West of Destination Drive (hereinafter sometimes referred to as "Site")

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Boardwalk Site Plan Electrical
Lake Edge and Water Feature Improvements
Grandscape Addition

Drawings and Specifications for the Work are set forth on Exhibit B attached hereto and made a part hereof. (The description, together with the Drawing and Specifications, are sometimes hereinafter referred to as the "Scope of Work.")

The Commencement Date as used in Paragraph 7 ("Commencement Date") is 7 calendar days after Contractor has received notice from the Company to proceed.

The Substantial Completion Date as used in Paragraph 7 ("Substantial Completion Date") for the total of the work is N/A

This Contract provides does not provide (*check one box*) for liquidated damages if the Contractor fails to complete the Work within the Contract Time. If applicable, the amount of the liquidated damages shall be \$1,000.00 per day as set forth in Instruction to Bidders Section 10.01, and the liquidated damages provision set forth in Paragraph 18 shall apply. If no dollar amount is inserted and no box is checked, the Contract shall not have a liquidated damages provision. The construction shall be 100% complete and delivered prior to N/A.

Performance and payment bonds are are not (*check one box*) required under this Contract. If performance and payment bonds are required, the provisions of Paragraph 17 shall apply.

Maintenance bonds are are not (*check one box*) required under this Contract. If maintenance bonds are required, the provisions of Paragraph 17 shall apply.

Should there be any conflict between any of the terms and provisions of the Contract Documents which cannot be reconciled, then the following priority shall prevail:

- a. Contract Documents
- b. General Conditions
- c. Supplementary Conditions
- d. Addenda, Change Orders or Modifications
- e. Specifications
- f. Drawings
- g. Instructions to Bidders
- h. Bid Proposal

2. DEFINITION OF TERMS

As used in the Contract Documents, each of the terms defined in this Paragraph 2 shall have the following meaning:

"Affiliates" shall mean any corporation, partnership, joint venture, limited partnership, limited liability company, or other legal entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Company.

"Application for Payment" shall mean the format approved by Company which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

"Claims" shall mean any and all direct or indirect claims, demands, actions, causes of action, suits, rights of recovery for any relief or damages, debts, accounts, damages, costs, losses, liabilities, and expenses (including, without limitation, interest, court costs, attorneys' fees and expenses, and other costs of defense), of any kind or nature relating to or arising out of the Work.

"Contract Price" shall mean the aggregate of all prices for each bid item listed in the Contractor's Proposal which is actually performed, incorporated into the Work and accepted by Engineer, and shall include all amounts due to Contractor computed in accordance with unit prices contained in the Contractor's Proposal for units of the Work actually completed and accepted by Engineer and Company, unless stipulated as a lump sum in the Contractor's Proposal.

"Engineer" shall mean the person (including employees of Company) or firm designated as such by Company, and Engineer's delegates designated from time to time to supervise and coordinate the Work.

"Force Majeure" shall mean the following when beyond the reasonable control of the affected party: acts of God (except as excluded herein) including lightning, fire, storm, flood and earthquake; war; insurrection; riot; strike, picketing, boycott, lockout or other labor disturbance; inability to obtain essential materials; priority allocations of materials; order, restraint or prohibition by the United States of America, any state, or by any board, department, commission or agency either having jurisdiction of the parties hereto or the Work, or jurisdiction over parties supplying labor, material, or any item or items necessary or desirable to performance under the Contract Documents. Neither rain, snow, ice, nor any other adverse weather condition shall be construed to be an Event of Force Majeure, except for such adverse weather condition which is considered unseasonable and which causes Engineer to determine that, despite the exercise of due diligence and best efforts of Contractor to avoid or overcome the same, continued performance of the Work would be perilous to personnel, equipment and the Work, and would cause the performance limitations of the equipment being used for the performance of the Work to be exceeded.

"Indemnitees" shall mean The City of the Colony, LMG Ventures, LLC, Company's Affiliates, subsidiaries, any additional insured, and their respective employees, officers, directors, members, representatives and agents.

"Subcontractor" shall mean independent contractors having a direct contract with Contractor to furnish equipment, materials, or labor for the Work and their sub-subcontractors of every tier.

"Work" shall mean all of those personnel, tasks, services, labor, supervision, facilities, structures, materials, equipment, supplies, transportation and all other tangible or material things required to be undertaken, produced, delivered, constructed, installed, or furnished by Contractor or any of its Subcontractors as specified in or reasonably inferable from the Contract Documents and shall include items, services or tasks incidental or

preliminary thereto, including procurement of any necessary permits, licenses, or agreements for use of proprietary information, patented methods or equipment, or other matters related to the Work not otherwise furnished by Company.

Work Days and Hours Except as herein specifically provided, no Work at the Site shall be performed during other than normal working days and permitted hours (meaning Monday through Saturday, 6 a.m. to 7 p.m., exclusive of federal holidays) without the written permission of Company, except in emergencies endangering life and property, in which case Contractor shall act immediately and shall notify Engineer and Company within twenty-four (24) hours of such emergency. If Contractor asks for, and receives written permission from Company to schedule Work at other than scheduled hours, all extra costs, including those for Engineers, shall be borne by Contractor.

3. CONTRACT PRICE

Company shall pay Contractor the Contract Price for the performance of the Work in accordance with the Contract Documents in current funds. Contractor shall be paid the lump sum amount for the Work reflected in the Contractor's proposal and Scope Clarifications, as amended by change orders approved in writing by the Company ("Change Order") from time to time.

4. CONTRACTOR'S WARRANTIES

(a) Contractor accepts the relationship of trust and confidence established between it and Company under this Contract. Contractor agrees to faithfully and fully perform the terms of this Contract, and shall complete the Work free and clear of all liens. Contractor shall, at all times during the progress of the Work, employ enough skilled workmen and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the time schedule.

(b) Contractor has satisfied itself, by its own independent investigation and study, regarding all the conditions affecting the Site and materials to be furnished; the meaning, intention and sufficiency of the drawings and specifications; and the conditions under which the Work is to be done; and has executed this Contract based solely on such investigation, study and determination made by it, and not in reliance upon any representation by Company or by anyone acting for or on behalf of Company, except as otherwise provided in the Instructions to Bidders and Supplementary Conditions, if any.

(c) Contractor shall comply with all laws, regulations and ordinances applicable to the performance of the Work. Contractor shall be responsible for any fines or penalties assessed against Company as a result of the Work.

5. CONCEALED CONDITIONS

As provided in Paragraph 4, above, Contractor has acquainted itself with all existing conditions and limitations affecting the Work, including, without limitation, all property lines, utility locations, existing improvements, elevations, and Site and local conditions, as applicable to the Work. Claims for additional compensation or extensions of time because of the failure of Contractor to familiarize itself with conditions at the Site will not be allowed.

If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for the Contract Documents, then

notice by the observing party shall be given to the other party promptly before the conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Price or "Contract Time" (as hereinafter defined), or both. If the Engineer determines that there are conditions at the Site as described in subparagraphs (1) and (2), above, and that no change in the terms of the Contract Documents is justified, the Engineer shall so notify Company and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Engineer has given notice of the decision.

No adjustment in the Contract Time or Contract Price shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by (a) Contractor's inspections, tests, reviews and preconstruction services for this project, including any tests made by or in the possession of Contractor, or (b) inspections, tests, reviews and preconstruction services which Contractor negligently failed to request in connection with the Work.

6. DRAWINGS AND SPECIFICATIONS; WARRANTIES

- (a) **The Work shall be furnished and performed in strict accordance with the "Drawings and Specifications" for said Work as described in Exhibit "B" attached hereto and made part hereof for all purposes. Contractor shall, at its expense, give all necessary notices and cause all Work done and materials and equipment furnished pursuant to the Contract Documents to comply strictly with all applicable local, state and federal laws, ordinances, rules, regulations, codes and orders (hereinafter referred to collectively as "Legal Requirements"). Further, Contractor covenants and warrants that it shall observe and comply strictly with all Legal Requirements in connection with the performance of the Work or otherwise. Contractor also shall take and observe all necessary measures and precautions for the safety and protection of all property and persons in connection with the performance of the Work. The Work shall be done, furnished and performed to the satisfaction of Company, and Company, Engineer and any governmental or other authorities concerned and their respective representatives, at all times, shall have access to the Work for any lawful purpose, including inspection.**
- (b) The fact that any part of the Work necessary to meet the requirements of Company, the authorities referred to above and the Drawings and Specifications, are not specifically mentioned in this Contract, will not excuse Contractor from performance thereof if said part of the Work to be performed is usual and normal in the crafts or trades required to perform the Work or the crafts or trades usually employed to perform work similar to the Work. Contractor warrants to the Company that (i) the materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, (ii) the Work will be free of defects not inherent in the quality required or permitted by the Contract Documents, and (iii) the Work will conform with the requirements of the Contract Documents. Any Work not conforming to these requirements may be considered defective. If requested in writing by Company within one year of the occurrence of Substantial Completion, the Contractor shall furnish reasonable evidence as to the kind and quality of materials and equipment furnished under this Contract. If within one year after Substantial Completion has occurred with respect to all or any designated portion of the Work, any of the Work is found not to comply with the requirements of the Contract Documents, then the Contractor shall correct it promptly after receiving written notice from the Company requesting such correction. ~~This one-year period shall be extended with respect to portions of the Work completed after the occurrence of Substantial Completion by a period equal to the time between the occurrence of Substantial Completion and the actual completion of such portion of the Work. The provisions of this subparagraph 6(b) shall survive acceptance of the Work under the Contract. Contractor's warranty in this section is in addition to, and does not limit in any way Company's claims for latent defects or claims for warranties set~~

forth by statute, ordinance or regulation. In addition, this warranty and the obligations that it imposes upon Contractor, are in addition to, and independent of, any obligations of Contractor or any other party under any maintenance of similar bonds provided to any governmental or other entity.

(c) Prior to final payment, Contractor shall assign and transfer to Company all warranties and guaranties received by Contractor in connection with any materials, equipment and components furnished by Contractor. If such warranties and guaranties are not by their terms assignable, Contractor agrees to initiate claims and enforce such warranties in accordance with their terms for the benefit of Company upon demand.

7. COMMENCEMENT OF PERFORMANCE AND COMPLETION

Contractor shall commence performance on the Commencement Date, provided that Contractor has received all necessary permits, and Contractor shall diligently prosecute the Work and achieve Substantial Completion of the entire Work not later than the Substantial Completion Date pursuant to the program schedule, subject to adjustments of the "Contract Time" (as hereinafter defined) as provided in Paragraph 20. Contractor shall be responsible for obtaining all necessary permits, and any delay in obtaining permits will not serve to extend the Contract Time unless such delay is specifically shown to be outside Contractor's control. "Contract Time", as used herein, shall mean the time period for Contractor's completion (Substantial Completion and Final Completion, as applicable) of the Work provided in this Paragraph 7, including any extensions of such time periods pursuant to Paragraph 20. "Substantial Completion", as used herein, shall mean the completion of the Work in accordance with the Contract Documents, as certified by the Engineer, subject to certain minor finishing items or adjustments being required to be made by Contractor and provided that Contractor has obtained and delivered to Company all permits and other consents from all governmental authorities, if any, that are required with respect to Company's occupancy and use of the Work. "Final Completion" shall occur when all punch list items and any portion of the Work incomplete at the time of Substantial Completion have been completed in accordance with the requirements of the Contract Documents and approved and accepted by Company. The Engineer shall certify the dates of Substantial Completion and Final Completion of the Work. Time is of the essence with respect to the Contract Documents and all obligations thereunder. Contractor shall prepare and submit a detailed construction schedule which contains a description of the various components of the Work and the completion schedule and value of such components to Company for approval prior to commencement of Work. Contractor shall provide an updated contract progress schedule monthly during the Contract Time. If Contractor falls behind the schedule for any reason by more than five percent (5%) of the Work to be completed at any given time according to the approved schedule, as amended from time to time, Contractor shall no later than fifteen (10) days after the schedule is breached, submit to Company a remedial plan of action adequate to restore the Work to the approved schedule promptly, which shall, if necessary, include working on weekends, holidays, or overtime, at no additional cost to Company.

8. SUPERVISION AND CONSTRUCTION PROCEDURES

(a) Contractor shall supervise and direct the Work, and provide a single source, using its best skill and attention. Contractor shall maintain a qualified superintendent on site at all times when performing the Work. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Contract and following any special considerations specified by Company in conformance with the Scope of Work.

(b) Contractor, in order to avoid labor disputes, shall employ only such labor as will, to the satisfaction of Company, work in harmony with other contractors and individuals employed by Company and shall not use materials or means which might cause strike or labor troubles by any persons employed in or about the Site.

(c) Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone nonskilled in the task assigned to him.

(d) Contractor shall furnish all of the construction equipment needed to complete the Work within the Contract Time. All equipment used which might affect the progress or quality of the Work shall be satisfactory in all respects for the performance of the Work and shall be maintained in good repair to insure that the Work will be of the highest quality and will be completed within the Contract Time.

9. SUBCONTRACTS

If applicable, all subcontracts shall contain unit prices and any other feasible formula for use in the determination of the cost of changes in the Work. Contractor agrees to hold all Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract or any negligent act and to diligently endeavor to effect recoveries of such damages. Company shall be deemed to be a third party beneficiary of each subcontract and may, if Company elects, require (following Contractor's default under this Contract or Company's termination of this Contract) that the Subcontractor perform all of the then unperformed duties and obligations of such Subcontractor thereunder for the benefit of Company (rather than Contractor); however, in the event that Company requires any such performance by a Subcontractor for the direct benefit of Company, then Company shall be bound and obligated to pay such Subcontractor for all work done by such Subcontractor in accordance with the terms of this Contract for all work performed in strict conformance to the Contract Documents to date (to-wit: the reasonable value of that portion of the subcontract performed by such Subcontractor) and subsequent to the date that Company elects to invoke such rights. Company's liability in this connection, however, is not to exceed the amount obtained by subtracting from the subcontract price the total of all sums paid by Contractor to Subcontractor prior to Company's invoking its rights hereunder with respect to direct performance by Subcontractor for Company. In the event that Company elects to invoke such rights, Company shall give written notice of such election to Contractor and such Subcontractor. Any amounts paid by Company to a Subcontractor shall be either (a) deducted from the amount due to Contractor under this Contract or (b) if Company has already paid Contractor, reimbursed by Contractor to Company upon Company's written demand.

Prior to commencement of the Work, Contractor shall furnish Company with a complete list of all persons, firms or entities which Contractor proposes to engage to furnish labor and/or materials in constructing the improvements and, if requested by Company, will furnish Company with a copy of all written agreements (including subcontracts and purchase orders) therefor and the terms of all verbal agreements therefor. Contractor agrees that Company has the right in its sole discretion to disapprove any Subcontractor of any tier. Company also shall have the right to telephone or otherwise communicate with each Subcontractor of every tier to verify the facts disclosed by any list or any invoice submitted to Company, or for any other purpose. All subcontracts let or amended by Contractor relating to the Work shall require disclosure to Company of information sufficient to make verification. Each approved subcontract shall contain provisions which specifically bind such Subcontractor to the applicable terms and provisions of the Contract Documents and shall also contain provisions permitting assignment thereof to Company and Company's lender as provided above.

Any Subcontractor or individual laborer whom Company or Engineer believes in good faith not to be qualified to pursue the Work or whom Company does not wish to be engaged in the Work, shall be excluded from the Work, and shall be replaced with a Subcontractor or laborer acceptable to Company and Engineer.

10. FEEES AND LICENSES

Contractor shall, unless specified to the contrary in the Scope of Work, secure and pay for all governmental fees, permits and licenses, necessary for the proper execution and completion of the Work, required to be obtained by a general contractor by the local jurisdiction in which the Work is to be performed.

11. CONTRACTOR'S USE OF COMPANY ASSETS

In the event that any arrangement is made whereby Contractor or any of its Subcontractors of any tier use any employees of Company or Company's Affiliates, any tools, equipment, apparatus, improvements, land or other property of Company or Affiliates or any utilities (such as electricity, gas, water, compressed air and toilet facilities) furnished by or through Company or Affiliates, irrespective of who pays the employees and regardless of whether any consideration is paid for the use of the tools or the utilities, then the employees while engaged in the use of the tools or the utilities shall be conclusively considered the agents, servants, and employees of Contractor, and the acceptance and/or use of the tools or the utilities by Contractor or its Subcontractors of every tier shall mean that Contractor has inspected and determined the tools and utilities satisfactory for Contractor's intended purposes and uses, and accepted full responsibility for the tools and utilities. Contractor agrees to indemnify and hold harmless Company for any and all claims or damages resulting from the use of such tools. Contractor shall return the tools at the conclusion of Contractor's use thereof in the same condition as when received, ordinary wear and tear excepted.

12. SAFETY AND SECURITY

Contractor shall, until final acceptance of its Work by Company, be responsible for taking all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all employees hired by it or any Subcontractor; Company's agents and representatives and other persons authorized by Company to visit the site or the Work; all other persons who may be affected by Contractor's activity at the Site; and property (including, but not limited to, the Work, equipment and materials belonging to Contractor, Company or other contractors employed by Company) at the Site or adjacent thereto. Such precautions may include, at Company's request, the separation of Contractor's equipment and materials from that of other contractors.

Company shall furnish to Contractor the right to conduct operations for the Work at the Site. Company may designate areas in and around the Site which Contractor may use for staging, equipment storage, material storage, and for Contractor's construction office. Contractor shall confine its operations to any designated areas and shall avoid entering other areas which may be owned by Company, even if near or adjacent to the designated areas. Contractor may post on or near its construction office one (1) small sign, subject to the approval of Company, identifying Contractor and the job for purposes of material deliveries.

Contractor shall have custody of and be responsible for the care and maintenance of the partially completed Work and the finished Work until final acceptance by Company. Except for failures, casualties or breaks which may occur as a result of tests that cannot be attributed to poor workmanship, Contractor shall repair or replace at its own expense any damage to the Work due to any cause, and shall do such remedial work as may be necessary to maintain the Work in proper condition until all parts of the Work have been completed in accordance with the Contract Documents and delivered undamaged to Company and accepted by Engineer.

Contractor shall at all times conduct its operations in such a manner and employ all reasonable means to prevent any injury (including death) to any person or damage to or destruction of any property, including wildlife and marine life along, upon or near the Site and the habitat, any vegetation required to be preserved by applicable law, bodies of water, or wetlands areas located adjacent to and in the vicinity of the Site. Contractor shall also exercise extreme care during ingress to or egress from the Site through bodies of water and wetlands to avoid damaging the habitat, vegetation, wildlife, or marine environment. Any damage to such water bodies and wetlands outside of the Site resulting from the prosecution of the Work, from ingress or egress of personnel, equipment or materials, or from any other cause attributable to Contractor shall be the sole responsibility of Contractor and any cost arising from said damage shall be borne solely by Contractor.

If the Work will cross, be parallel to or be in close proximity to facilities, such as utilities of either Company or others, then extreme care shall be exercised at all times so as not to damage or interfere with the operation of such facilities. The Contract Price includes the cost of providing all labor, materials and equipment necessary to complete any crossing or to protect any facilities as shown on the Drawings and to the satisfaction of Company.

Contractor recognizes that in some instances the uncovering of known facilities may reveal some divergences from the Drawings and shall perform the Work occasioned by such changes at no additional cost to Company. Contractor further recognizes that existing facilities not shown on the Drawings or otherwise brought to Contractor's attention may be discovered, in which case Contractor shall immediately apprise Company and Engineer of the nature, size and location of the facility, and shall perform all necessary Work required in connection with such facilities as extra work.

Contractor shall develop a safety program applicable to each job Site and to the Work to be done, review such program with Company in advance of beginning the Work, and enforce such program at all times. Company's review of the safety program shall not be construed to be an approval of its adequacy or compliance with applicable law. Further, Contractor shall comply with all applicable Laws and Regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) as amended, replaced or superceded and any other legislation enacted for the safety and health of Contractor's employees, and Subcontractors. Company shall have the right, but not the obligation, to inspect Contractor's operations periodically for the purpose of determining compliance by Contractor with the safety program, but such inspections shall not diminish Contractor's complete responsibility for protecting the safety and health of its employees and Subcontractors.

Contractor shall notify Company immediately by telephone with prompt confirmation in writing, of injuries and fatalities that occur on the Site in connection with any Work being performed under this Agreement and shall provide Company with such reports of injuries and fatalities as Company shall deem necessary, including but not limited to, copies of all reports or other documents filed or provided to Contractor's insurers or the state in which the Site is located in connection with such injury or fatality.

13. INSURANCE

Contractor shall, at Contractor's sole cost and expense, comply with the insurance provisions set forth in Exhibit "C" attached hereto and made a part hereof for all purposes.

14. INDEMNIFICATION

To the extent permitted by applicable law, Contractor shall defend and indemnify Company and Indemnitees (with counsel satisfactory to Company) and hold Company and Indemnitees harmless from all Claims of every kind and nature, including attorneys' fees, arising out of injury to, or death of, persons (including Contractor's and any Subcontractor's employees), and damage to any and all property, including loss of use thereof, occurring incident to or resulting wholly or in part from, directly or indirectly, any negligent or willful act or omission by Contractor in connection with or growing out of the Contract Documents or the performance by Contractor of the Work, including, without limitation, the use of any employees of Company or Company's Affiliates, Company's tools or the utilities, **REGARDLESS OF WHETHER THE CLAIMS ARE FORESEEABLE OR UNFORESEEABLE OR ARE FOUNDED IN WHOLE OR IN PART ON BREACH OF CONTRACT, OR OTHER LEGAL DUTY, FAULT, OR NEGLIGENCE OF CONTRACTOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS, CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS OWNER (THE "INDEMNIFIED PARTY") AGAINST ANY AND ALL LIABILITY, COSTS, EXPENSES, CLAIMS AND DAMAGES INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE FOR ANY AND ALL CLAIMS ARISING OUT OF THE CONTRACTED WORK, WITH RESPECT TO CLAIMS ARISING OUT OF THE CONTRACTED WORK, IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY OBLIGATIONS ARISING HEREUNDER INURE TO THE BENEFIT OF THE INDEMNIFIED PARTIES. IT IS ALSO THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY OBLIGATIONS HEREUNDER APPLY TO ANY CLAIM ARISING OUT OF DAMAGE TO PROPERTY OR INJURY OR DEATH SUSTAINED BY ANY PERSON. NO REMEDY PROVIDED PURSUANT TO THE WORKERS' COMPENSATION ACT SHALL OPERATE TO CIRCUMVENT THESE OBLIGATIONS.**

IF AFTER CONTRACTOR HAS DEFENDED ANY SUCH CLAIM AND IT IS JUDICIALLY DETERMINED THAT THE INJURY, DEATH OR DAMAGE WAS PROXIMATELY CAUSED BY THE PROPORTIONATE RESPONSIBILITY OF THE OWNER, IN WHOLE OR IN PART, OWNER SHALL REIMBURSE CONTRACTOR FOR OR PAY DIRECTLY, AS THE CASE MAY BE, THOSE PROPORTIONATE DAMAGES, FOR WHICH OWNER IS PROPORTIONATELY RESPONSIBLE. The indemnification obligation of Contractor under this Paragraph 14 shall include damage wrongfully caused by Contractor to the Work or property of Company, which Contractor shall promptly remedy and damage wrongfully caused by Contractor to a separate contractor or property of any separate contractor, which Contractor shall promptly attempt to settle.

15. MANNER OF PAYMENT; RIGHT TO RETAIN AND LIENS

(a) Application for Payment. Payment requests received by the 20th of the month shall be reviewed and processed for payment on the 1st of the following month. Contractor shall submit to Owner's Representative and Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If required by Company, each such Application for Payment shall be accompanied by any or all of the following:

- (i) a certificate of payment issued by Engineer substantiating the percentages and values of the portion of the Work completed and stating that such portion of the Work has been completed in substantial conformance with the Contract Documents;
- (ii) an affidavit and partial or final (as appropriate) lien release and waiver by Contractor, in the form attached hereto as Exhibit "D" and made a part hereof for all purposes, stating that:

(1) the Application for Payment is accurate and complete,

- (2) there are no mechanic's liens, material liens or stop notices outstanding as of the date of the Application, and
 - (3) all bills have been paid to date (other than the bills to be paid out of the current requested payment) so that no basis for filing such liens or stop notices exists;
 - (4) an unconditional lien release and for Work previously paid under the immediately prior Application for Payment, including, without limitation, releases of all claims of lien and stop notices that may have been recorded or notice thereof served on Company); a written statement from Contractor setting forth its good faith estimate of the number of days remaining until Substantial Completion has been achieved; and
- (iii) such other documents and information in form, scope and substance as Company may reasonably require.

If payments are to be made on account of materials or equipment not incorporated in the Work but necessary to maintain the sequence of the Work and delivered and suitably stored at the Site in accordance with the requirements of Company or at some other location agreed upon in writing by Company, such payments shall be conditioned upon submission by Contractor of documentation satisfactory to Company to establish title in Company or Contractor without claim of lien or other interest, applicable insurance at full replacement value, and transportation to the Site. All sales, use or other taxes on materials used on the Work shall be clearly identified by Contractor and Subcontractor in all documentation.

(b) Engineer Review. Owner's Representative will, within ten (10) business days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Company, or return the Application to Contractor indicating in writing the Owner's Representative reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. After receipt by Company of the Application for Payment with Engineer's recommendation for payment as provided in the first sentence of this sub-paragraph (b), the amount recommended will (subject to the provisions of sub-paragraph (f) below) become due and when due will be paid by Company to Contractor.

(c) Retainage. Contractor shall be paid ninety percent (90%) of the amount approved for such Work, less all preceding payments with respect thereto. Contractor's invoice and Company's payment thereof shall be based upon the percentage of completion for all lump sum Work according to the tables or schedules submitted with the Contractor's Proposal. The remaining ten percent (10%) shall constitute the retainage for such Work performed by Contractor. The retainage shall be held by Company until all Work covered by the Contract Documents has been fully completed, tested by Company, and accepted by Engineer in accordance with the Contract Documents and will be released to Contractor as part of the final payment.

(d) Substantial Completion. When Contractor considers the entire Work ready for its intended use, Contractor shall notify Company and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a Certificate of Substantial Completion. Within a reasonable time thereafter, Company, Contractor and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to Contractor a tentative Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the tentative Certificate of Substantial Completion, Company will deliver to Contractor a written recommendation as to division of responsibilities pending final payment between Company and Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless Company and Contractor agree

otherwise in writing prior to issuing the definitive Certificate of Substantial Completion, Company's aforesaid recommendation will be binding on Company and Contractor until final payment.

(e) Final Payment After completion of the Work, final settlement shall be made with respect to the Work and all monies due Contractor shall be paid to it promptly after the following conditions shall have been met and the following requirements complied with:

- (i) The Work shall have been inspected, tested and accepted by Company and Engineer shall have delivered a Certificate of Substantial Completion to Contractor pursuant to subparagraph (d) above and all items to be completed or corrected before final payment shall have been so completed or corrected;
- (ii) Satisfactory evidence shall have been furnished to Company by Contractor of the payment of all bills and debts of all Subcontractors of every tier and all bills and debts for labor and materials arising out of or in connection with the Work;
- (iii) Satisfactory evidence shall have been furnished to Company by Contractor of the settlement and discharge of all Claims for which Contractor is responsible pursuant to the Contract Documents;
- (iv) Affidavits and certificates of completion, in form acceptable to Company's counsel, if requested, shall be delivered to Company; and,
- (v) A formal written instrument in the form attached as Exhibit "D", completed in a manner satisfactory to Company shall have been executed by Contractor and delivered to Company, which instrument duly and legally releases Company from all Claims which Contractor may claim in connection with, on account of, and/or arising out of the Contract Documents, and/or the performance of the Work by Contractor, except for any retained funds which Company holds under the provisions of the Contract Documents. The form of Bills Paid and Completion Affidavit and Final Release attached to this Contract as Exhibit "D" is acceptable for this purpose.

(f) Claims. Payment otherwise due by Company to Contractor may be withheld by Company, without payment of interest, on account of defective Work not remedied by Contractor, unpaid labor or material bills, or Claims for which Contractor is responsible under the Contract Documents, or upon reasonable evidence indicating that such bills or Claims are outstanding. Company shall provide a written explanation of the reason for withholding the payment. If and when the cause or causes for withholding any such payment shall be discharged, removed, cured or otherwise remedied to Company's satisfaction, all without cost to Company, and satisfactory evidence of such discharge, removal, cure or remedy shall have been presented to Company, the payments withheld shall be promptly made to Contractor. If Contractor fails or refuses to discharge, remove, cure or otherwise remedy to Company's satisfaction any cause for withholding such payment within ten (10) days after delivery of written demand to Contractor by Company, Company may discharge, remove, cure or otherwise remedy to Company's satisfaction such cause or cause it to be discharged, removed, cured or otherwise remedied to Company's satisfaction and may deduct the cost thereof from the amount then due Contractor under the Contract. If such cost shall exceed the balance due Contractor, Contractor and its sureties shall be liable for and shall pay the difference to Company. If, however, Contractor reasonably, promptly, and in good faith contests the validity and reasonableness of any such Claim, and in Company's opinion such Claim does not adversely affect Company's public relations, Company may defer taking any action pending a settlement with the claimant satisfactory to Company or until judgment is rendered against Contractor or Company, upon payment by Contractor of a sum amply sufficient in Engineer's judgment to satisfy the amount of such Claim, including, in addition, an ample amount to cover all costs to Company in connection therewith, including, without limitation, interest, court costs, attorneys' fees and expenses, cost of appeals to the highest appellate court having

jurisdiction, and any other costs of defense. Company shall have the right to make any payments, whether progress or partial payments or final payments, without giving notice thereof to any surety or sureties on the performance or payment bond of Contractor or any Subcontractor of every tier, and such surety's liability under said bond or bonds shall not in any way be released or diminished on account of Company's making payments without notice to the surety or sureties.

(g) Liens. Contractor shall promptly release, or cause the release of, all liens, recorded notices, claims for nonpayment or lis pendens made or filed by its Subcontractors, Sub-subcontractors, or material or equipment suppliers of any tier, whether during or after the Contract Time, so long as Contractor has been paid by the Company for the portion of the Work furnished or performed by any such claimant pursuant to the Contract. In the case of liens or recorded notices relating to liens, Contractor shall, at Contractor's cost and expense, accomplish such removal by recording a release of lien, properly executed by the lien claimant, or by filing with a court of competent jurisdiction a properly executed bond (provided that such bond and the surety issuing it shall be acceptable to such court) in the minimum amount of one and one-half times the amount of the recorded lien or such greater amount as may be prescribed by applicable State statute, provided, however, that such bonding procedure must operate to fully remove the lien as an encumbrance against both actual and record title.

If, at any time during or after the Contract Time, any lien, claim, security interest, or encumbrance arises or remains unsatisfied after Company makes payments to the Contractor for the portion of the Work from which such lien, claim, security interest, or encumbrance arises, the Contractor shall indemnify and hold harmless Company from all damages, charges and expenses that Company incurs in discharging such a lien, including all costs and reasonable attorneys' fees.

(h) No Waiver. Acceptance of any portion of the Work or payment therefor by Company shall not constitute a waiver of any claims that Company may have against Contractor with respect thereto.

(i) Special Conditions – Payment. Notwithstanding any other items, conditions, or provisions of the General or Supplemental Conditions or any other provisions of the Contract Documents to the contrary, LMG Ventures, LLC. (the "Company") shall be deemed and considered as the "Owner" for all purposes under the Contract Documents. After submission to and approval by the Company, the Contractor agrees to and shall look solely to LMG Ventures, LLC. ("OWNER"), for payment of all construction estimates, invoices or other sums, of whatever kind or nature, due or to become due pursuant to or in relation to this Contract, and the Company agrees to make all payments to Contractor in accordance with the terms hereof. It is agreed that a default by Owner in making such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due the Contractor pursuant to the Contract Documents.

OWNER'S REPRESENTATIVE reserves the right to assign its obligations hereunder to the Company, subject to written acceptance thereof by the Company. A copy of any such assignment and the acceptance thereof by the Company shall be provided to the Contractor, and thereafter the Company shall be obligated to make further payments due the Contractor pursuant to this Contract.

16. AS BUILT DRAWINGS

All Drawings, Specifications, modifications, Change Orders and other written materials pertaining to the Work are, and shall remain, the property of Company. Contractor shall maintain a current as-built drawing record including modifications and Change Orders, and shall submit the record to Engineer and, if required, to any governing body for final approval. Final as-built drawings shall be delivered to Engineer upon final completion prior to final payment being paid to Contractor.

17. BONDS

(a) Performance and Payment Bonds. If required by Paragraph 1 of this Contract, Contractor shall obtain and furnish to Company, at Contractor's expense, and maintain in effect throughout its performance under this Contract, performance and payment bonds naming Company and Developer as obligee in a form acceptable to Company, issued by a surety company authorized to do business in the state in which the Site is located and which is acceptable to Company, in an amount equal to the Contract Price. No notice of Change Order need be given to the surety company. Contractor also shall supply evidence satisfactory to Company that the party issuing the bonds has the authority to bind the issuing surety company.

(b) Maintenance Bonds. If required by Paragraph 1 of this Contract, Contractor, at Contractor's expense, shall obtain and furnish at the time of Substantial Completion to such entities as Company requests (including The City of The Colony), a maintenance bond having a duration of two-years and equal to ten percent (10%) of the Contract Price (as determined by actual invoices submitted to Company and as adjusted for any Change Orders). Such maintenance bond shall be in a form acceptable to Company and The City of The Colony, issued by a surety company authorized to do business in the state in which the Site is located and which is acceptable to Company. No notice of Change Order need be given to the surety company. Contractor also shall supply evidence satisfactory to Company that the party issuing the bonds has the authority to bind the issuing surety company.

18. CONTRACTOR'S DEFAULT

If Contractor (i) defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, (ii) fails to make proper and timely payment to any Subcontractor for materials or labor, (iii) fails to comply with the progress schedule, (iv) fails to replace rejected material promptly or correct rejected workmanship as herein provided, or fails to observe any other terms, provisions, conditions, covenants and agreements in this Contract to be observed and performed on the part of Contractor, Company, after seven (7) days written notice to Contractor, and without prejudice to any other right or remedy Company may have, provided the Contractor has not cured such default or failure within said seven (7) day period, Company may make good such deficiencies and may deduct the cost thereof, including compensation for the Engineer's or any architect's services and expenses made necessary thereby, from the payment then or thereafter due Contractor. Alternatively, after seven (7) days written notice and Contractor's failure to cure such defect or default at the Company's option, Company may terminate the Contract and take possession of the Site and remove all materials, tools and construction equipment and machinery thereon owned by Contractor (or require Contractor to immediately remove all such materials, tools and construction equipment and machinery from the Site) and Company may finish (or cause another contractor to finish) the Work by whatever method Company may deem expedient. If Company takes possession of the Site, Company may use materials, tools and construction equipment owned by Contractor and left on the Site. If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, including compensation for the Engineer's and any architect's services and expenses made necessary thereby (including, without limitation, Company's reasonable attorney's fees and costs), such excess shall be paid to Contractor following completion of the Work by Company, but if such cost exceeds such unpaid balance, Contractor shall pay the difference to Company. Company shall not be responsible to Contractor for any loss of anticipated profits on work not performed on account of a termination under this Paragraph 18. After any termination of this Contract by Company pursuant to this Paragraph 18, Contractor shall not be entitled to any further payment under this Contract except to the extent of any amount by which Work completed or installed by Contractor prior to such termination and not previously paid for by Company exceeds the amount due by Contractor to Company under this Paragraph 18 (including all damages which Company would be entitled to recover at law from Contractor by reason of Contractor's breach), and even then only at such time as the Work is finally completed. Any sums payable by Contractor to Company pursuant to this Paragraph 18 shall be payable upon demand and shall bear interest at the highest lawful rate until paid.

In addition to the circumstances outlined in this Paragraph 18 entitling Company to perform Work on behalf of Contractor, Company may terminate the Contract, if (i) Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors; (ii) Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; (iii) a receiver or trustee is appointed for all or a significant portion of the assets of Contractor; or (iv) Contractor actually or constructively abandons, or puts Company on actual or constructive notice that it intends to abandon the Work, Company may exercise the remedies provided in this Paragraph 18.

It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Company shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Company to terminate the Contract Documents and to the accompanying rights set forth above in this Paragraph 18. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Company shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Price.

In addition to the foregoing remedies of Company, if this Contract provides for liquidated damages (as indicated on the first page of the Contract) for failure to complete the Work within the Contract Time, Contractor agrees to pay Company the amount per day set forth on the first page of this Contract as liquidated damages (and not as a penalty) for each and every day by which Contractor fails to achieve completion of the Work within the Contract Time. The parties hereby agree that in the event Contractor does not achieve completion of the Work within the Contract Time, Company will suffer damages that will be difficult to calculate, and the parties agree that the liquidated damages provided in this Paragraph 18 are a fair and reasonable estimate thereof and shall not be viewed as a penalty.

If Company fails to make a payment required hereunder for a period of thirty (30) days from the due date in Paragraph 15 without providing the explanation for withholding the payment described in Subparagraph 16(f) herein, Contractor, after seven (7) days written notice to Company, without prejudice or any other right or remedy Contractor may have, provided the Company has not cured such default within said seven (7) day period, may terminate this Contract and recover from the Company for payment for Work executed, including the Contractor's overhead and profit attributable to such Work, and for proven loss with respect to materials, tools and construction equipment and machinery. Contractor may not terminate if non-payment is the result of a withholding permitted by Paragraph 15(f).

Any sum of money or indebtedness owed by Contractor to Company as a refund or offset on account of audit, under any indemnity, or otherwise arising in connection with the Contract, shall be paid to Company at its address for notices given in this Contract, or at such other address which Company may specify in writing.

19. COMPANY'S RIGHT TO STOP THE WORK

If the Contractor fails to correct the Work, or any portion thereof, which is not in accordance with the requirements of the Contract Documents as required by Paragraph 6 and Paragraph 18 or fails to carry out Work or provide information in accordance with the Contract Documents, and the Contractor, after receipt of written notice from the Company, either (i) has not cured such failure within 7 days or (ii) if the nature of the failure is such that it is not capable of cure within 7 days, has not reached agreement with the Company for a plan to cure such failure or has not commenced and diligently and continuously pursued the cure of such failure in accordance with such plan within such 7 day period, then the Company, by written

order signed by the Company or by an agent specifically so empowered by the Company in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the Contractor has provided the Company with a plan for corrective action acceptable to the Company in its reasonable judgment. The right of the Company to stop the Work shall not, however, give rise to a duty on the part of the Company to exercise this right for the benefit of the Contractor or any other person or entity. Company's exercise of the rights under this paragraph shall not result in any cost to Company and Contractor shall not be entitled to make a claim under this Contract or otherwise for any additional costs or impacts resulting from a stop of work.

20. EXTENSION OF TIME

If Contractor is delayed in the completion of the Work due to Force Majeure then the time for completion of the Work shall be extended for a period equivalent to the duration of such delay. Any delay and the causes thereof shall be evidenced by written request for an extension of time from Contractor to Company, with a copy to Engineer, within seventy-two (72) hours after the delay commences; otherwise, Contractor shall be deemed to have waived all claims for the extension of time. Company's action on a request for extension of time shall be final. No later than seven (7) days following any extension of time Contractor shall submit a revised schedule to Company. Contractor shall take all reasonable steps to avoid any delay. Otherwise the Contractor will provide all resources as required to complete the work per the program schedule.

21. CHANGE ORDERS

Company shall have the right at any time, by written Change Order provided by and signed by Company, to make changes in any one or more of the following parts of the Contract:

- (a) the Drawings and Specifications applicable hereto, as well as Exhibit "B"; or
- (b) the scheduling of performance of all or any portion of the Work.

If any such changes cause an increase or decrease in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment will be made in the Contract Price called for, or the time for performance, or both, and this Contract shall be modified in writing accordingly by a Change Order on Company's form. Any claim by Contractor for adjustment under this Paragraph 21 must be submitted to Company in writing within ten (10) days from the date of receipt by Contractor of notification of change. If the cost of any change in the Work cannot be agreed upon, Contractor, provided Contractor receives a written order signed by Company, shall nevertheless promptly proceed with the Work involved. The costs of such Work shall then be determined by the Engineer on the basis of actual costs and savings of those performing the Work attributable to the change, plus five percent (5%) for profit and overhead. In such case, Contractor shall keep and present, in such form as Company may reasonably require, an itemized accounting, together with appropriate supporting data for inclusion in a subsequent Change Order. Pending final determination of costs to Company, payments should be made on the Engineer's certificate for payment. Company shall not be required to notify any surety or sureties on the performance or payment bonds of Contractor or any Subcontractor of every tier of any Change Orders.

22. REINSPECTION AND/OR OVERTIME INSPECTION

The cost of any re-inspection or overtime inspection by any person having the right to make re-inspections, whether by law or otherwise, shall be borne by Contractor in the event such re-inspection was made necessary by failure of Contractor to complete the Work contracted for herein, in accordance with the aforesaid Drawings and Specifications.

23. CLEAN-UP; PROTECTION OF WORK

Contractor agrees to clean up and remove all its debris, rubbish and surplus materials as the Work progresses and to maintain the appearance of the Site in a neat and orderly manner and to keep the Work protected from damage by the elements (including, but not limited to, rain) and from damage likely otherwise to be occasioned in the performance of the Work and to protect all other parts of the Site and adjacent property from damage likely to be caused by the Work. Without limiting the foregoing, Contractor agrees to comply with all applicable federal, state, county, local and other laws and deed restrictions relating to the maintenance and appearance of the Site. If Contractor fails to comply with any of its obligations stated in this paragraph, Company may do so and Contractor shall reimburse Company for the costs so incurred upon demand.

24. COOPERATION WITH OTHER CONTRACTORS

If requested by Company, Contractor shall, as part of the Work, provide for the coordination of the Work to be performed by each separate contractor engaged by Company, if any, with the Work to be performed by Contractor or its subcontractors of any tier. This includes regular schedule coordination meetings as established by Company. Contractor shall use its best efforts to cooperate with Company and all separate contractors, their subcontractors and any other entity involved in the performance of the Work. In order to cause the Work and any work to be performed by separate contractors to be completed in an expeditious manner, Contractor agrees that it will use all reasonable efforts in order to ensure that such separate contractors have a reasonable opportunity to complete their Work as and when required. Company shall cause all of its separate contractors, if any, to maintain commercial general liability insurance in reasonable amounts and workmen's compensation insurance in not less than the minimum required statutory amount.

If any part of the Work depends upon the proper performance of the work of a separate contractor, Contractor shall, prior to proceeding with the Work, promptly report to Company any apparent discrepancies or defects in such other work that render it unsuitable and prevent Contractor from proceeding expeditiously with the Work. Failure of Contractor to report such deficiencies or defects shall constitute an acceptance of such separate contractor's work as fit and proper to receive the Work.

25. NON-CONFORMING WORK

When any non-conforming Work is found, the entire area of the Work involved shall be corrected unless Contractor can completely define the limits of the non-conforming Work. Engineer shall have the authority for determining what additional testing, sampling or inspecting is needed to define non-conforming Work. All such additional testing, sampling or inspecting shall be at the Contractor's expense. All corrected Work shall be re-tested at Contractor's expense. Extra architectural or engineering services required by Contractor to analyze non-conforming Work shall be paid for by Contractor.

26. TERMINATION FOR CONVENIENCE BY COMPANY

(a) Company may terminate Contractor's performance under the Contract for Company's convenience at any time upon written notice to Contractor, whether or not Contractor is in default and, in such event, Company's only liability will be to pay Contractor the following amounts:

- (i) The unpaid balance due Contractor for the Work actually performed and accepted by Company, based on the schedules and tables, unit prices and lump sums enumerated in the Contractor's Proposal or the Supplemental Conditions of the Contract Documents, if any;
- (ii) All expenditures made and costs incurred by Contractor for materials ordered by Contractor for the Work prior to the date of termination and not incorporated in the Work, less reasonable salvage or resale value, provided such materials conform to the Specifications, and for labor performed on any such materials prior to the date of termination; and

- (iii) Fifteen percent (15%) of the foregoing costs under subparagraphs (i) and (ii) above to cover Contractor's overhead expenses.
 - (iv) Contractor waives any claim for lost anticipated profits on the unperformed portion of the work.
- (b) From the total of the items enumerated in subparagraphs (i) to (iii), inclusive, there shall be deducted all claims of Company against Contractor, including claims on account of delay or defects in materials and/or workmanship.
- (c) The amount payable under the provisions of Paragraph 26(a), plus the sum of all amounts previously paid under the Contract, shall in no event exceed the Contract Price.
- (d) Contractor shall transfer and assign to Company in accordance with Company's instructions, all materials, supplies, Work in process, and other things for which Contractor is entitled to receive reimbursement hereunder, and all plans, drawings, working drawings, sketches, specifications, and information in connection with the Work, and shall take such action as may be necessary to secure to Company, at its election, the rights of Contractor under any or all orders and subcontracts made in connection with the Work.
- (e) If and as Company so directs or authorizes, Contractor shall sell at a price approved by Company, or retain at a price mutually agreeable, any such materials, supplies, Work in process, or other things as referred to in Paragraph 26(d), above. The proceeds of any such sale or the agreed price shall be paid or credited to Company in such manner as Company may direct to reduce the amount payable by Company under this Paragraph 26.
- (f) If requested by Company, Contractor shall endeavor to cancel any or all of its outstanding orders or subcontracts upon such terms as may be approved by Company.
- (g) Upon the performance of the obligations of the respective parties under this Paragraph 26, all obligations of the respective parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work.
- (h) Nothing in this Paragraph 26 shall affect the right of Company to terminate Contractor's performance as provided elsewhere in the Contract Documents.

27. BOOKS AND RECORDS

Company may inspect, copy and audit, upon twenty-four (24) hours' prior notice, all or any part of the books and records of Contractor relating to the Work. Contractor shall keep full and detailed accounts, books and records as may be necessary for proper financial management under this Contract, which books and records shall be preserved by Contractor for a period of two (2) year after the final payment by Company.

28. WAIVER OF REMEDIES

The waiver by Company of any default, or of any breach of the terms of the Contract, shall not be deemed a waiver of any subsequent breach. The remedies and rights of Company, in the event of any breach hereof by Contractor, are cumulative and in addition to those given by law.

29. ASSIGNMENT

Subject to Contractor's right to contract with Subcontractors and suppliers with respect to the performance of portions of the Work, Contractor shall not assign all, or any part of, this Contract nor any payments hereunder without first obtaining the consent in writing from Company and then, only subject to

the provisions of this Contract. This Contract is for Company's and the Developer's benefit, their successors and assigns who, as well as Contractor, may directly enforce all rights and warranties, express or implied herein, but Subcontractors shall have recourse only against Contractor and not against Company. Company may rely solely upon Contractor for enforcement of all subcontracts. To effect such purpose, Contractor now assigns to Company all right to bring any actions against Subcontractors and material vendors without waiver by Company of its right against Contractor because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; provided, however, that Company shall not have the right to bring such actions directly against such Subcontractor unless Contractor has defaulted hereunder (and such default remains uncured) or Company has terminated the Contract as a result of such default. Contractor will indemnify, defend and hold Company harmless from any failure or refusal of any Subcontractor to comply with any provision of the Contract Documents.

30. INDEPENDENT CONTRACTOR RELATIONSHIP

Contractor is an independent contractor and has the full right and authority to select the means, methods, and manner of performing the Work, being responsible to Company for all materials delivered and for the results herein contracted for, and upon completion of the Contract, the Work shall be delivered complete and undamaged in accordance with the Specifications and any Drawings attached hereto. Contractor shall have no right or power to bind, commit, or act for Company unless expressly provided to the contrary in the Contract Documents.

31. ROLE OF ENGINEER

Engineer may designate in writing to Contractor a field representative to observe the general progress of the Work. In addition to the other communications to be given to Company by Contractor, Contractor may give communications to Engineer's field representative, but such field representative shall have no authority to act on behalf of or bind Company unless expressly authorized in writing by Company and then only within the authority expressly conferred upon such representative by Company.

Engineer shall be charged with the duty of ascertaining that the Work is done in accordance with the provisions of the Contract Documents. Engineer shall have the authority to reject all Work and materials which do not conform to the Contract Documents, and shall have such other authorities as are conferred upon Engineer in the Contract Documents. Contractor recognizes that Engineer is to inspect the Work for compliance with the Contract Documents. Contractor shall provide Engineer or Engineer's field representative reasonable notice and opportunity to inspect portions of the work prior to burial or other additional work that would make subsequent inspection difficult.

When pursuant to authority or discretion conferred upon Engineer by the Contract Documents, Engineer is called upon to resolve a dispute, to accept or reject a portion of the Work, or otherwise to make a decision, Engineer's authority and judgment shall be exercised in a professional manner and in good faith, and Engineer's decision so arrived at shall be final and binding upon both Company and Contractor.

32. INVALIDITY

If any part or provision of this Contract shall be declared void or unenforceable by any court of competent jurisdiction, the remaining parts and provisions shall nevertheless remain in full force and effect.

33. ATTORNEYS' FEES

The prevailing party in any court or arbitration action arising out of this Contract, or the enforcement or breach hereof, shall be entitled to court costs and reasonable attorneys' fees as determined by the court.

34. WAIVER OF JURY TRIAL

COMPANY AND CONTRACTOR SPECIFICALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS OR STATUTORY CLAIM, COUNTERCLAIM OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THE WORK OR THIS CONTRACT BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.

35. NOTICES

Any notice provided or permitted to be given under the Contract Documents must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, by registered or certified mail, with return receipt requested; by hand delivery of such notice in person to such party (with a signed receipt); or by facsimile provided such facsimile delivery is confirmed on the noticing party's facsimile facility as a function thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as set forth on the signature page hereof.

36. ENTIRE AGREEMENT; AMENDMENT

The Contract Documents set forth all agreements between Company and Contractor relative to the Work, and all prior negotiations or agreements are merged in the Contract Documents. No modification hereof or subsequent agreement relative to the subject matter of the Contract Documents shall be binding unless in writing and signed by both parties to the Contract Documents.

37. HEADINGS

The headings used in this Contract are for convenience only and are not to be construed as part of this Contract.

38. APPLICABLE LAW

This Contract shall be enforceable under, and interpreted in accordance with, the laws of the state in which the Site is located.

39. JURISDICTION AND VENUE

Each of Company and Contractor irrevocably submits to the exclusive jurisdiction of the state and federal court in the state in which the Site is located for the purposes of any suit, action or other proceeding arising out of this Contract or any transaction contemplated hereby. Each of Company and Contractor agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the federal district in which the Site is located, or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, the appropriate state court in the state and county in which the Site is located. Each of Company and Contractor irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Contract or the transactions contemplated hereby in the courts specified above, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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

OWNER:

LMG Ventures, LLC

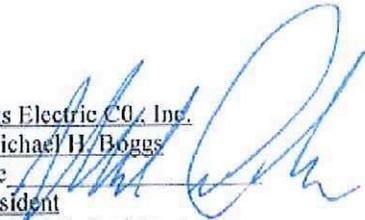
By: 
Name: Ryan Blumkin

Title: Vice President

Address: 700 S. 72nd Street
Omaha, NE 68114

Telephone: (402)392-3270

CONTRACTOR:

By: Boggs Electric CO, Inc.
Name: Michael H. Boggs
Signature: 
Title: President
Address: 5303 Buford Jett Lane
Balch Springs, TX 75180

Telephone: 972-557-5906

EXHIBITS

Exhibit "A" - Site

Exhibit "B" - Drawings and Specifications

Exhibit "C" - Insurance Requirements

Exhibit "D" - Affidavit by Contractor and Partial or Final (as appropriate) Lien Release and Waiver

SECTION 2: EXHIBIT "A"

SITE

As shown on Construction Plans.

SECTION 2: EXHIBIT "B"

DRAWINGS AND SPECIFICATIONS

See Yaggi Engineering, Inc. Construction Plans for Boardwalk Site Plan Electrical Lake Edge and Water Feature Improvements, Grandseape Boardwalk

<u>Sheet Number</u>	<u>Sheet Title</u>	<u>Signature Date</u>
E1.01	OVERALL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E1.02	SITE PARKING LOT ELECTRICAL LIGHTING	04-24-2015
E1.03	SITE PARKING LOT ELECTRICAL LIGHTING	04-24-2015
E1.04	ELECTRICAL DETAILS	04-24-2015
E2.01	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.02	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.03	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.04	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.05	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.06	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.07	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.08	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.09	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.10	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.11	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.12	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E2.13	PARTIAL BOARDWALK SITE PLAN ELECTRICAL	04-24-2015
E3.01	ELECTRICAL DETAILS	04-24-2015
E3.02	ELECTRICAL DETAILS	04-24-2015
E3.03	ELECTRICAL DETAILS	04-24-2015
E3.04	ELECTRICAL DETAILS	04-24-2015

7-30-15

SECTION 2: EXHIBIT "C"

INSURANCE REQUIREMENTS

So long as any of the Work remains to be completed, Contractor shall, at contractor's sole cost and expense, carry and maintain in full force and effect the following insurance coverage:

(a) Workmen's Compensation Insurance in not less than the statutory minimum amount, covering all individuals employed by Contractor upon or about the Site, and employee's legal liability providing not less than \$500,000 Bodily Injury by accident or disease, with a waiver of subrogation endorsement in favor of Company;

(b) If applicable with respect to building construction, Builder's Risk Insurance, which shall be provided on an "all risk" completed value non-reporting form with a policy limit equal to one hundred percent (100%) of the insurable replacement cost of the Work (excluding earthquake, land value and soft costs and any materials furnished/installed outside the scope of this Contract [which materials shall be insured by Company]), and shall cover fire, Broad Form Extended Coverage (including falling objects, windstorm, aircraft, wind, hail, riots and civil commotion, smoke, vandalism, explosion and lightning), Theft and flood/surface waters, and shall provide coverage for materials and equipment stored away from the Site for use on the Site, including coverage for said property in transit to the Site;

(c) Commercial General Liability Insurance on an occurrence form (including public liability insurance, property damage liability insurance, automobile insurance, contractor's protective insurance, contractual liability insurance, and delete exclusions relative to Collapse, Explosion and Underground Property Damage Hazards) in the following minimum amounts (except for automotive liability coverage) with umbrella or excess coverage of an additional \$5,000,000 per occurrence/aggregate; and Combined Single Limit (Bodily Injury and Property Damage combined) as follows:

(i)	\$1,000,000	Each Occurrence
(ii)	\$2,000,000	Aggregate
(iii)	\$2,000,000	Products/Completed Operations Aggregate

(d) The form of the commercial general liability policy shall be the ISO form CGO 01 0196 or equivalent. LMG Ventures, LLC.; The City of The Colony, Texas; MMC I Development Partners LLC Collett & Associates (Charlotte, NC); Graham Associates, Inc.; Yaggi Engineering, Inc.; 121 Acquisition Company LLC; 8400 Hickory, LLC ; Nebraska Furniture Mart; NFM Services, LLC; and TXFM, Inc. will be named as additional insureds on ISO form 2026 1185; the separation of insured language will not be modified; and a waiver of subrogation in favor of the Company and the other additional insured. The Contractor's commercial general liability insurance shall be primary with respect to any liability insurance maintained by the Company.

With respect to Comprehensive Automobile Liability Insurance, bodily injury shall be in the minimum amount of \$1,000,000 Combined Single Limit. Such policies shall be on the standard form written to cover all owned, hired and non-owned automobiles.

Each policy of insurance obtained by Contractor pursuant to the Contract Documents shall provide, by endorsement or otherwise (i) that such policy shall not be canceled, endorsed, altered or reissued to effect a change in coverage for any reason or to any extent whatsoever unless the insurer shall have first given Company at least thirty (30) days prior written notice thereof; and (ii) that Company may, but shall not be obligated to, make premium payments to prevent the cancellation, endorsement, alteration or reissuance of such policy and such payments shall be accepted by the insurer to prevent same. Certificates of insurance acceptable to the Company shall be filed with the Company prior to commencement of the Work. Copies of policies and endorsements shall be provided to the Company upon written request. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable

promptness in accordance with the Contractor's information and belief. Such policies shall provide, by endorsement or otherwise, that Contractor shall be solely responsible for the payment of all premiums under the policies, and that Company and the other indemnitees shall have no obligation for the payment thereof, notwithstanding that Company and the other indemnitees are named as additional insureds under the policy. If Builder's Risk Insurance is provided, any insured loss or claim of loss shall be adjusted by the Company, and any settlement payments shall be made payable to the Company as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Company who shall make distribution in accordance with an agreement to be reached in such event between Company and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but Work shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute. The Contractor shall be responsible for any loss within the deductible amount of the policy. If Company is damaged by the failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all costs properly attributable thereto. The Contractor shall obtain and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made hereunder or until no person or entity other than Company has an insurable interest in the property required by this insurance provision to be covered, whichever is earlier.

If Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this insurance provision, Company may, but shall not be obligated to, upon five (5) days' written notice to Contractor, purchase such insurance on behalf of Contractor and shall be entitled to be reimbursed by Contractor upon demand. Company's failure to receive or demand copies of any policies or endorsements required in this Exhibit shall not be construed as a waiver of the requirements herein.

Notwithstanding anything to the contrary herein contained, in the event that either Company or Contractor incurs a loss by fire or other casualty, which fire or other casualty shall have been caused in whole or in part by the negligence or acts or omissions of the other party or the other party's agents, contractors, employees or servants, then, to the extent that the party incurring such loss is compensated by the Builder's Risk Insurance Coverage obtained pursuant to this insurance provision or any other property insurance of the Company or the Contractor applicable to the Work or the Site, that party hereby waives and releases any claim that it might have against the other party and the other party's agents, contractors, servants and employees; and no insurance company or other party shall have any rights against either Company or Contractor by reason of any fire or casualty damage, either by subrogation or assignment.

SECTION 2: EXHIBIT "D"

FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

Sec. 53.284. **FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM.** (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)

(d) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____
_____ (Company name)
By _____ (Signature)
_____ (Title)

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____
Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____
_____ (Company name)
By _____ (Signature)
_____ (Title)

SECTION 2
PREVAILING WAGE RATE FOR MUNICIPAL CONSTRUCTION IN
DENTON COUNTY, TEXAS (Revised February 2007)

The wage rates below, in accordance with statutory requirements and prevailing local wages, have been determined by Denton County, Texas. The CONTRACTOR shall comply with all State and Federal Laws applicable to such work. The proceeding are minimum rates. Bidders shall base their bids on rates they expect to pay, if in excess of those listed. The OWNER will not consider claims for extra payment to CONTRACTOR on account of payment of wages higher than those specified.

	<u>Rates</u>
Air Tool Operators	\$ 10.06
Asphalt Raker	11.01
Asphalt Shoveler	8.80
Batching Plant Weigher	14.15
Carpenter	12.80
Concrete Finisher-Paving	12.85
Concrete Finisher-Structure	13.27
Concrete Rubber	10.61
Electrician	18.12
Flagger	8.43
Form Builder-Structures	11.63
Form Setter-Paving & Curb	11.83
Form Setter-Structures	11.63
Laborer-Common	9.18
Laborer-Utility	10.65
Mechanic	16.97
Oiler	14.98
Servicer	12.32
Painter-Structures	13.17
Pipe Layer	11.04
Asphalt Distributor Operator	13.99
Asphalt Paving Machine	12.78
Broom or Sweeper Operator	9.88
Bulldozer	13.22
Concrete Finishing Machine	13.63
Concrete Paving Joint Scaler	12.50
Concrete Paving Saw	13.56
Concrete Paving Spreader	14.50
Slip form Machine Operator	12.33
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel	14.12

**REVALING WAGE RATE FOR MUNICIPAL CONSTRUCTION IN
DENTON COUNTY, TEXAS (Revised February 2007) (continued)**

	<u>Rates</u>
Foundation Drill Operator Crawler Mounted	\$13.67
Foundation Drill Operator Truck Mounted	16.30
Front End Loader	12.62
Milling Machine Operator	11.83
Mixer	11.58
Motor Grader Operator Fine Grade	15.20
Motor Grade Operator	14.50
Pavement Marking Machine	10.04
Roller, Steel Wheel Plant-Mix Pavements	11.28
Roller, Steel Wheel Other Flatwheel or Tamping	10.92
Roller, Pneumatic, Self-Propelled	11.07
Scraper	11.42
Tractor-Crawler Type	12.60
Tractor-Pneumatic	12.91
Traveling Mixer	12.03
Wagon-Drill, Boring Machine	14.00
Reinforcing Steel Setter Paving	14.86
Reinforcing Steel Setter Structures	16.29
Spreader Box Operator	10.92
Zone Work Barricade	10.09
Truck Driver-Single Axle Light	10.91
Truck Driver-Single Axle Heavy	11.47
Truck Driver-Tandem Axle Semi Trailer	11.75
Truck Driver-Lowboy/Float	14.93
Truck Driver-Transit Mix	12.08
Welder	13.57

Request for additional classifications and wage rates may be submitted to the City ENGINEER after award, and may be approved only if: (1) the work to be performed by the classification requested is not performed by a classification in the wage determination; (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination (for the given area and type of construction).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR. 5.5 (a) (1) (v)).

CERTIFICATE OF INSURANCE

DRL (08/05/97)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO ADDITIONAL RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED

COMPANIES AFFORDING COVERAGE

COMPANY

COMPANY

COMPANY

COMPANY

COVERAGES

THIS IS TO CERTIFY TO THE _____ THAT THE FOLLOWING POLICIES OF INSURANCE, SUBJECT TO THEIR TERMS, CONDITIONS AND EXCLUSIONS, HAVE BEEN ISSUED BY THE COMPANIES COVERING THE PERIOD DATED BELOW ON THE TYPES OF OPERATIONS AND AT THE LOCATIONS DESCRIBED HEREIN. IF CHANGES ARE MADE TO ANY OF THE POLICIES DESCRIBED HEREIN, THEY WILL BE CANCELED, CHANGED, REDUCED IN COVERAGE, OR ALLOWED TO EXPIRE WITHOUT AT LEAST THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL TO THE _____ AT THE ADDRESS LISTED UNDER CERTIFICATE HOLDER BELOW.

CO	TYPE OF LIABILITY	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS OF LIABILITY (IN THOUSANDS)	
	GENERAL LIABILITY				GENERAL AGGREGATE	\$
	COMPLIANCE LIABILITY				PRODUCTS COMPLETION	\$
	CLAIMS MADE				PERSONAL AND ADJ. INURY	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (by or for)	\$
					MEDICAL (by or for)	\$
 ADDITIONAL INSURED					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	\$
	ALL AUTOS				BOILER & MACH. (per person)	\$
	ALL OWNED AUTOS				BOILER & MACH. (per accident)	\$
	SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	HIRE/AUTOS					
	NON OWNED AUTOS					
 ADDITIONAL INSURED					
	GARAGE LIABILITY				AUTO ONLY EA ACCIDENT	\$
	ALL AUTOS				OTHER THAN AUTO-ONLY	\$
					EACH ACCIDENT	\$
					AGGREGATE	\$
	FIRE PROTECTION				EACH OCCURRENCE	\$
	UMBRELLA FORM				AGGREGATE	\$
	OTHER THAN UMBRELLA					
 ADDITIONAL INSURED					
	WORKERS' COMPENSATION				STATUTORY LIMITS	
	EMPLOYER LIABILITY				EACH OCCURRENCE	
	EMPLOYEE COMPENSATION				DISEASE - POLIC LIMIT	\$
	INCLUDED				DISEASE - EACH EMPLOYEE	\$
 ADDITIONAL INSURED					
	OTHER					

EMPLOYER'S POLICY NUMBER	INSURED'S POLICY NUMBER	COVERAGE	INSURED'S POLICY NUMBER
EMPLOYER'S POLICY NUMBER	INSURED'S POLICY NUMBER	COVERAGE	INSURED'S POLICY NUMBER
EMPLOYER'S POLICY NUMBER	INSURED'S POLICY NUMBER	COVERAGE	INSURED'S POLICY NUMBER

_____ has been named an additional Insured by an endorsement to the coverages, other than Workers' Compensation and Employers' Liability, listed herein with regard to the Insured's activities under this project and all premiums arising from the coverages herein shall be the responsibility of the Insured.

Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail at least thirty (30) days advance written notice to the certificate holder by certified mail.

Authorized Representative

ACKNOWLEDGEMENT

On this _____ day of _____, 20____, I, _____, an authorized representative of _____ (name of person accepting this certificate) have accepted this certificate and contract to the foregoing conditions and a true and correct copy of the same for the purpose of providing the same and is covered by the policies of insurance included above.

Name (Print) and Title of the Insured

My Commission Expires _____

PERFORMANCE BOND

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF _____

§

That we, _____, as Principal herein, and [Surety], a corporation organized and existing under the laws of the State of [Surety's state of incorp], and who is authorized and admitted to issue surety bonds in the State of Texas, Surety herein, are held and firmly bound unto LMG Ventures, LLC, located in the City of Omaha, State of Nebraska, Obligee herein, in the sum of _____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain written contract with the Obligee dated the ____ day of _____, 2015, herein referred to as "the Contract" and incorporated herein and made a part hereof for all purposes, for the construction of : _____

Boardwalk Site Plan Electrical

Lake Edge and Water Feature Improvements

Grandscape Addition

NOW, THEREFORE, the condition of this obligation is such, if the said Principal shall faithfully perform the work in accordance with the plans, specifications, and other Contract documents and shall fully indemnify and hold harmless the Obligee from all costs and damages which Obligee may suffer by reason of Principal's failure to perform the Work in conformity with the Contract, and reimburse and repay Obligee for all outlay and expense that Obligee may incur in making good such default, then this obligation shall be void; otherwise, to remain in full force and effect. Whenever Contractor shall be declared by Obligee to be in default under the Contract, the Surety shall, upon request of Obligee and within seven (7) calendar days from receipt of Obligee's notice of Contractor's default, commence and thereafter complete performance of Contractor's obligations under the Contract. This Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of

time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of such statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 2015.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Secretary

(S E A L)

Witness as to Surety

Name: _____
Attorney in Fact

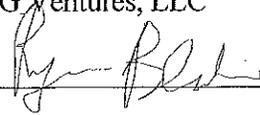
Address: _____

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

LMG Ventures, LLC

By:  _____

Name: Ryan Blumkin

Title: Vice-President

Date: 10.20.15

this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to Chapter 2253 of the Texas Government Code, as amended, and all rights and liabilities on this bond shall be determined in accordance with the provisions of said statute, to the same extent as if it were copied at length herein. All notices shall be delivered in writing to the addresses shown below or to addresses provided in the Contract.

IN WITNESS WHEREOF, the duly authorized representatives of the Principal and the Surety have executed this instrument.

SIGNED and SEALED this _____ day of _____, 2015.

The date of bond shall not be prior to date of Contract.

ATTEST:

(Principal) Secretary

(S E A L)

Witness as to Principal

ATTEST:

Secretary

PRINCIPAL

By: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

SURETY

By: _____

Name: _____

Attorney in Fact

(S E A L)

Address: _____

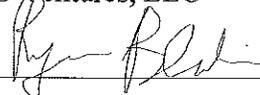
Witness as to Surety

Telephone Number: _____

An original copy of Power of Attorney shall be attached to Bond by the Attorney-in-Fact.

Approved as to Form:

LMG Ventures, LLC

By:  _____

Name: Ryan Blumkin

Title: Vice-President

Date: 10.20.15

**CITY OF THE COLONY, TEXAS
RESOLUTION NO. 2016-_____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PARTIAL ASSIGNMENT OF CONTRACT BY AND BETWEEN THE CITY OF THE COLONY AND LMG VENTURES, LLC FOR THE PURPOSE OF COMPLETION OF THE ELECTRICAL WORK ON THE WELL AND AERATION EQUIPMENT FOR THE BOARDWALK DISTRICT OF GRANDSCAPE; THAT THE FUNDING SOURCE FOR PARTIAL ASSIGNMENT SHALL THE PUBLIC IMPROVEMENT DISTRICT NO. 1; THAT SAID PARTIAL ASSIGNMENT OF CONTRACT SHALL BE INCORPORATED HEREIN AS EXHIBIT "A"; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PARTIAL ASSIGNMENT OF CONTRACT; PROVIDING AN EFFECTIVE DATE

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

Section 1. That the City Council of the City of The Colony, Texas, has duly reviewed and considered the Partial Assignment of Contract by and between the City of The Colony and LMG Ventures, LLC for the purpose of completing the electrical work on the well and aeration equipment at the Boardwalk District of Grandscape.

Section 2. That funding for said in the amount of \$105,261.00 shall be provided by the Public Improvement District No. 1.

Section 3. That this Contract, attached hereto as Exhibit "A", is found to be acceptable and in the best interest of the City and its citizens, and the City Manager is hereby authorized to execute the Contract on behalf of the City of The Colony, Texas, with the terms and conditions as stated therein.

Section 4. That this resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the City of The Colony, Texas, this 20th day of September, 2016.

Joe McCurry, Mayor
City of The Colony, Texas

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider approving a resolution amending Fiscal Year 2015-16 Master Fee Schedule for Fiscal Year 2016-2017 effective October 1, 2016 (General Admin, Miller)

Background:

Purpose:
Amend fee schedule for 2016-17.

Issues:

Alternatives:

Recommendations:

Attachments:
Fee Schedule Amendments
Proposed Resolution

PROPOSED MASTER FEE SCHEDULE CHANGES FY 2016/2017

Item	Existing Fee	Proposed Fee	Eff Date
<u>GENERAL FUND</u>			
FIRE FEES			
Working without a permit		300	10/01/16
After hours inspection fee		300	10/01/16
Advanced Life Support (ALS) Emergencies	\$550 - Resident \$550 - Non-Resident	\$900 - Resident \$900 - Non-Resident	10/01/16 10/01/16
Advance Life Support 2 (ALS2)	\$650 - Resident \$650 - Non-Resident	\$1,000 - Resident \$1,100 - Non-Resident	10/01/16 10/01/16
Basic Life Support (BLS) Emergencies	\$650 - Resident \$650 - Non-Resident	\$800 - Resident \$850 - Non-Resident	10/01/16 10/01/16
Specilized Critical Care (SCT)	\$650 - Resident \$650 - Non-Resident	\$900 - Resident \$1,100 - Non-Resident	10/01/16 10/01/16
Advanced Life Support (ALS) Disposables	\$35 - Non-Resident	\$200 - Non-Resident	10/01/16
Basic Life Support (BLS) Disposables	\$35 - Resident	\$150 - Non-Resident	10/01/16
POLICE FEES			
		PENDING	
LIBRARY FEES			
Children's kit (cassette & book)	\$9.00, plus \$5.00 proc fee \$5.00/piece up to a maximum of	Remove Fee	10/1/2016
Audiobooks & kits (cassette)	\$50.00 per cataloged item, plus \$5.00 processing fee	Remove Fee	10/1/2016
<u>PARKS FUND</u>			
RECREATION:			
Kidz Kamp - Summer sessions (base)	\$115/week res / \$125/week non-res	\$120/week res / \$145/week non-res	10/01/16
Kidz Kamp - Holiday sessions (base)	\$30/day res / \$35/day non-res	\$35/day res / \$45/day non-res	1/1/17
Kidz Kamp - Summer supply fee	\$20	\$25	10/01/16
ATHLETICS:			
Adult Softball Fee	\$350/team/season	\$300/team/season	1/1/17
Adult Basketball	\$380/team/season	\$300/team/season	1/1/17
Adult Volleyball	\$275/team/season	\$300/team/season	1/1/17
Tournament Rental Rates - non- co-pon			
Five Star Lit	\$200/field/day, or \$35/hr	\$200/field/day, or \$50/hr 2 hr mim	1/1/17
Five Star Unlit	\$185/field/day, or \$30/hr	\$185/field/day, or \$50/hr 2 hr mim	1/1/17
Other Lit	\$175/field/day, or \$25/hr	\$175/field/day, or \$30/hr	1/1/17
LAKE PARKS:			
RV Sites - w/ Annual Pass	\$15	\$17/res, \$25/non-res	10/1/16
RV Sites - w/o Annual Pass	\$20	\$22/res, \$30/non-res.	10/1/16
Tent Sites - w/ Annual Pass	\$12	\$15/res, \$20 non-res.	10/1/16
Tent Sites - w/o Annual Pass	\$17	\$20/res, \$25 non-res.	10/1/16
Annual Combo - Resident - First Car	\$55	Remove Fee	10/1/15
Annual Combo - Resident - Second Car	\$45	Remove Fee	10/1/15
Annual Combo - Non-Resident - First Car	\$95	Remove Fee	10/1/15
Annual Combo - Non-Resident - Second Car	\$60	Remove Fee	10/1/15
A - DEVELOPMENT SERVICES:			
Demolition - Swimming Pools and Hot Tubs		\$50	10/01/16

SCHEDULE A - CONTINUED

2015-2016

Water Rates			
<i>Inside city</i>		<i>Outside city</i>	
<i>Meter size (inches)</i>	<i>Rate</i>	<i>Meter size (inches)</i>	<i>Rate</i>
5/8	17.33	5/8	26.01
3/4	22.99	3/4	34.49
1	32.58	1	48.88
1 1/2	63.25	1 1/2	94.86
2	105.41	2	158.14
3	162.95	3	244.36
4	253.88	4	380.83
6	571.25	6	856.85
8	1,285.32	8	1,927.96
10	2,891.98	10	4,337.96
Commodity rate (per th. Gallons)		Commodity rate (per th. Gallons)	
2,001-15,000	3.92	2,001-15,000	5.89
15,001-25,000	4.89	15,001-25,000	7.31
25,001-40,000	5.22	25,001-40,000	7.80
40,001 and over	5.69	40,001 and over	8.54

2016-2017

Water Rates (includes a 3% increase)			
<i>Inside city</i>		<i>Outside city</i>	
<i>Meter size (inches)</i>	<i>Rate</i>	<i>Meter size (inches)</i>	<i>Rate</i>
5/8	18.20	5/8	27.31
3/4	24.14	3/4	36.21
1	34.21	1	51.32
1 1/2	66.41	1 1/2	99.60
2	110.68	2	166.05
3	171.10	3	256.58
4	266.57	4	399.87
6	599.81	6	899.69
8	1,349.59	8	2,024.36
10	3,036.58	10	4,554.86
Commodity rate (per th. Gallons)		Commodity rate (per th. Gallons)	
2,001-15,000	4.12	2,001-15,000	6.18
15,001-25,000	5.13	15,001-25,000	7.68
25,001-40,000	5.48	25,001-40,000	8.19
40,001 and over	5.97	40,001 and over	8.97

SCHEDULE A - CONTINUED
2015-2016

Sewer Rates			
<i>Inside city</i>		<i>Outside city</i>	
<i>Meter size (inches)</i>	<i>Rate</i>	<i>Meter size (inches)</i>	<i>Rate</i>
5/8	16.79	5/8	25.19
3/4	20.39	3/4	30.62
1	27.63	1	41.46
1 1/2	45.72	1 1/2	68.58
2	67.39	2	101.13
3	118.04	3	177.06
4	190.34	4	285.53
6	487.31	6	730.96
8	1,247.49	8	1,871.21
10	3,193.57	10	4,790.32
Commodity rate (per th. Gallons)		Commodity rate (per th. Gallons)	
Residential(over 2,000 gal)	3.52	Residential(over 2,000 gal)	5.29
Commercial(over 2,000 gal)	4.62	Commercial(over 2,000 gal)	7.12

2016-2017

Sewer Rates (includes a 3% increase)			
<i>Inside city</i>		<i>Outside city</i>	
<i>Meter size (inches)</i>	<i>Rate</i>	<i>Meter size (inches)</i>	<i>Rate</i>
5/8	17.63	5/8	26.45
3/4	21.41	3/4	32.15
1	29.01	1	43.53
1 1/2	48.01	1 1/2	72.01
2	70.76	2	106.19
3	123.94	3	185.91
4	199.86	4	299.81
6	511.68	6	767.51
8	1,309.86	8	1,964.77
10	3,353.25	10	5,029.84
Commodity rate (per th. Gallons)		Commodity rate (per th. Gallons)	
Residential(over 2,000)	3.70	Residential(over 2,000)	5.55
Commercial(over 2,000)	4.85	Commercial(over 2,000)	7.48

RESOLUTION NO. 2016-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AMENDING RESOLUTION NO. 2015-070, AOPTION OF THE MASTER FEE SCHEDULE, AMENDING THE MASTER FEE SCHEDULE, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS ATTACHMENT "A"; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of The Colony adopted the Master Fee Schedule for Fiscal Year 2015-2016 by Resolution No. 2015-070, passed and approved on the 15th day of September 2015; and

WHEREAS, the City desires to amend the 2015-2016 Master Fee Schedule, providing for new fees and fee amendments for the City; and

WHEREAS, after consideration and review, the City Council finds that Resolution No. 2015-070, as amended is the new Master Fee Schedule, which is attached hereto and incorporated herein as Attachment "A," be adopted to provide fees for the City of The Colony.

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

Section 1. That Resolution No. 2015-070, as amended by Attachment "A", be incorporated as the Master Fee Schedule.

Section 2. That all provisions of any resolution of the City Council of the City of The Colony in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

Section 3. This Resolution shall become effective on October 1, 2016, from and after its passage, as the law and charter in such cases provide.

PASSED and APPROVED this 20th day of September, 2016.

Joe McCourry, Mayor

ATTEST:

Tina Stewart, City Secretary,

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider approving an ordinance adopting the City of The Colony Fiscal Year Budget beginning October 1, 2016 through September 30, 2017; providing for intra and inter departmental fund transfers; providing for the investment of certain funds; providing that expenditures for said fiscal year to be made in accordance with said budget (General Admin, Miller)

Background:

Purpose:

Approve 2016-2017 Operating and CIP Budgets.

Issues:

Alternatives:

Recommendations:

Attachments:

Proposed Ordinance

**CITY OF THE COLONY, TEXAS
ORDINANCE NO. 2016-_____**

ADOPT MUNICIPAL BUDGET FOR FISCAL YEAR 2016-2017

AN ORDINANCE OF THE CITY OF THE COLONY, APPROVING AND ADOPTING A BUDGET FOR THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2016, THROUGH SEPTEMBER 30, 2017; PROVIDING FOR THE INTRA AND INTER-DEPARTMENT FUND TRANSFERS; PROVIDING FOR THE INVESTMENT OF CERTAIN FUNDS; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Executive Director of Administration for the City of The Colony, Texas has heretofore filed with the City Secretary, a proposed general budget for the City covering the fiscal year 2016-2017; and

WHEREAS, a public hearing was duly held and all interested persons were given an opportunity to be heard for or against any item therein in accordance with the Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS:

SECTION 1: That the attached budget, presented by the City Manager and reviewed during Council meetings and work sessions, and as amended be approved for the fiscal year 2016-2017.

SECTION 2: That the City Manager be and is hereby authorized to make intra and Council approved inter-departmental fund transfers during the fiscal year as becomes necessary in order to avoid over-expenditures of a particular account.

SECTION 3: That the City Manager, unless expressly prohibited by law, or unless it is in contravention of any Depository Contract, may direct the City Finance Director to invest funds in accordance with the City's Investment Policy.

SECTION 4: That said Budget as attached hereto as Exhibit "A" of this Ordinance, and made a part hereof for all purposes, is hereby approved in all respects and is adopted as the City's budget for the fiscal year beginning October 1, 2016, and ending September 30, 2017.

SECTION 5: The fact that the fiscal year begins on October 1, 2016, requires that this Ordinance be effective upon its passage and adopted to preserve the public peace, property, health and safety, and shall be in full force and effect from and after its passage and adoption.

DULY PASSED AND APPROVED, this the 20th day of September, 2016.

Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney
City of The Colony, Texas

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider approving a resolution ratifying the property tax revenue increase reflected in the City of The Colony Budget for Fiscal Year 2016-17 (General Admin, Miller)

Background:

Purpose:

Recognize the increase in property taxes received from appreciating existing properties in the City.

Issues:

Alternatives:

Recommendations:

Attachments:

Proposed Resolution

**CITY OF THE COLONY, TEXAS
RESOLUTION NO. 2016-_____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, RATIFYING THE BUDGET FOR THE FISCAL YEAR 2016-2017 THAT WILL REQUIRE RAISING MORE REVENUE FROM PROPERTY TAXES THAN PREVIOUS YEARS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, following public notice duly posted and published in all things as required by law, a public hearing was held, by and before the City Council of the City of The Colony, the subject of which was the proposed budget for the City of The Colony for Fiscal Year 2016-2017; and

WHEREAS, House Bill 3195, as adopted at the Regular Session of the 80th Legislature requires a separate vote on a budget that will require raising more revenue from property taxes than previous years.

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

Section 1. The City Council hereby approves a record vote for the adoption of a budget for Fiscal Year 2016-2017 which will raise more revenue from property taxes than previous years.

Section 2. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provides.

PASSED and APPROVED this the 20th day of September, 2016.

Joe McCourry, Mayor

ATTEST:

Tina Stewart, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider approving an ordinance adopting the City of The Colony tax rate of \$.6675 per \$100 valuation on January 1, 2016. Tax rate is comprised of \$.51254 M&O and \$.15496 of General Fund Debt Service (General Admin, Miller)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Motion must be read as, "I move that the property taxes be increased by the adoption of a tax rate of \$.6675. This tax rate will raise more taxes for maintenance and operations than last year's tax rate. The tax rate will effectively be raised by 10 percent and will raise taxes for maintenance and operations on a \$100,000 home by approximately \$61.

Attachments:

Proposed Ordinance

**CITY OF THE COLONY, TEXAS
ORDINANCE NO. 2015-_____**

ADOPT TAX RATE FOR FISCAL YEAR 2016-2017

AN ORDINANCE OF THE CITY OF THE COLONY, TEXAS, LEVYING THE AD VALOREM TAXES FOR THE FISCAL YEAR 2016-2017 AT A RATE OF \$.6675 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION OF ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY AS OF JANUARY 1, 2016; TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE CITY; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; AND DECLARING AN EFFECTIVE DATE.

BE IT SO ORDAINED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS:

SECTION 1: That there be and is hereby levied for the fiscal year 2016-2017, on all taxable property, real, personal and mixed, situated within the limits of the city of The Colony, Texas, and not exempt by the Constitution of the State and valid State laws, a tax of \$.6675 on each One Hundred Dollars (\$100) assessed value of taxable property, and shall be apportioned and distributed as follows:

- (a) For the purpose of defraying the current expenses of municipal government of the City, a tax of \$.51254 on each One Hundred Dollars (\$100) assessed value of all taxable property.
- (b) For the purpose of creating a sinking fund to pay interest and principal on all outstanding bonds of the City, not otherwise provided for, a tax of \$.15496 on each One Hundred Dollars (\$100) assessed value of all taxable property, within the City, which shall be applied to the payment of such interest and maturities of all outstanding bonds.
- (c) I MOVE THAT THE PROPERTY TAXES BE INCREASED BY THE ADOPTION OF A TAX RATE OF \$.6675. THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 10 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$61.

SECTION 2: That all ad valorem taxes shall become due and payable on October 1, 2016 and all ad valorem taxes for the year shall become delinquent after January 31, 2017. There shall be no discount for payment of taxes prior to said January 31, 2017. If any person fails to pay the

ad valorem taxes on or before the 31st day of January 2016, the following penalties shall be payable thereon, to-wit:

During the month of February, seven percent (7%); during the month of March, nine percent (9%); during the month of April, eleven percent (11%); during the month of May, thirteen percent (13%); during the month of June, fifteen percent (15%); and on or after the 1st day of July, eighteen percent (18%).

SECTION 3: Taxes are payable at the Denton County office of the tax collector who on behalf of The Colony collects ad valorem taxes for The Colony. The City shall have available all rights and remedies provided by law for enforcement of the collection of taxes levied under this ordinance.

SECTION 4: That the tax rolls, as presented to the City Council, together with any supplement thereto, be, and the same are hereby approved.

SECTION 5: The fact that it is necessary that this ordinance be enacted in order to authorize the collection of ad valorem taxes for the fiscal year 2016-2017, this ordinance shall take effect from and after its passage as the law in such cases provides.

DULY PASSED AND APPROVED, this the 20th day of September, 2016.

Joe McCourry, Mayor
City of The Colony, Texas

ATTEST:

Tina Stewart, TRMC, City Secretary

APPROVED AS TO FORM:

City Attorney
City of The Colony, Texas

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider an ordinance levying the Public Improvement District Annual Assessment on properties located within the City of The Colony Public Improvement District No. 1, approving the Service and Assessment Plan for the District for Fiscal Year 2016-2017 and approving an Assessment Roll (General Admin, Miller)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

Final PID Assessment
Proposed Ordinance

FINAL

City of The Colony Public Improvement District No. 1
2016/2017 Annual Service and Assessment Plan

August 10, 2016

Amended August 29, 2016

SECTION 1 INTRODUCTION

Capitalized terms used in this "City of The Colony Public Improvement District No. 1 Service and Assessment Plan" (this "Service and Assessment Plan") shall have the meanings set forth in Section 2. Unless otherwise defined, all references to "Section" mean a section of this Service and Assessment Plan, and all references to "Exhibit" mean an exhibit to this Service and Assessment Plan.

1.1 On October 8, 2012, the City Council of the City of The Colony, Texas (the "City Council" and the "City") passed and approved Resolution No. 2012-073 creating The Colony Public Improvement District No. 1 (the "District") pursuant to Chapter 372, Texas Local Government Code, as amended (the "Act"). The District includes within its boundaries approximately 439.12 contiguous acres located within the corporate limits of the City south of and adjacent to the Sam Rayburn Tollway (State Highway 121), north of and adjacent to Plano Parkway, and west of Spring Creek Parkway, which property is described by metes and bounds on Exhibit A and depicted on Exhibit A-1 (the "Property").

1.2 Portions of the Property are currently undeveloped, while other portions are under development or fully developed. The portion of the Property described as Grandscape Addition Lot 1/Block A consisting of 81.99 acres and identified as Denton Central Appraisal District ("Denton CAD") Tax Parcel No. 657618, and the portion of the Property described as Grandscape Additional Lot 2/Block A consisting of 25.48 acres and identified by Denton CAD Tax Parcel No. 657619 (collectively, the "Facility Property") is developed with a mixed-use facility which includes approximately 1,280,000 square feet for warehouse and distribution uses, approximately 25,000 square feet for a regional corporate headquarters, approximately 546,000 square feet for retail sales to the general public and surface and structured parking (collectively, the "Facility"). The portion of the property described as Grandscape Addition, Phase II, Lot 2/Block D consisting of approximately 16.421 acres and identified as Denton CAD Tax Parcels Nos. 674227 (the "Boardwalk Property") will be developed with a boardwalk and related amenities (the "Boardwalk"). Portions of the Property will be developed with additional mixed-use facilities including, but not limited to, entertainment, tourism, recreation, and convention facilities that will attract tourists, visitors, and shoppers from a wide geographic region, and hotels, retail stores, concessions, restaurants, and other facilities related to the entertainment, tourism, recreation, and convention uses (collectively, the "Related Development"). The portions of the Related Development currently under development include the following: the portion of the Property described as (1) Grandscape Addition, Phase II, Lot 6/Block A consisting of 2.015 acres and identified as Denton CAD Tax Parcel No. 649990; (2) Grandscape Addition, Phase II, Lot 7/Block A consisting of 2.105 acres and identified as Denton CAD Tax Parcel No. 649991; (3) Grandscape Addition, Phase II, Lot 8/Block A consisting of 2.944 acres and identified as Denton CAD Tax Parcel No. 653843; (4) Grandscape Addition, Phase II, Lot 9/Block A consisting of 2.683 acres and identified as Denton CAD Tax Parcel No. 653844; (5)

Grandscape Addition Phase II, Lot 2/Block B consisting of 1.949 acres and identified as Denton CAD Tax Parcel No. 655036; (6) Grandscape Addition Phase II, Lot 1/Block B consisting of 3.386 acres and identified as Denton CAD Tax Parcel No. 674231; (7) Grandscape Addition Phase II, Lot 1R/Block J consisting of 3.135 acres and identified as Denton DCAD Property ID No. 674422; (8) a portion of Grandscape Addition Phase II, Lot 1/Block H consisting of 8.551 acres and identified as a portion of Denton DCAD Property ID No. 178724 as recorded in Denton County Recording Document No. 94189 (Tax Parcel No. not yet assigned) (collectively 1.2(1)-(8) are, the "Related Development Property"). Other portions of the Property will be developed with public improvements required to serve the Facility (the "Facility Public Improvements"); public improvements required to serve the Boardwalk (the "Boardwalk Public Improvements"); and public improvements required to serve the Related Development (the "Related Development Public Improvements"), and referred to collectively with the Facility Public Improvements and the Boardwalk Public Improvements as the "Public Improvements").

1.3 The Public Improvements, and portions of the Property on which the Public Improvements are constructed, will remain owned by the City.

1.4 It is contemplated that the Public Improvements will be constructed by or on behalf of the City using, in part, Assessment Revenue.

1.5 Assessment Revenue from any Assessment against all or any portion of the Property will be collected in lump sum with 30 days of the levy of the assessment and deposited into a segregated operating account (the "PID Operating Account for Annual Assessments") created and controlled by the City. Interest earned on the PID Operating Account for Annual Assessments shall be added to and become part of the PID Operating Account for Annual Assessments. The PID Operating Account created pursuant to Ordinance No. 2013-1992 shall be renamed "PID Operating Account for Pledged Revenues." All Assessment Revenue from any Assessment levied pursuant to Ordinance No. 2013-1992 shall be deposited into the PID Operating Account for Pledged Revenues and transferred from that account, if at all, consistent with the requirements of Ordinance No. 2013-1992. All Assessment Revenue from any Assessment levied on an annual basis shall be deposited into the PID Operating Account for Annual Assessments and used solely for the purposes determined by the City Council at the time the Assessments are levied.

1.6 The Facility Public Improvements fall into the following categories: (1) traffic management system; (2) enhanced police services; (3) enhanced development services; (4) street and roadway improvements, including pavement repair and striping, maintenance of street lighting, installation and maintenance of traffic signalization and signage, and maintenance of landscaping within public rights-of-way; (5) water well operation and maintenance; and (6) pond maintenance. The Boardwalk Public Improvements fall into the following categories: (1) enhanced development services; (2) street and roadway improvements, including pavement repair and striping, maintenance of street lighting, installation and maintenance of traffic signalization and signage, and maintenance of landscaping within public rights-of-way; (3)

water well operation and maintenance; and(4) pond maintenance. The Related Development Public Improvements fall into the following categories: (1) enhanced development services; (2) street and roadway improvements, including pavement repair and striping, maintenance of street lighting, installation and maintenance of traffic signalization and signage, and maintenance of landscaping within public rights-of-way; (3) water well operation and maintenance; and (4) pond maintenance. The Public Improvements are more particularly described in the report titled ***PUBLIC IMPROVEMENTS REPORT, The City of The Colony Public Improvement District No. 1, The Colony, Texas***, dated August 10, 2016, and amended August 29, 2016, prepared by Assistant City Manager Tod Maurina (the "Official Report"), a copy of which report is attached as **Exhibit B**.

1.7 The costs for the Public Improvements are estimated in the Official Report. The total cost of the Facility Public Improvements is estimated to be \$875,155.64 (the "Facility Public Improvements Cost") as shown on **Exhibit B**. The total cost of the Boardwalk Public Improvements is estimated to be \$120,673.24 (the "Boardwalk Public Improvements Cost") as shown on **Exhibit B**. The total cost of the Related Development Public Improvements is estimated to be \$167,007.12 (the "Related Development Public Improvements Cost") as shown on **Exhibit B**. The individual line item costs shown in the Official Report and on **Exhibit B** for each category of improvements are estimates and may vary item-to-item so long as the cost of all Public Improvements do not exceed \$1,162,836.00. The Facility Public Improvements Cost, the Boardwalk Public Improvement Cost and the Related Development Public Improvements Cost are sometime referred to collectively as the "Public Improvements Cost." A reconciliation of the 2015-16 Public Improvement Costs yielded a \$363,000.00 surplus. To provide operations funding during the lag period between the budget commencement and the annual assessment collection \$301,565.00 (90 days of operating costs) was allocated to a "Pre-paid Expense" line item. The balance of \$61,434.00 was allocated to reduce the 2016-17 Assessment from \$1,224,270.00 to \$1,162,836.00.

1.8 The Act governs the process by which the Public Improvements Cost is allocated to and assessed against the Property. This process requires the preparation of an ongoing service plan (a "Service Plan"), an assessment plan (an "Assessment Plan"), and an assessment roll (an "Assessment Roll").

1.9 The Act requires the preparation, and the presentment to and review and approval by the City Council, of a Service Plan covering a period of at least five years and defining the annual indebtedness and projected costs of the Public Improvements. The Service Plan must be reviewed and updated at least annually to determine the annual budget for the Public Improvements. The Service Plan is contained in Section 3.

1.10 The Act requires the Service Plan to include an Assessment Plan. The Assessment Plan assesses the Public Improvements Cost against the Property on the basis of the special benefits conferred upon the Property by the Public Improvements. The Public Improvements Cost may be assessed in any manner that results in imposing equal shares of the cost on Parcels similarly

benefited. The special benefit of the Public Improvements is being apportioned by this Service and Assessment Plan to the Property in the amount of the Public Improvements Cost. The Assessment Plan is contained in Section 4.

1.11 The Act requires the preparation of an Assessment Roll after the total Public Improvements Cost has been determined. The Assessment Roll must state the assessment against each Parcel determined by the method of assessment chosen by the City Council in the Assessment Plan. The assessment against a Parcel must be sufficient to pay the share of the Public Improvements Cost allocated to the Parcel and cannot exceed the special benefit conferred upon the Parcel. The Assessment Roll is contained in Section 5.

SECTION 2 **DEFINITIONS**

"Act" is defined in Section 1.1

"Administrator" means any person or entity designated by the City Council to perform the obligations of the Administrator under this Service and Assessment Plan.

"Assessment" means, for a Parcel, the portion of the Public Improvements Cost allocated to and assessed against the Parcel based on the special benefit conferred on the Parcel by the Public Improvements.

"Assessment Plan" is defined in Section 1.8.

"Assessment Roll" is defined in Section 1.8.

"Assessment Revenue" means the revenues received by the City from the payment of Assessments.

"Boardwalk" is defined in Section 1.2.

"Boardwalk Property" is defined in Section 1.2.

"Boardwalk Public Improvements" are defined in Section 1.2.

"Boardwalk Public Improvements Cost" is defined in Section 1.7.

"City" is defined in Section 1.1.

"City Council" is defined in Section 1.1.

"Denton CAD" is defined in Section 1.2.

"District" is defined in Section 1.1.

"Facility" is defined in Section 1.2.

"Facility Property" is defined in Section 1.2.

"Facility Public Improvements" are defined in Section 1.2.

"Facility Public Improvements Cost" is defined in Section 1.7.

"Official Report" is defined in Section 1.6.

"Parcel" means a parcel or tract of land within the District that is identified by (i) a metes and bounds description, (ii) a tax map identification number assigned by Denton CAD for real property tax purposes, or (iii) a lot and block number shown on a final subdivision plat recorded in the real property records of Denton County, Texas.

"PID Operating Account for Pledged Revenues" is defined in Section 1.5.

"PID Operating Account for Annual Assessments" is defined in Section 1.5.

"Property" is defined in Section 1.1.

"Public Improvements" are defined in Section 1.2.

"Public Improvements Cost" is defined in Section 1.7.

"Related Development" is defined in Section 1.2.

"Related Development Property" is defined in Section 1.2.

"Related Development Public Improvements" are defined in Section 1.2.

"Related Development Public Improvements Cost" is defined in Section 1.7.

"Service and Assessment Plan" means this City of The Colony Public Improvement District No. 1, Service and Assessment Plan, dated February 7, 2013, as amended and updated, and this Annual Service and Assessment Plan.

"Service Plan" is defined in Section 1.8.

"Service Plan Update" is defined in Section 3.1.

"Special Benefits Report" is defined in Section 4.3.

SECTION 3
SERVICE PLAN

3.1 This Section 3 is the Service Plan for the District. This Service Plan covers a period of at least five years beginning with calendar year 2016 and defines the projected cost and annual indebtedness for the Public Improvements. The Service Plan shall be reviewed and updated at least annually for the purpose of determining the annual budget for the Public Improvements (each such update, a "Service Plan Update").

3.2 The projected Public Improvements Cost is \$1,162,836.00, and for the next five years such cost is allocated as shown on Exhibit C.

3.3 The principal amount of any Assessment may be reduced but not increased.

SECTION 4
ASSESSMENT PLAN

4.1 Method of Assessment. This Section 4 is the Assessment Plan for the District. This Assessment Plan assesses the Public Improvements Cost against the Property on the basis of the special benefits conferred on the Property by the Public Improvements. The Act provides that the Public Improvements Cost may be assessed equally per front foot or square foot (with or without regard to the value of improvements constructed on the land) or in any other manner that results in imposing equal shares of the cost on property similarly benefited.

4.2 Best and Highest Use. Based on: (i) the size and location of the Property within the corporate limits of the City; (ii) the lack of public infrastructure to serve development of the Property; (iii) the proximity of the Property to public roadways and water and sewer facilities; (iv) the proximity of the Property to population and employment centers; (v) the scope and economic impact of the Facility, the Boardwalk, and the Related Development on the City, Denton County; and the north Texas region; (vi) existing and projected land uses in the vicinity of the Property; (vii) projected growth in the greater Dallas metropolitan area and, in particular, along the State Highway 121 corridor; and (viii) the quality of the proposed development within the Property, the City Council has determined that: (A) the best and highest use of the Property is for the development of the Facility, the Boardwalk, and the Related Development; (B) achieving the best and highest use of the Property requires the Public Improvements; (C) without the Public Improvements the Property will not be developed to its best and highest use; (D) the establishment of the District provides an effective means of funding the Public Improvements to achieve the best and highest use for the Property without financial burden to the City; and (E) the Public Improvements will promote the interests of the City and confer a special benefit on the Property.

4.3 Public Improvements Cost. The City Council has received, reviewed, and approved that certain *SPECIAL BENEFITS REPORT, The City of The Colony Public Improvement District No.*

1, *The Colony, Texas* dated August 10, 2016, prepared by Assistant City Manager Tod Maurina, a copy of which is attached as **Exhibit D** (the "Special Benefits Report"). The individual line item costs shown in the Special Benefits Report and on **Exhibit D-1** for each category of improvements are estimates and may vary item-to-item so long as the Public Improvements Cost does not exceed \$1,162,836.00.

4.4 Adjustment of Assessments. The Assessments described in this Article IV are based on estimates of the Public Improvements Cost as set forth in the Official Report. If the actual cost of the Public Improvements is less than the estimates, the Assessments shall be reduced as determined by the Administrator and approved by the City Council in a Service Plan Update.

4.5 Subdivision; Change to Tax Exempt.

4.5.1 Upon Subdivision. If the Property is subdivided, the Assessment against the property will be reallocated among the subdivided Parcels on a per-acre basis as determined by the Administrator and reflected in a Service Plan Update approved by the City Council after a public hearing for which notice addressed to "Property Owner" has been mailed, regular mail, to the current address of the owner of the property being subdivided as reflected on the tax rolls.

4.5.2 Upon Becoming Tax Exempt. If any portion of the Property becomes exempt from the payment of ad valorem taxes, the owner of such portion shall pay to the City the unpaid principal amount of the Assessment allocated (on a per-acre basis) to such portion of the Property.

4.6 Assessment Payments. The Assessment against the Property shall be due and payable to the City within 30 days of the levy of the Assessment.

4.7 PID Operating Account. Assessment Revenue from the collection of any Assessment against the Property will be deposited by the City into the PID Operating Account for Annual Assessments.

4.8 Reduction of Assessment Against the Property. The Assessment against the Property (and the corresponding assessment lien) shall be reduced by the sum of all amounts by which the Public Improvement Costs are reduced.

4.9 Security for Payment. All payments due in accordance with this Service and Assessment Plan shall be treated the same with respect to the liens created to secure payment and the rights of the City, including foreclosure, in the event of delinquencies. Any foreclosure sale of a Parcel for nonpayment of any such amounts shall be subject to a continuing lien for the remaining unpaid amounts in accordance with state law. All assessment liens created pursuant to Ordinance No. 2013-1992 are superior to any lien created hereby.

4.10 Release of Lien. When an Assessment has been paid in full, the Administrator shall

notify the City, and the City shall execute a release, in recordable form, evidencing full payment of the Assessment and the unconditional release of the lien securing payment of the Assessment. All releases shall be reflected in a Service Plan Update.

4.11 Findings and Determinations. The findings and determinations by the City Council set forth in this Service and Assessment Plan are based on: (i) the Official Report; (ii) the Special Benefits Report; (iii) evidence and testimony presented to the City Council; and (iv) information made available to the City Council. The City Council has relied on the information contained in the Official Report, Special Benefits Report, evidence, and testimony in the preparation and approval of this Service and Assessment Plan and the allocation of the Public Improvements Cost to the Property. Such findings and determinations represent the discretionary exercise by the City Council of its legislative and governmental authority and power, and such findings and determinations are conclusive and binding on the current and future owners of the Property.

SECTION 5 **ASSESSMENT ROLL**

This Section 5 is the Assessment Roll for the District. The Assessment Roll is set forth on Exhibit E and includes each Parcel against which an assessment should be levied in the amount shown on Exhibit E which is the portion of the Public Improvements Cost that the City Council has determined confers a special benefit on the Property.

SECTION 6 **ADDITIONAL PROVISIONS**

6.1 Severability. The provisions of this Service and Assessment Plan are intended to be severable. In the event any provision of this Service and Assessment Plan, or the application thereof to any person or circumstance, is held or determined to be invalid, illegal, or unenforceable, and if such invalidity, unenforceability, or illegality does not cause substantial deviation from the underlying intent of the City Council as expressed in this Service and Assessment Plan, then such provision shall be deemed severed from this Service and Assessment Plan with respect to such person, entity, or circumstance without invalidating the remainder of this Service and Assessment Plan or the application of such provision to other persons, entities, or circumstances.

6.2 Exhibits. The following exhibits are part of this Service and Assessment Plan:

- Exhibit A Legal Description of the Property
- Exhibit A-1 Depiction of the Property
- Exhibit B Official Report - Public Improvements Cost
- Exhibit C Service Plan: Five-Year Projection of Public Improvements Costs
- Exhibit D Special Benefits Report
- Exhibit D-1 Facility Public Improvements Cost – Special Benefit Analysis
- Exhibit E Assessment Roll

Exhibit A
Legal Description of the Property (439.12 Acres)

Being a 439.12 acre tract of land situated in the B.B.B & C.R.R. Survey, Abstract No. 173, B.B.B. & C. Survey, Abstract No. 174, Thomas A. West Survey, Abstract No. 1344, and the M.D.T. Hallmark Survey, Abstract No. 570, Denton County, Texas, and being all of a tract of land conveyed by deed to 121 Acquisition Company, LLC., as recorded in Instrument No. 2011-114773, 2011-121444, and 2011-112195, Deed Records, Denton County, Texas, and a portion of Plano Parkway and a portion of Burlington Northern Railroad tract, and being more particularly described as follows:

BEGINNING at a found TxDOT monument, said point being the northwest corner of said 121 Acquisition Company, LLC tract and being in the south right-of-way line of State Highway 121 (having a variable width R.O.W.);

THENCE North 63°32'06" East, along said south right-of-way line, a distance of 130.52 feet to a point for corner;

THENCE North 60°22'33" East, continuing along said south right-of-way line, a distance of 80.86 feet to a point for corner;

THENCE South 29°13'03" East, continuing along said south right-of-way line, a distance of 50.00 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 219.64 feet to a point for corner, said point being in the west right-of-way line of Plano Parkway (100 ft R.O.W.);

THENCE North 50°53'35" East, leaving said south right-of-way line, and leaving said west right-of-way line, a distance of 100.00 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 950.00 feet and a central angle of 1°26'54" and a long chord which bears North 38°22'58" West, 24.01 feet, said point being in the east right-of-way line of said Plano Parkway;

THENCE along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 24.01 feet to a point for corner, said point being the most southerly point of a corner-clip of the intersection of said east right-of-way line of Plano Parkway and the south right-of-way line of said State highway 121;

THENCE North 08°46'31" East, along said corner-clip, a distance of 26.03 feet to a point for corner, said point being in the south right-of-way line of said State highway 121;

Exhibit A
Legal Description of the Property (439.12 Acres)

THENCE North 60°47'38" East, along said south right-of-way line, a distance of 203.71 feet to a point for corner;

THENCE North 58°17'36" East, continuing along said south right-of-way line, a distance of 252.11 feet to a point for corner;

THENCE North 55°47'40" East, continuing along said south right-of-way line, a distance of 105.11 feet to a point for corner;

THENCE North 58°17'42" East, continuing along said south right-of-way line, a distance of 248.62 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 263.85 feet to a point for corner;

THENCE North 76°30'51" East, continuing along said south right-of-way line, a distance of 92.27 feet to a point for corner;

THENCE North 65°56'12" East, continuing along said south right-of-way line, a distance of 100.40 feet to a point for corner;

THENCE North 64°13'39" East, continuing along said south right-of-way line, a distance of 100.18 feet to a point for corner;

THENCE North 60°16'36" East, continuing along said south right-of-way line, a distance of 39.88 feet to a point for corner;

THENCE South 74°12'01" East, continuing along said south right-of-way line, a distance of 70.70 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 64.12 feet to a point for corner;

THENCE North 15°47'17" East, continuing along said south right-of-way line, a distance of 73.27 feet to a point for corner;

THENCE North 59°04'32" East, continuing along said south right-of-way line, a distance of 94.25 feet to a point for corner;

THENCE North 55°39'04" East, continuing along said south right-of-way line, a distance of

Exhibit A
Legal Description of the Property (439.12 Acres)

100.40 feet to a point for corner;

THENCE North 47°37'54" East, continuing along said south right-of-way line, a distance of 114.18 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 3800.00 feet to a point for corner;

THENCE North 65°20'10" East, continuing along said south right-of-way line, a distance of 189.41 feet to a point for corner;

THENCE North 61°56'23" East, continuing along said south right-of-way line, a distance of 100.02 feet to a point for corner;

THENCE North 63°39'23" East, continuing along said south right-of-way line, a distance of 100.12 feet to a point for corner;

THENCE North 64°47'53" East, continuing along said south right-of-way line, a distance of 100.24 feet to a point for corner;

THENCE North 66°30'16" East, continuing along said south right-of-way line, a distance of 201.00 feet to a point for corner;

THENCE North 65°56'12" East, continuing along said south right-of-way line, a distance of 100.40 feet to a point for corner;

THENCE North 66°30'16" East, continuing along said south right-of-way line, a distance of 100.50 feet to a point for corner;

THENCE North 63°05'04" East, continuing along said south right-of-way line, a distance of 100.08 feet to a point for corner;

THENCE North 64°13'39" East, continuing along said south right-of-way line, a distance of 100.18 feet to a point for corner;

THENCE North 83°05'27" East, continuing along said south right-of-way line, a distance of 69.58 feet to a point for corner;

THENCE North 60°39'18" East, continuing along said south right-of-way line, a distance of 33.81 feet to a point for corner, said point being in the west right-of-way line of Burlington

Exhibit A
Legal Description of the Property (439.12 Acres)

Northern Railroad (having a variable width R.O.W.);

THENCE North 60°38'52" East, leaving said west right-of-way line, a distance of 107.30 feet to a point for corner, said point being in the east right-of-way line of said Burlington Northern Railroad;

THENCE North 60°45'58" East, leaving said east right-of-way line, continuing along said south right-of-way line of State Highway 121, a distance of 254.35 feet to a point for corner;

THENCE North 63°19'02" East, continuing along said south right-of-way line, a distance of 585.96 feet to a point for corner;

THENCE North 60°52'09" East, continuing along said south right-of-way line, a distance of 369.37 feet to a point for corner, said point being in the west right-of-way line of West Spring Creek Parkway (having a 160 ft R.O.W.);

THENCE South 29°24'43" East, leaving said south right-of-way line, and along said west right-of-way line, a distance of 265.52 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 970.00 feet and a central angle of 29°13'42", and a long chord which bears South 14°53'13" East, 489.48 feet;

THENCE continuing along said west right-of-way line, and along said non-tangent curve to the right an arc distance of 494.83 feet to a point for corner;

THENCE South 00°22'42" East, continuing along said west right-of-way line, a distance of 476.17 feet to a point for corner;

THENCE South 00°23'35" East, continuing along said west right-of-way line, a distance of 864.92 feet to a point for corner, said point being in the north line of Kings Ridge Addition, Phase Three, as recorded in Cabinet X, Page 450, Plat Records, Denton County, Texas;

THENCE South 89°40'20" West, leaving said west right-of-way line, and along said north line, a distance of 1199.93 feet to a point for corner, said point being in the east right-of-way line of said Burlington Northern Railroad;

THENCE North 87°39'44" West, leaving said north line, leaving said east right-of-way line, a distance of 101.16 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 3703.75 feet and a central angle of 3°44'19" and a long chord which bears South 04°12'25" West, 241.62 feet, said point being in the west right-of-way line of said

Exhibit A
Legal Description of the Property (439.12 Acres)

Burlington Northern Railroad;

THENCE along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 241.67 feet to a point for corner;

THENCE South 06°04'35" West, continuing along said east right-of-way line, a distance of 2524.64 feet to a point for corner;

THENCE North 83°17'00" West, continuing along said east right-of-way line, a distance of 190.16 feet to a point for corner;

THENCE South 00°51'51" East, continuing along said east right-of-way line, a distance of 970.10 feet to a point for corner;

THENCE South 89°03'50" West, continuing along said east right-of-way line, a distance of 31.06 feet to a point for corner;

THENCE South 01°14'37" East, continuing along said east right-of-way line, a distance of 447.78 feet to a point for corner;

THENCE North 87°06'22" West, leaving said east right-of-way line, a distance of 1240.48 feet to a point for corner, for the beginning of a non-tangent curve to the left having a radius of 1130.00 feet and a central angle of 103°16'58", and a long chord which bears North 38°43'34" West, 1772.16 feet, said point being in the east right-of-way line of said Plano Parkway;

THENCE along said east right-of-way line, and along said non-tangent curve to the left an arc distance of 2036.97 feet to a point for corner;

THENCE South 89°38'05" West, continuing along said east right-of-way line, a distance of 647.23 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 950.00 feet and a central angle of 40°05'36" and a long chord which bears North 70°19'29" West, 651.29 feet;

THENCE continuing along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 664.77 feet to a point for corner, for the beginning of a reverse curve to the left having a radius of 1050.00 feet and a central angle of 40°15'06" and a long chord which bears North 70°25'01" West, 722.57 feet;

THENCE continuing along said east right-of-way line, and along said curve to the left an arc distance of 737.65 feet to a point for corner;

Exhibit A
Legal Description of the Property (439.12 Acres)

THENCE South 89°31'25" West, continuing along said east right-of-way line, a distance of 623.83 feet to a point for corner, for the beginning of a tangent curve to the right having a radius of 950.00 feet, a central angle of 0°48'07", and a long chord which bears South 89°55'28" West, 13.21 feet;

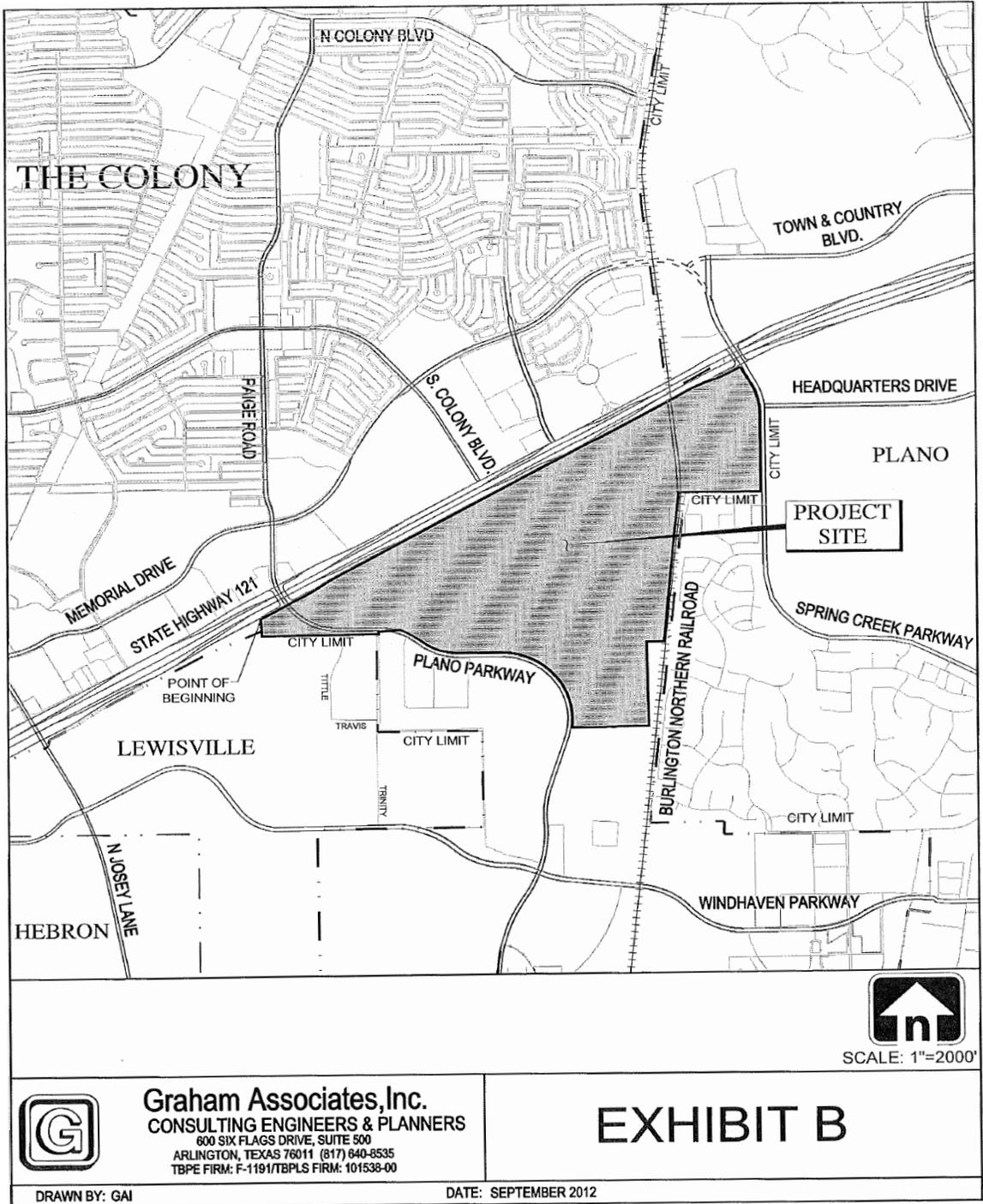
THENCE continuing along said east right-of-way line, along said curve to the right, an arc distance of 13.21 feet to a point for corner;

THENCE South 00°19'22" West, leaving said east right-of-way line, a distance of 100.00 feet to a point for corner, said point being in the west right-of-way line of said Plano Parkway;

THENCE South 89°58'40" West, leaving said west right-of-way line, a distance of 1210.45 feet to a point for corner;

THENCE North 00°25'18" West, a distance of 226.47 feet to the POINT OF BEGINNING and CONTAINING 19,128,279 square feet, 439.12 acres of land, more or less.

Exhibit A-1
 Depiction of the Property



 **Graham Associates, Inc.**
 CONSULTING ENGINEERS & PLANNERS
 800 SIX FLAGS DRIVE, SUITE 500
 ARLINGTON, TEXAS 76011 (817) 640-8535
 TBPE FIRM: F-1191/TBPLS FIRM: 101538-00

EXHIBIT B

DRAWN BY: GAI

DATE: SEPTEMBER 2012

Exhibit B
Official Report

PUBLIC IMPROVEMENTS REPORT

The City of The Colony Public Improvement District No. 1

The Colony, Texas

PREPARED BY:

Tod Maurina, Assistant City Manager

DATED: August 10, 2016

Amended August 29, 2016

Exhibit B
Official Report

Exhibit B
Official Report - Public Improvements Cost

Public Improvements	Facility	Boardwalk	Related Development	TOTALS
Traffic management system	\$38,221.00	\$0	\$0	\$38,221.00
Enhanced police services	\$178,131.00			\$178,131.00
Enhanced development services	\$250,003.78	\$38,732.98	\$63,381.24	\$352,118.00
Street and roadway improvements	\$404,959.86	\$62,740.26	\$102,665.88	\$570,366.00
Water well operation and maintenance	\$2,240.00	\$11,200.00	\$560.00	\$14,000.00
Pond maintenance	\$1,600.00	\$8,000.00	\$400.00	\$10,000.00
TOTALS	\$875,155.64	\$120,673.24	\$167,007.12	\$1,162,836.00

Exhibit C
Service Plan: Five-Year Projection of Facility Public Improvements Cost

<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
\$1,162,836.00	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00

Exhibit D
Special Benefits Report

SPECIAL BENEFITS REPORT

The City of The Colony Public Improvement District No. 1

The Colony, Texas

PREPARED BY:

Tod Maurina, Assistant City Manager

DATED: August 10, 2016

Amended August 29, 2016

The Facility is expected to generate eight million customers each year. Given the traffic and security needs of the Facility, above those provided as part of the City's basic municipal services, one hundred percent of the Public Improvements for the traffic management system/control equipment and one hundred percent of the enhanced police services are attributable to the Facility Property. The Facility Property is a single economic unit comprised of two tax parcels. The costs attributable the Public Improvements for the traffic management system and enhanced police services are allocated to the two tax parcels based on acreage.

The water well and pond amenities primarily benefit the Boardwalk given their proximity. As such, eighty percent of the Public Improvements for the water well operation and maintenance, and pond maintenance are attributable to the Boardwalk Property. The remaining 20 percent of these Public Improvements are allocated to the Facility and the Related Development on a per acre allocation such that the Facility Property is apportioned 80.03 percent ($107.47 \text{ Facility Property} / 134.28 = 80.03\%$) of the remaining costs and the Related Development Property is apportioned 19.97 percent ($26.768 \text{ Related Development Property} / 134.28 \text{ total acres} = 19.97\%$) of the remaining costs. In other words, the Facility is allocated approximately 15 percent of the remaining 20 percent; and the Related Development is allocated 5 percent of the remaining 20 percent.

The enhanced development services and the street and roadway Public Improvements are allocated on a per-acre basis to the Facility Property, the Boardwalk Property and the Related Development Property such that the Facility Property is apportioned 71 percent ($107.47 \text{ Facility Property} / 150.659 \text{ total acres}$); the Boardwalk Property is apportioned 11 percent ($16.421 \text{ Boardwalk Property} / 150.659 \text{ total acres}$); and the Related Development Property is apportioned 18 percent ($26.768 \text{ Related Development Property} / 150.659 \text{ total acres}$).

Description of Public Improvements	Total Estimated Cost	Cost Allocated to Facility	Cost Allocated to Boardwalk	Cost Allocated to Related Development
Traffic management system	\$38,221.00	\$38,221.00	\$0	\$0
Enhanced police services	\$178,131.00	\$178,131.00		
Enhanced development services	\$352,118.00	\$250,003.78	\$38,732.98	\$63,381.24
Street and roadway improvements	\$570,366.00	\$404,959.86	\$62,740.26	\$102,665.88
Water well operation and maintenance	\$14,000.00	\$2,240.00	\$11,200.00	\$560.00
Pond maintenance	\$10,000.00	\$1,600.00	\$8,000.00	\$400.00
TOTALS	\$1,162,836.00	\$875,155.64	\$120,673.24	\$167,007.12

Exhibit D-1
Facility Public Improvements Cost – Special Benefit Analysis

Public Improvements	TOTALS	Special Benefit to Facility Property	Special Benefit to Boardwalk Property	Special Benefit to Related Development Property
Traffic management system	\$38,221.00	100%	0%	0%
Enhanced police services	\$178,131.00	100%	0	0%
Enhanced development services	\$352,118.00	71%	11%	18%
Street and roadway improvements	\$570,366.00	71%	11%	18%
Water well operation and maintenance	\$14,000.00	15%	80.00%	5%
Pond maintenance	\$10,000.00	15%	80.00%	5%
TOTALS	\$1,162,836.00			

Exhibit E
Assessment Roll

Tax Parcel	Assessment
Facility Property (\$875,155.64)	
#657618 – 81.99 acres ~76.29%	\$667,656.24
#657619 – 25.48 acres ~23.71%	\$207,499.40
Boardwalk Property (\$120,673.24)	
#659316, 659317, and 659318 – 16.815 acres 100%	\$120,673.24
Related Development Property (\$167,007.12)	
#649990 – 2.015 acres ~ 7.53%	\$12,575.64
#649991 – 2.105 acres ~ 7.86%	\$13,126.76
#653843 – 2.944 acres ~ 11.00%	\$18,370.78
#653844 – 2.683 acres ~ 10.03%	\$16,750.82
#674231 – 3.386 acres ~ 12.65%	\$21,126.40
#655036 – 1.949 acres ~ 7.28%	\$12,158.12
#674422 – 3.135 acres ~ 11.71%	\$19,556.53
#94189 – 8.551 acres ~31.94%	\$53,342.07

Exhibit E
Assessment Roll

CITY OF THE COLONY, TEXAS

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, RELATED TO THE CITY OF THE COLONY PUBLIC IMPROVEMENT DISTRICT NO. 1; APPROVING A SERVICE AND ASSESSMENT PLAN FOR THE DISTRICT FOR FISCAL YEAR 2016-2017 ANNUAL FACILITY PUBLIC IMPROVEMENTS, BOARDWALK PUBLIC IMPROVEMENTS, AND RELATED DEVELOPMENT PUBLIC IMPROVEMENTS FOR DEVELOPED PROPERTIES WITHIN THE DISTRICT CONSISTING OF THE FACILITY PROPERTY, BOARDWALK PROPERTY AND RELATED DEVELOPMENT PROPERTY; APPROVING AN ASSESSMENT ROLL FOR THE FACILITY PROPERTY, BOARDWALK PROPERTY, AND RELATED DEVELOPMENT PROPERTY WITHIN THE DISTRICT; LEVYING A SPECIAL ASSESSMENT AGAINST THE FACILITY PROPERTY, BOARDWALK PROPERTY, AND RELATED DEVELOPMENT PROPERTY WITHIN THE DISTRICT TO PAY FOR FISCAL YEAR 2016-2017 ANNUAL FACILITY PUBLIC IMPROVEMENTS, BOARDWALK PUBLIC IMPROVEMENTS, AND RELATED DEVELOPMENT PUBLIC IMPROVEMENTS; PROVIDING FOR THE COLLECTION OF THE SPECIAL ASSESSMENTS; CREATING A CHARGE AND LIEN AGAINST SAID PROPERTIES; RATIFYING AND CONFIRMING PRIOR ACTIONS RELATED TO THE DISTRICT; PROVIDING PENALTIES FOR DELINQUENT SPECIAL ASSESSMENTS; CREATING A DISTRICT PROJECT FUND; PROVIDING FINDINGS AND DETERMINATIONS BY AND RELATED TO THE DISTRICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 372 of the Texas Local Government Code (hereinafter referred to as the "Act") authorize the City of The Colony, Texas, to create a public improvement district within the City of The Colony, Texas; and

WHEREAS, on Monday, September 17, 2012, there was presented to the City of The Colony, Texas (hereinafter referred to as the "City") a petition (hereinafter referred to as the "Petition") seeking the authorization to establish a public improvement district (hereinafter referred to as the "District") within the City pursuant to Chapter 372 of the Texas Local Government Code, as amended, for an approximately 439.12 acre tract or tracts of land, which is more further described and depicted in *Exhibit A* of this Ordinance, which is attached hereto and incorporated herein for all purposes; and

WHEREAS, on Tuesday, September 18, 2012, the City Council for the City approved Resolution No. 2012-067, ordering a public hearing for October 8, 2012 (hereinafter referred to as the "Creation Public Hearing"), to consider a resolution creating the District; and

WHEREAS, on or before **September 22, 2012**, the City Secretary mailed and caused to be published notice of the Creation Public Hearing as required by the Act, which date was before the 15th day before the date of the Creation Public Hearing; and

WHEREAS, after mailing, publishing, and otherwise providing all notices of the Creation Public Hearing as required by the Act and state law, the City Council conducted the Creation Public Hearing on **October 8, 2012**, at the time and place and for the purposes set forth in the notices; and

WHEREAS, Owner appeared at the Creation Public Hearing by its representative and affirmed Owner's request to create the District; and

WHEREAS, no one appeared at the Creation Public Hearing in opposition to the creation of the District; and

WHEREAS, after all persons having an interest in the District were given an opportunity to be heard in support of or in opposition to the creation of the District, the City Council closed the Creation Public Hearing on **October 8, 2012**, and by a majority vote of all members of the City Council adopted and approved Resolution No. 2012-073 creating the District; and

WHEREAS, on **October 9, 2012**, the City Secretary caused notice of Resolution No. 2012-073 to be published as required by the Act; whereupon the creation of the District took effect as provided by the Act; and

WHEREAS, the District comprises land which is partially undeveloped, while other portions are under development or have been fully developed, which includes the following: (1) Grandscape Addition Lot 1, Block A, consisting of 81.99 acres and identified as Denton Central Appraisal District ("Denton CAD") Tax Parcel No. 657618; and Grandscape Additional Lot 2, Block A, consisting of 25.48 acres and identified by Denton CAD Tax Parcel No. 657619 (collectively referred to as the "Facility Property"); (2) Grandscape Addition, Phase II, Lot 2, Block D, consisting of approximately 16.815 acres and conveyed in Denton County Instrument No. 2015-8528 (hereinafter referred to as the "Boardwalk Property"); and (3) the following properties which collectively are referred to as the "Related Development Property": (a) Grandscape Addition, Phase II, Lot 6, Block A, consisting of 2.105 acres and identified as Denton CAD Tax Parcel No. 649990; (b) Grandscape Addition, Phase II, Lot 7, Block A, consisting of 2.248 acres and identified as Denton CAD Tax Parcel No. 649991; (c) Grandscape Addition, Phase II, Lot 8, Block A, consisting of 2.944 acres and identified as Denton CAD Tax Parcel No. 653843; (d) Grandscape Addition, Phase II, Lot 9, Block A, consisting of 2.683 acres and identified as Denton CAD Tax Parcel No. 653844; (e) Grandscape Addition Phase II, Lot 2, Block B, consisting of 1.949 acres and identified as Denton CAD Tax Parcel No. 655036; and (f) Grandscape Addition Phase II, Lot 1, Block B, consisting of 3.693 acres and identified as Denton CAD Tax Parcel No. 655035;(g) Grandscape Addition Phase II, Lot 1R/Block J consisting of 3.135 acres and identified as Denton DCAD Property ID No. 692389; (h) a portion of Grandscape Addition Phase II, Lot 1/Block H consisting of 8.551 acres and identified as a portion of Denton DCAD Property ID No. 178724 as recorded in Denton County Recording Document No. 94189 (Tax Parcel No. not yet assigned); and

WHEREAS, on **Tuesday, August 16, 2016**, the City Council adopted and approved a resolution accepting the *City of The Colony Public Improvement District No. 1, Preliminary 2016-2017 Annual Service and Assessment Plan*, dated August 10, 2016, for properties within the District, including (i) a determination of the cost of the public improvements and supplemental services being provided for the special benefit of the District; (ii) a service plan; (iii) an assessment plan; and (iv) an assessment roll (collectively, the “Preliminary 2016-2017 Annual SAP”). Further, said resolution directed the Preliminary 2016-2017 Annual SAP be filed with the City Secretary and made available for public inspection, called a public hearing for **Tuesday, September 6, 2016** (the “Assessment Hearing”) to consider the levy of special assessments in the aggregate amount of **\$1,162,836.00** against properties within the District to pay for public improvements and enhanced services that will confer a special benefit on the properties located within the City of The Colony Public Improvement District No. 1, and authorized and directed the City Secretary to mail, publish, and otherwise provide notices of the Assessment Hearing as required by the Act and state law; and

WHEREAS, the Preliminary 2016-2017 Annual SAP included a service plan, an assessment plan, and an assessment roll as required by the Act; and

WHEREAS, the City Secretary mailed and caused to be published notice of the Assessment Hearing before the 10th day before the date of the Assessment Hearing as required by the Act; and

WHEREAS, after mailing, publishing, and otherwise providing all notices of the Assessment Hearing as required by the Act and state law, the City Council conducted the Assessment Hearing on **September 6, 2016**, at the time and place and for the purposes set forth in the notices; and

WHEREAS, after all persons having an interest in the levy of special assessments against the Facility Property, Boardwalk Property and Related Development Property within the District were given an opportunity to be heard in support of or in opposition to the special assessments, the City Council closed the Assessment Hearing on **September 6, 2016**; and

WHEREAS, after the closing of the Assessment Hearing, and after considering the information, materials, evidence, and testimony offered to the City Council prior to and at the Assessment Hearing, and there were no objections to the levy of the special assessments against the Facility Property, Boardwalk Property and Related Development Property, the City Council has determined that it promotes the interests of the City to adopt and approve this Ordinance.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THAT:

SECTION 1. The recitals set forth in the WHEREAS clauses of this Ordinance are true and correct, are part of this Ordinance for all purposes, and constitute findings and determinations of the City Council acting in its discretionary, legislative capacity.

SECTION 2. The City Council has investigated and determined and hereby ratifies and

confirms that:

- 2.1 The matters set forth in the Petition are true and correct;
- 2.2 The Petition complies with all requirements of the Act and is sufficient under the Act for all purposes including, but not limited to, the creation of the District;
- 2.3 The Facility Public Improvements, Boardwalk Public Improvements, and Related Development Public Improvements more particularly described in the Service and Assessment Plan, attached hereto as **Exhibit C** are authorized by the Act, promote the interests of the City, and confer a special benefit on the Facility Property, Boardwalk Property, and the Related Development Property;
- 2.4 The form, content, timing, and method for providing notice of the Creation Public Hearing, and all matters related to the conduct of the Creation Public Hearing and the adoption of Resolution No. 2012-073 creating the District were in accordance with the Act, state law, and the City Charter and ordinances of the City;
- 2.5 Prior to conducting the Assessment Hearing and the adoption of this Ordinance, the City Council determined the total cost of the Facility Public Improvements, Boardwalk Public Improvements, and Related Development Public Improvements based on Official Reports and filed with the City Secretary and made available for public inspection the Preliminary 2016-2017 Annual SAP;
- 2.6 The form, content, timing, and method for providing the notice of the Assessment Hearing, and all matters related to the conduct of the Assessment Hearing and the adoption of this Ordinance, were in accordance with the Act, state law, and the City Charter and ordinances of the City;
- 2.7 The City Council has provided opportunity for the owners of property liable for the special assessments, and for the public at large, to appear, in person or by their representatives, and present objections to the creation of the District and the levy of the special assessments; however, no objections to the creation of the District or to the levy of the special assessments against the Facility Property, Boardwalk Property, and the Related Development Property were presented; and
- 2.8 All actions taken by the City Council in connection with the District have been taken and performed in accordance with the Act, state law, and the City Charter and ordinances of the City and in a regular, proper, and valid manner.

SECTION 3. The *City of the Colony Public Improvement District No. 1 2016-2017 Annual Service and Assessment Plan* dated August 10, 2016, a copy of which is attached hereto as **Exhibit C**, and is incorporated herein for all purposes (as updated, from time to time, the “Service and Assessment Plan”) is hereby approved by the City Council as the “service plan,” “assessment plan,” and “assessment roll” as the 2016-2017 Annual Service and Assessment Plan for the Facility Property, Boardwalk Property, and the Related Development Property as required

by the Act, and is incorporated as part of this Ordinance for all purposes. The Service and Assessment Plan shall be updated by the City Council no less frequently than annually as required by the Act and more frequently as required by the Service and Assessment Plan. A copy of the Service and Assessment Plan, as updated from time to time, is available from the City Secretary.

SECTION 4. Unless otherwise defined in this Ordinance, capitalized terms used in this Ordinance shall have the meanings given to them in the Service and Assessment Plan.

SECTION 5. Based on the Service and Assessment Plan, attached hereto as *Exhibit C*, the City Council hereby levies a Special Assessment (as a “special assessment” under the Act) upon the Facility Property, Boardwalk Property, and the Related Development Property in the amounts set forth in *Exhibit B* of this Ordinance, which is attached hereto and incorporated herein for all purposes.

SECTION 6. Each Special Assessment against the Facility Property, Boardwalk Property, and the Related Development Property, together with interest, the expenses of collection, and reasonable attorney’s fees, if incurred, constitutes a lien against the Facility Property, Boardwalk Property, and the Related Development Property (the priority of which is established by the Act) and is the personal liability of and charge against the owner of the Facility Property, Boardwalk Property, and the Related Development Property regardless of whether the owner is named in this Ordinance.

SECTION 7. The assessment lien against the Facility Property, Boardwalk Property, and the Related Development Property created by the Special Assessment is effective from the date of this Ordinance and “runs with the land.” The assessment lien against the Facility Property, Boardwalk Property, and the Related Development Property may be enforced by the City, including foreclosure, in the same manner that an ad valorem tax lien is foreclosed. Any purchaser of the Facility Property, Boardwalk Property, and the Related Development Property in foreclosure takes subject to the lien against the Facility Property, Boardwalk Property, and the Related Development Property created by the Special Assessment.

SECTION 8. The Special Assessments against the Facility Property, Boardwalk Property, and the Related Development Property as set forth in *Exhibit B* of this Ordinance are due and payable not later than January 31, 2017, and will be delinquent on February 1, 2017. Delinquent Special Assessments shall incur interest, penalties, and attorney’s fees in the same manner as delinquent ad valorem taxes.

SECTION 9. The City (or any other person, entity, or governmental agency permitted by law) shall bill, collect, and immediately deposit Assessment Revenue into a segregated operating account, the PID Operating Account for Annual Assessments, as provided by the Service and Assessment Plan. The PID Operating Account for Annual Assessments (and the sub-accounts thereof) shall be created by the City and shall be segregated from all other funds of the City. The City shall only use the funds in the PID Operating Account for Annual Assessments for the purposes determined by the City Council at the time the Special Assessments are levied.

SECTION 10. Based on materials and information prepared by City staff and qualified professional consultants, on testimony provided throughout the process of creating the District and levying the Special Assessments including, but not limited to, testimony offered at the Creation Public Hearing and Assessment Hearing, and on other information, materials, evidence, and testimony available to or provided to the City Council for its consideration, the City Council, acting in its discretionary, legislative capacity, hereby finds and determines:

10.1 That the Facility Property, Boardwalk Property, and the Related Development Property are specially benefited by the Facility Public Improvements, Boardwalk Public Improvements and Related Development Improvements, as applicable, in an amount that exceeds the Special Assessments levied against the Facility Property, Boardwalk Property, and the Related Development Property;

10.2 That the Special Assessments against the Facility Property, Boardwalk Property, and the Related Development Property: (i) is just and equitable; (ii) produces substantial equality, considering the benefits received and the burdens imposed; (iii) results in imposing equal shares of the cost of the Public Improvements on property within the District that is similarly benefitted; and (iv) is authorized by and has been levied in accordance with the Act, state law, City Charter, and the ordinances of the City;

10.3 That all prerequisites to the fixing of the Special Assessment lien against the Facility Property, Boardwalk Property, and the Related Development Property, and to the personal liability of the real and true owner of the Facility Property, Boardwalk Property, and the Related Development Property, whether named in this Ordinance or not, have been in all things regularly and duly performed in compliance with the Act and all other applicable laws, ordinances, regulations, procedures, and policies; and

10.4 That the Special Assessments levied against the Facility Property, Boardwalk Property, and the Related Development Property are in amounts required to pay the cost of the Public Improvements.

SECTION 11. The City Council may make supplemental assessments to correct omissions or mistakes related to the cost of the Public Improvements and reassessments if the City Council determines that any special assessment is excessive. The City Council may also adjust Special Assessments downward following each annual update to the Service and Assessment Plan.

SECTION 12. This Ordinance incorporates, by reference, all provisions of the Act. In the event of any conflict between this Ordinance and the Act, the Act shall control.

SECTION 13. If any provision of this Ordinance, or the application of any provision to any person or set of circumstances, is held by any court to be invalid, the remaining provisions shall be unaffected. All provisions of this Ordinance are severable for such purpose.

SECTION 14. This Ordinance shall take effect effective immediately upon passage and approval by the City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THIS THE 6TH DAY OF SEPTEMBER, 2016.

APPROVED:

Joe McCourry, Mayor

ATTEST:

Tina Stewart, City Secretary

APPROVED AS TO FORM:

Jeff Moore, City Attorney

Exhibit A

Legal Description of the Property (439.12 Acres)

Being a 439.12 acre tract of land situated in the B.B.B & C.R.R. Survey, Abstract No. 173, B.B.B. & C. Survey, Abstract No. 174, Thomas A. West Survey, Abstract No. 1344, and the M.D.T. Hallmark Survey, Abstract No. 570, Denton County, Texas, and being all of a tract of land conveyed by deed to 121 Acquisition Company, LLC., as recorded in Instrument No. 2011-114773, 2011-121444, and 2011-112195, Deed Records, Denton County, Texas, and a portion of Plano Parkway and a portion of Burlington Northern Railroad tract, and being more particularly described as follows:

BEGINNING at a found Txdot monument, said point being the northwest corner of said 121 Acquisition Company, LLC tract and being in the south right-of-way line of State Highway 121 (having a variable width R.O.W.);

THENCE North $63^{\circ}32'06''$ East, along said south right-of-way line, a distance of 130.52 feet to a point for corner;

THENCE North $60^{\circ}22'33''$ East, continuing along said south right-of-way line, a distance of 80.86 feet to a point for corner;

THENCE South $29^{\circ}13'03''$ East, continuing along said south right-of-way line, a distance of 50.00 feet to a point for corner;

THENCE North $60^{\circ}47'38''$ East, continuing along said south right-of-way line, a distance of 219.64 feet to a point for corner, said point being in the west right-of-way line of Plano Parkway (100 ft R.O.W.);

THENCE North $50^{\circ}53'35''$ East, leaving said south right-of-way line, and leaving said west right-of-way line, a distance of 100.00 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 950.00 feet and a central angle of $1^{\circ}26'54''$ and a long chord which bears North $38^{\circ}22'58''$ West, 24.01 feet, said point being in the east right-of-way line of said Plano Parkway;

THENCE along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 24.01 feet to a point for corner, said point being the most southerly point of a corner-clip of the intersection of said east right-of-way line of Plano Parkway and the south right-of-way line of said State highway 121;

THENCE North $08^{\circ}46'31''$ East, along said corner-clip, a distance of 26.03 feet to a point for corner, said point being in the south right-of-way line of said State highway 121;

THENCE North $60^{\circ}47'38''$ East, along said south right-of-way line, a distance of 203.71 feet to a point for corner;

THENCE North $58^{\circ}17'36''$ East, continuing along said south right-of-way line, a distance of 252.11 feet to a point for corner;

THENCE North 55°47'40" East, continuing along said south right-of-way line, a distance of 105.11 feet to a point for corner;

THENCE North 58°17'42" East, continuing along said south right-of-way line, a distance of 248.62 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 263.85 feet to a point for corner;

THENCE North 76°30'51" East, continuing along said south right-of-way line, a distance of 92.27 feet to a point for corner;

THENCE North 65°56'12" East, continuing along said south right-of-way line, a distance of 100.40 feet to a point for corner;

THENCE North 64°13'39" East, continuing along said south right-of-way line, a distance of 100.18 feet to a point for corner;

THENCE North 60°16'36" East, continuing along said south right-of-way line, a distance of 39.88 feet to a point for corner;

THENCE South 74°12'01" East, continuing along said south right-of-way line, a distance of 70.70 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 64.12 feet to a point for corner;

THENCE North 15°47'17" East, continuing along said south right-of-way line, a distance of 73.27 feet to a point for corner;

THENCE North 59°04'32" East, continuing along said south right-of-way line, a distance of 94.25 feet to a point for corner;

THENCE North 55°39'04" East, continuing along said south right-of-way line, a distance of 100.40 feet to a point for corner;

THENCE North 47°37'54" East, continuing along said south right-of-way line, a distance of 114.18 feet to a point for corner;

THENCE North 60°47'38" East, continuing along said south right-of-way line, a distance of 3800.00 feet to a point for corner;

THENCE North 65°20'10" East, continuing along said south right-of-way line, a distance of 189.41 feet to a point for corner;

THENCE North 61°56'23" East, continuing along said south right-of-way line, a distance of

100.02 feet to a point for corner;

THENCE North $63^{\circ}39'23''$ East, continuing along said south right-of-way line, a distance of 100.12 feet to a point for corner;

THENCE North $64^{\circ}47'53''$ East, continuing along said south right-of-way line, a distance of 100.24 feet to a point for corner;

THENCE North $66^{\circ}30'16''$ East, continuing along said south right-of-way line, a distance of 201.00 feet to a point for corner;

THENCE North $65^{\circ}56'12''$ East, continuing along said south right-of-way line, a distance of 100.40 feet to a point for corner;

THENCE North $66^{\circ}30'16''$ East, continuing along said south right-of-way line, a distance of 100.50 feet to a point for corner;

THENCE North $63^{\circ}05'04''$ East, continuing along said south right-of-way line, a distance of 100.08 feet to a point for corner;

THENCE North $64^{\circ}13'39''$ East, continuing along said south right-of-way line, a distance of 100.18 feet to a point for corner;

THENCE North $83^{\circ}05'27''$ East, continuing along said south right-of-way line, a distance of 69.58 feet to a point for corner;

THENCE North $60^{\circ}39'18''$ East, continuing along said south right-of-way line, a distance of 33.81 feet to a point for corner, said point being in the west right-of-way line of Burlington Northern Railroad (having a variable width R.O.W.);

THENCE North $60^{\circ}38'52''$ East, leaving said west right-of-way line, a distance of 107.30 feet to a point for corner, said point being in the east right-of-way line of said Burlington Northern Railroad;

THENCE North $60^{\circ}45'58''$ East, leaving said east right-of-way line, continuing along said south right-of-way line of State Highway 121, a distance of 254.35 feet to a point for corner;

THENCE North $63^{\circ}19'02''$ East, continuing along said south right-of-way line, a distance of 585.96 feet to a point for corner;

THENCE North $60^{\circ}52'09''$ East, continuing along said south right-of-way line, a distance of 369.37 feet to a point for corner, said point being in the west right-of-way line of West Spring Creek Parkway (having a 160 ft R.O.W.);

THENCE South $29^{\circ}24'43''$ East, leaving said south right-of-way line, and along said west right-of-way line, a distance of 265.52 feet to a point for corner, for the beginning of a non-tangent

curve to the right having a radius of 970.00 feet and a central angle of $29^{\circ}13'42''$, and a long chord which bears South $14^{\circ}53'13''$ East, 489.48 feet;

THENCE continuing along said west right-of-way line, and along said non-tangent curve to the right an arc distance of 494.83 feet to a point for corner;

THENCE South $00^{\circ}22'42''$ East, continuing along said west right-of-way line, a distance of 476.17 feet to a point for corner;

THENCE South $00^{\circ}23'35''$ East, continuing along said west right-of-way line, a distance of 864.92 feet to a point for corner, said point being in the north line of Kings Ridge Addition, Phase Three, as recorded in Cabinet X, Page 450, Plat Records, Denton County, Texas;

THENCE South $89^{\circ}40'20''$ West, leaving said west right-of-way line, and along said north line, a distance of 1199.93 feet to a point for corner, said point being in the east right-of-way line of said Burlington Northern Railroad;

THENCE North $87^{\circ}39'44''$ West, leaving said north line, leaving said east right-of-way line, a distance of 101.16 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 3703.75 feet and a central angle of $3^{\circ}44'19''$ and a long chord which bears South $04^{\circ}12'25''$ West, 241.62 feet, said point being in the west right-of-way line of said Burlington Northern Railroad;

THENCE along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 241.67 feet to a point for corner;

THENCE South $06^{\circ}04'35''$ West, continuing along said east right-of-way line, a distance of 2524.64 feet to a point for corner;

THENCE North $83^{\circ}17'00''$ West, continuing along said east right-of-way line, a distance of 190.16 feet to a point for corner;

THENCE South $00^{\circ}51'51''$ East, continuing along said east right-of-way line, a distance of 970.10 feet to a point for corner;

THENCE South $89^{\circ}03'50''$ West, continuing along said east right-of-way line, a distance of 31.06 feet to a point for corner;

THENCE South $01^{\circ}14'37''$ East, continuing along said east right-of-way line, a distance of 447.78 feet to a point for corner;

THENCE North $87^{\circ}06'22''$ West, leaving said east right-of-way line, a distance of 1240.48 feet to a point for corner, for the beginning of a non-tangent curve to the left having a radius of 1130.00 feet and a central angle of $103^{\circ}16'58''$, and a long chord which bears North $38^{\circ}43'34''$ West, 1772.16 feet, said point being in the east right-of-way line of said Plano Parkway;

THENCE along said east right-of-way line, and along said non-tangent curve to the left an arc distance of 2036.97 feet to a point for corner;

THENCE South 89°38'05" West, continuing along said east right-of-way line, a distance of 647.23 feet to a point for corner, for the beginning of a non-tangent curve to the right having a radius of 950.00 feet and a central angle of 40°05'36" and a long chord which bears North 70°19'29" West, 651.29 feet;

THENCE continuing along said east right-of-way line, and along said non-tangent curve to the right an arc distance of 664.77 feet to a point for corner, for the beginning of a reverse curve to the left having a radius of 1050.00 feet and a central angle of 40°15'06" and a long chord which bears North 70°25'01" West, 722.57 feet;

THENCE continuing along said east right-of-way line, and along said curve to the left an arc distance of 737.65 feet to a point for corner;

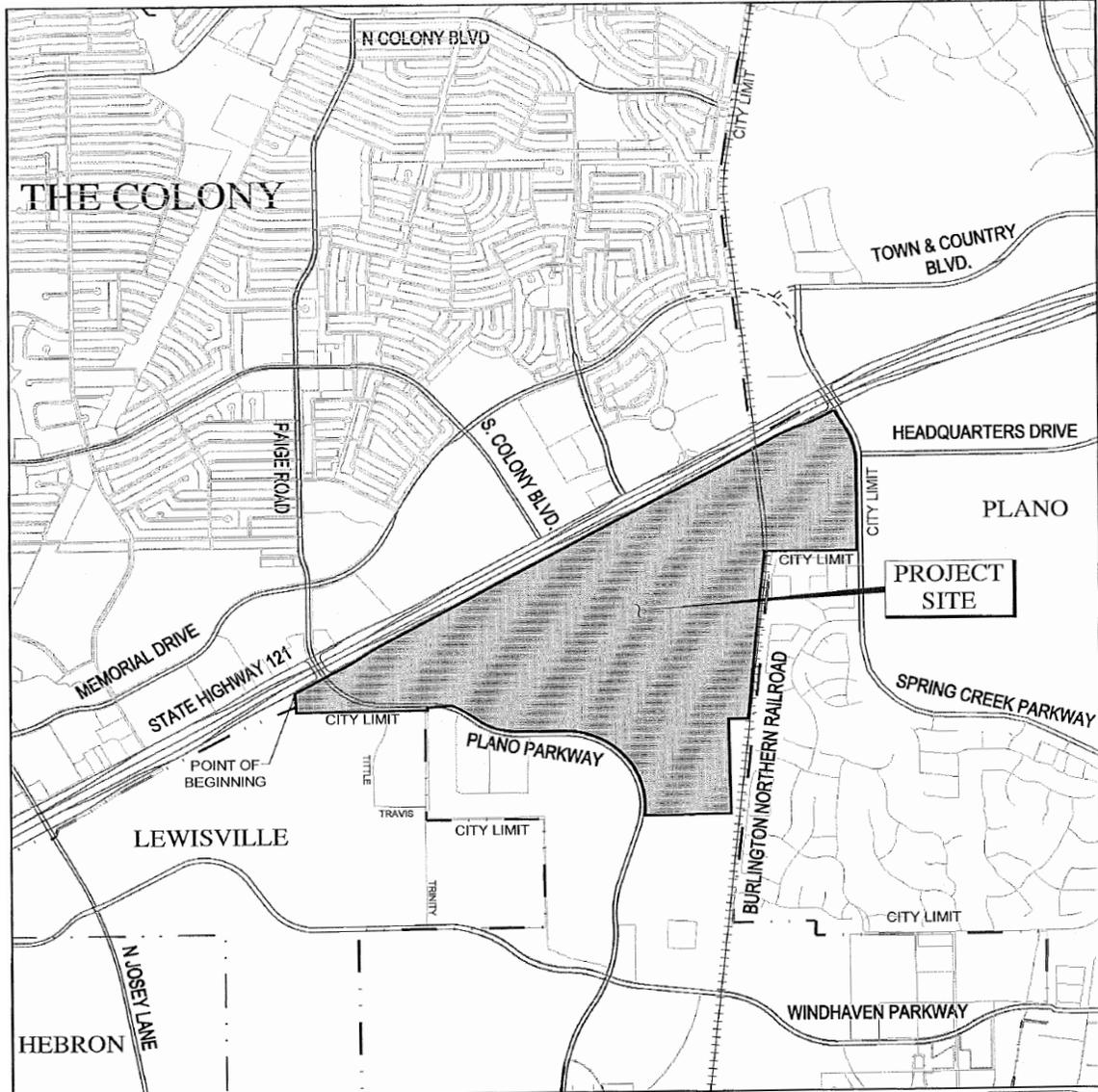
THENCE South 89°31'25" West, continuing along said east right-of-way line, a distance of 623.83 feet to a point for corner, for the beginning of a tangent curve to the right having a radius of 950.00 feet, a central angle of 0°48'07", and a long chord which bears South 89°55'28" West, 13.21 feet;

THENCE continuing along said east right-of-way line, along said curve to the right, an arc distance of 13.21 feet to a point for corner;

THENCE South 00°19'22" West, leaving said east right-of-way line, a distance of 100.00 feet to a point for corner, said point being in the west right-of-way line of said Plano Parkway;

THENCE South 89°58'40" West, leaving said west right-of-way line, a distance of 1210.45 feet to a point for corner;

THENCE North 00°25'18" West, a distance of 226.47 feet to the POINT OF BEGINNING and CONTAINING 19,128,279 square feet, 439.12 acres of land, more or less.



SCALE: 1"=2000'



Graham Associates, Inc.
 CONSULTING ENGINEERS & PLANNERS
 600 SIX FLAGS DRIVE, SUITE 500
 ARLINGTON, TEXAS 76011 (817) 640-8535
 TBPE FIRM: F-1191/TBPLS FIRM: 101538-00

EXHIBIT B

DRAWN BY: GAI

DATE: SEPTEMBER 2012

Exhibit B

2016-2017 Special Assessments
Facility Property, Boardwalk Property, and the Related Development Property

Tax Parcel	Assessment
Facility Property (\$875,155.64)	
#657618 – 81.99 acres ~76.29%	\$667,656.24
#657619 – 25.48 acres ~23.71%	\$207,499.40
Boardwalk Property (\$120,673.24)	
#659316, 659317, and 659318 – 16.815 acres 100%	\$120,673.24
Related Development Property (\$167,007.12)	
#649990 – 2.105 acres ~ 7.71%	\$12,873.52
#649991 – 2.248 acres ~ 8.23%	\$13,748.06
#653843 – 2.944 acres ~ 10.78%	\$18,004.58
#653844 – 2.683 acres ~ 9.82%	\$16,408.38
#655035 – 3.693 acres ~ 13.529%	\$22,585.22
#655036 – 1.949 acres ~ 7.14%	\$11,919.47
#178724 – 3.135 acres ~ 11.48%	\$19,172.67
#94189 – 8.551 acres ~31.31%	\$52,295.22

Exhibit C

City of The Colony Public Improvement District No. 1
2016-2017 Annual Service and Assessment Plan

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 15, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST: Discuss and consider a variance to the Noise Ordinance regarding Webber Construction for the FM 423 Project (General Admin, Shallenburger)

Background:

Purpose:

Issues:

Alternatives:

Recommendations:

Attachments:

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

**SUMMARY OF
REQUEST:**

A. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding Austin Ranch building fee issue.

B. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Atlantic Colony Venture I, LLC and Atlantic Colony Venture II, LLC v. City of The Colony, Texas, et al., Cause No. 16-02219-442.

C. Council shall convene into a closed executive session pursuant to Section 551.071 of the Texas Government Code to seek legal advice from the city attorney regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.

TO: Mayor, City Council, and City Manager

DATE SUBMITTED: September 14, 2016

MEETING DATE: 09/20/2016

SUMMARY OF REQUEST:

- A. Any action as a result of executive session regarding Austin Ranch building fee issue.
- B. Any action as a result of executive session regarding the pending or contemplated litigation - Atlantic Venture, LLC and Atlantic Colony Venture II, LLC v. City of The Colony, Texas, et al.
- C. Any action as a result of executive session regarding pending or contemplated litigation – Appeal of Brazos Electric Power Cooperative, Inc., PUC Docket No. 45175 and City of The Colony, Texas v. Brazos Electric Power Cooperative, Inc. matter, Cause No. 16-06424-16.
