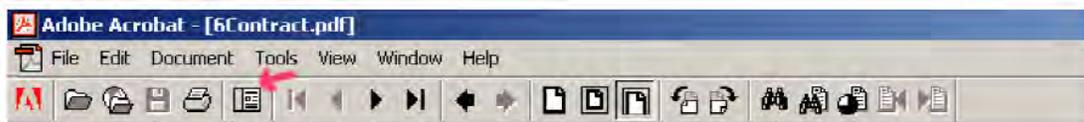




# Lewisville City Council

The agenda and backup items follow in one continuous document. However, to view documents individually, click on the bookmark tab at the left of the screen. A list of all documents contained in the packet should appear in a screen to the left. If it does not, click on the “Show/Hide Navigation Pane” button in the toolbar at the top of the page.



Click on the item you would like to view, and it will appear in the window to the right.

**A G E N D A**

**LEWISVILLE CITY COUNCIL MEETING  
AUGUST 1, 2016**

**LEWISVILLE CITY HALL  
151 WEST CHURCH STREET  
LEWISVILLE, TEXAS 75057**

**WORKSHOP SESSION – 5:45 P.M.  
REGULAR SESSION - 7:00 P.M.**

Call to Order and Announce a Quorum is Present.

**WORKSHOP SESSION – 5:45 P.M.**

- A. Discussion of Options Related to Hebron Streetscaping
- B. Presentation of Key Results from the 2016 Police Operations and City Appearance/Property Maintenance Survey
- C. Discussion on Proposed Trial Program for Traffic Signal Control Box Wraps in Old Town Core
- D. Discussion of Regular Agenda Items and Consent Agenda Items

**REGULAR SESSION - 7:00 P.M.**

- A. **INVOCATION:** Mayor Pro Tem Gilmore
- B. **PLEDGE TO THE AMERICAN AND TEXAS FLAGS:** Councilman Ferguson

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

**C. PUBLIC HEARINGS:**

- 1. Continued Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Agriculture Open Space District (AO) to Medical District (MD), on an Approximately 2.592-Acre Tract of Land Out of the Lou Burgeois Survey, Abstract No. 52, Located at the Southwest Corner of South Uecker Lane and Oakbend Drive at 2276 South Uecker Lane as Requested by The Gathering Vista Ridge, LLC on Behalf of Doyle Leon Atchley, the Property Owner (Case No. PZ-2016-05-15).**

**ADMINISTRATIVE COMMENTS:**

On July 26, 2016, the applicant withdrew this zone change request; therefore, no action by the city council is necessary. This public hearing is continued from the June 20, 2016 City Council meeting. The current zoning of the property is Agriculture Open Space. The applicant is proposing a duplex residential community targeted to seniors with 12 duplexes ranging in size from 800 square feet to 1,350 square feet. The request is for MD zoning primarily to avoid a more appropriate zoning district of Duplex (DU) or Townhouse (TH) which lends itself to this type of development; but would not meet the those district requirements and yield the same number of units. The proposal is not a good fit for the area and does not adhere to any applicable zoning district. The Planning and Zoning Commission recommended denial (3-2) of the zone change request at their meeting of May 17, 2016.

**RECOMMENDATION:**

That the City Council take no action on the zone change request as it has been withdrawn.

- 2. Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Multi-Family One (MF-1) to Planned Development-Mixed Use (PD-MU), With Five Associated Variances, on an Approximately 5.082-Acre Tract of Land Out of the S. Luttrell Survey Abstract 743, Located at 3000 North Stemmons Freeway, as Requested by G&A Consultants, LLC on Behalf of H198, LLC, the Property Owner (Case No. PZ-2016-07-18).**

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

**ADMINISTRATIVE COMMENTS:**

The Planned Development (PD) district allows for innovative community design concepts which may not meet all regulations of the City's standard zoning categories, but ensures a high quality development with enhanced amenities and a customized design tailored for a particular site. The property for the proposed PD has been a mobile home and RV park for over 40 years. The concept plan for the proposed Tower Bay Lofts contains a single building to be constructed in one phase with 308 residential units, courtyards with amenities and a multi-story parking garage. The following five variances are being requested: a) to waive the deceleration requirement; b) to allow a 145.1-ft driveway spacing in lieu of the required 230-ft; c) to allow a reduction in the required parking from two parking spaces per unit to 1.73 parking spaces per unit; d) to allow a 3.5-ft landscape buffer in lieu of the required 10-ft landscape buffer; and e) to allow ornamental trees in the landscape buffer in lieu of trees on the approved tree list for private property. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of July 19, 2016.

**RECOMMENDATION:**

That the City Council approve the proposed ordinance and five associated variances as set forth in the caption above.

**PRESENTATION:** - Al Crozier, Property Owner

**AVAILABLE FOR QUESTIONS:** - Nika Reinecke, Director of Economic Development and Planning

3. **Public Hearing: Consideration of a Resolution Authorizing the Adoption of the Community Development Block Grant (CDBG) 2016 Annual Action Plan and Amendments to the Citizen Participation Plan and Authorization for the City Manager to Submit the Plan to the U.S. Department of Housing and Urban Development; and Acknowledge Receipt of the Recommended FY 2016-2017 City Social Service Agency Fund Budget of \$170,000 From the CDBG Advisory Committee.**

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

**ADMINISTRATIVE COMMENTS:**

An Annual Action Plan must be submitted to the U.S. Department of Housing and Urban Development (HUD) by August 15 as a requirement to receive Community Development Block Grant (CDBG) funds of \$599,101 in FY 2016-2017. The plan has been developed following priorities set by the 2012 Consolidated Plan. The CDBG Advisory Committee reviewed applications submitted by non-profit agencies and City Departments for projects that address HUD national objectives and 2012 Community Needs Assessment priorities. At their June 7, 2016 meeting, the Committee, by a vote of 7-0, recommended a draft budget which has been incorporated into the Action Plan. The Plan was made available for a 30 day Public Comment period from July 1, 2016 through August 1, 2016. The Citizen Participation Plan amendments are required as a result of the new Fair Housing Rule and will guide public outreach efforts in developing a new Fair Housing Assessment as well as the Consolidated Plan for Housing and Community Development every three to five years. The Advisory Committee recommendations also include City Social Service Agency Fund allocations funded directly by the City general fund which will be included in the draft City Budget. On July 19, 2016 the Advisory Committee voted unanimously to recommend approval of both the Annual Action Plan and Citizen Participation Plan.

**RECOMMENDATION:**

That the City Council approve the resolution, acknowledge receipt of the City Social Service Fund budget and authorize the City Manager to submit the plans as set forth in the caption above.

**PRESENTATION:** - Jamey Kirby, Grants Coordinator

- D. **VISITORS/CITIZENS FORUM:** At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.
- E. **CONSENT AGENDA:** All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member or citizen so request. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

- 4. Approval of a Bid Award for the FM544 16" Water Line Improvement Project to Wilson Contractor Services, LLC, Denton, Texas in the Amount of \$1,539,455.87; Which Includes \$73,307.42 for Contingencies; and Authorization for the City Manager to Execute the Contract.**

**ADMINISTRATIVE COMMENTS:**

A total of seventeen (17) bid invitations were downloaded from Bidsync.com. A total of seven (7) bids were received and opened July 7, 2016. The project consists of installing a 16" water line to connect the existing 16" water line in Windhaven Parkway and provide a future connection point for a 16" water loop to the 16" water line in Josey Lane currently under construction. Funds are available in the Capital Improvement Project Program.

**RECOMMENDATION:**

That the City Council approve the contract as set forth in the caption above.

- 5. Approval of the Capital Improvements Advisory Committee Semi-Annual Report for the Period of October 1, 2015 Through March 31, 2016.**

**ADMINISTRATIVE COMMENTS:**

The Semi-Annual Report is to provide information on the progress of the Capital Improvements Plan associated with the Impact Fee Program and the Land Use Assumption Plan. In accordance with the Local Government Code, Section 395, the Capital Improvements Advisory Committee has reviewed the Semi-Annual Report and is recommending Council approval.

**RECOMMENDATION:**

That the City Council approve the semi-annual report as set forth in the caption above.

- 6. Approval of a Contract for Architectural Services with Barker Rinker Seacat Architecture for the Design of the Proposed Multi-Generational Center Located at the Southwest Corner of Valley Parkway and Corporate Drive and a Feasibility Study for a 20 Acre Nature Park Located at the Southeast Corner of Valley Parkway and Corporate Drive; in the Amount of \$3,561,055; and Authorization for the City Manager to Execute the Contract.**

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

**ADMINISTRATIVE COMMENTS:**

Through the Vision 2025 process and the following 2015 City Bond Election, the residents of Lewisville expressed a need to increase the size of the Senior Activity Center and build a new recreation center. The proposed Multi-Generational Center will combine the Senior Center, Memorial Park Recreation Center, and add an indoor aquatic facility thus creating a 90,000 square foot new facility located in the northeast corner of the lot. Assuming the Contract is approved by City Council on August 1, public meetings would take place in mid-to-late October. The concept design phase should be completed by mid-December. The next few phases: Schematic Design, Design Development, and Construction Documents will take just over a year. Construction is anticipated to begin mid-May 2018. Assuming everything remains on schedule, the potential opening of the new facility would be late fall 2019. The firm of Barker Rinker Seacat Architecture is recommended based on their prior multigenerational facility design, experience and references. Funding is available from Capital Improvement Projects.

**RECOMMENDATION:**

That the City Council approve the contract for architectural services as set forth in the caption above.

- 7. Approval of a Resolution Authorizing the City to Submit a Grant Application to the Texas Criminal Justice Division to Obtain Funding to Purchase a Public Safety Records Management System.**

**ADMINISTRATIVE COMMENTS:**

The Lewisville Police Department is preparing a grant application to obtain funding from the State of Texas under its Texas Conversion to the National Incident-Based Reporting System grant program. The application seeks to fund the purchase of a new Public Safety Records Management system to replace the existing records management system that has been in use for over 15 years. The estimated cost is \$1,750,000, all of which will be covered by the grant if our application is approved.

**RECOMMENDATION:**

That the City Council approve the proposed resolution as set forth in the caption above.

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

F. **REGULAR HEARINGS:**

8. **Second and Final Reading: An Ordinance of the City Council of the City of Lewisville, Texas Extending the Term of an Ordinance Granting a Franchise to Texas New Mexico Power Company and Associated Language Regarding Compensation; and Providing an Effective Date.**

**ADMINISTRATIVE COMMENTS:**

On February 20, 2012, Council approved an ordinance for the Texas New Mexico Power Company (TNMP) franchise, which will expire on April 30, 2017. Staff is requesting an extension of the current franchise ordinance, which allows the continuation of the terms and conditions of Ordinance No. 3927-02-2012 until April 30, 2022. The City of Lewisville Charter requires two readings of this ordinance, with 30 days in between. The first reading occurred on June 20, 2016. This will be the second and final reading.

**RECOMMENDATION:**

That the City Council approve the second and final reading of this ordinance as set forth in the caption above.

- G. **REPORTS:** Reports about items of community interest regarding which no action will be taken.
- H. **CLOSED SESSION:** In Accordance with Texas Government Code, Subchapter D,
1. Section 551.071 (Consultation with Attorney): Legal Issues Related to Outdoor Receptacles
  2. Section 551.072 (Real Estate): Property Acquisition
  3. Section 551.087 (Economic Development): Deliberation Regarding Economic Development Negotiations
- I. **RECONVENE** into Regular Session and Consider Action, if Any, on Items Discussed in Closed Session.

**AGENDA  
LEWISVILLE CITY COUNCIL  
AUGUST 1, 2016**

J. **ADJOURNMENT**

The City Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily triangles and polygons, creating a dynamic, layered effect. The shapes are positioned on the left and right sides of the frame, framing the central text.

# Hebron Parkway Landscape & Bike/Pedestrian Trail

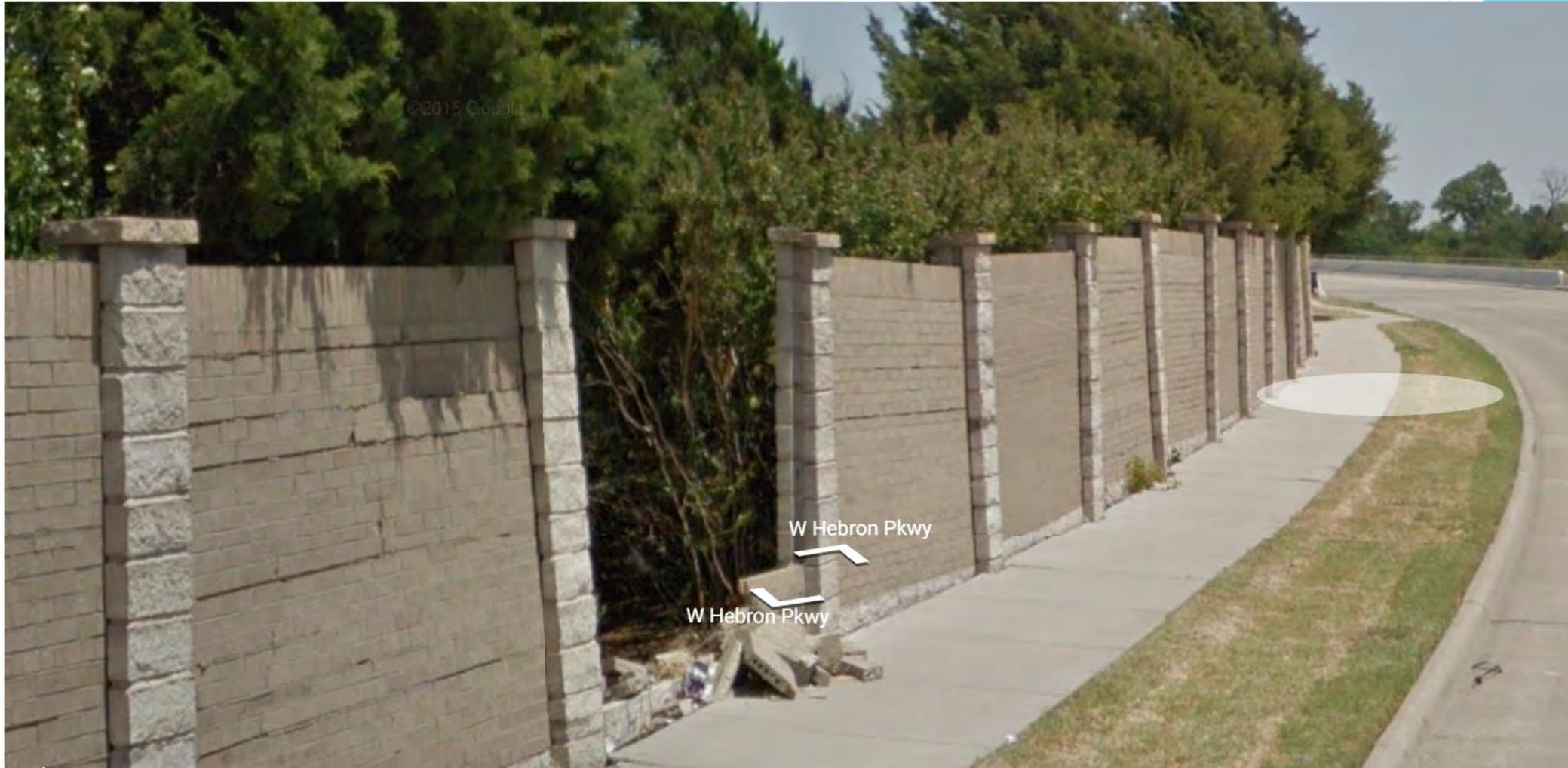
# Hebron Parkway from railroad intersection east to bridge



# Former masonry screening wall



# Former masonry screening wall



# Former masonry screening wall



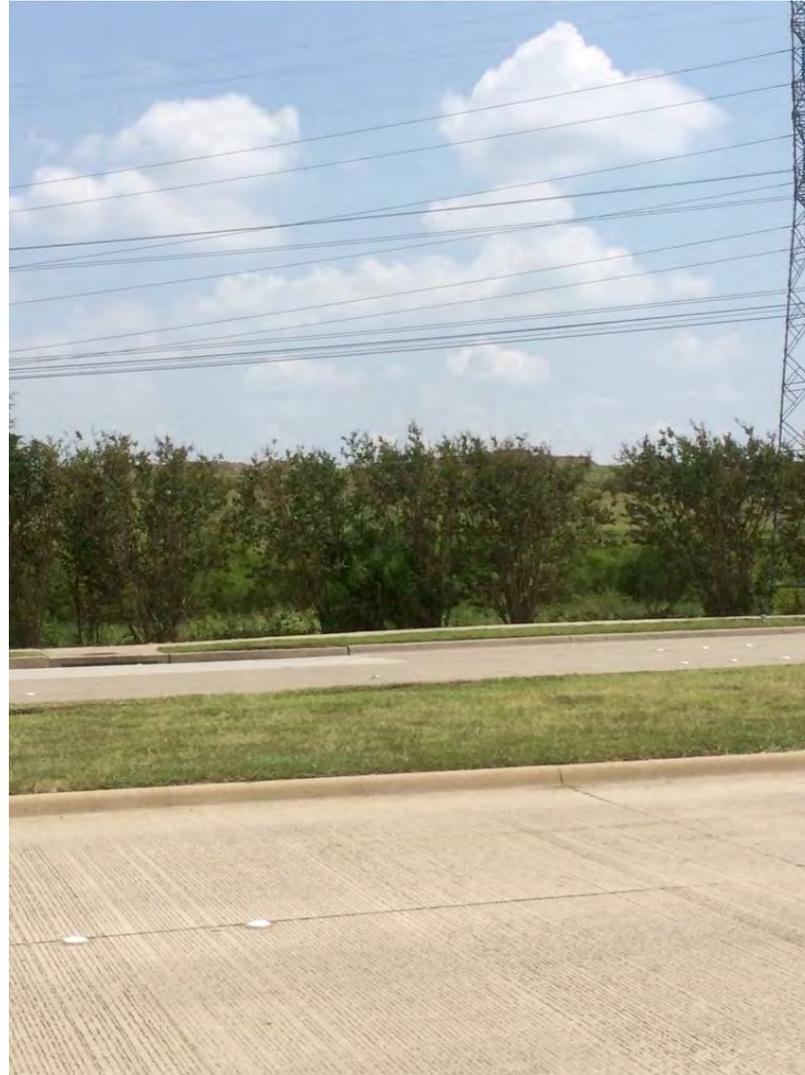
# Former masonry screening wall



# Former masonry screening wall

- ▶ Hebron Parkway masonry wall was demolished by the City - Spring 2016 (approximately 1,850 lf).
- ▶ Currently, existing trees, crepe myrtles, etc., are providing a natural screen.

# Existing natural condition



# Existing natural condition

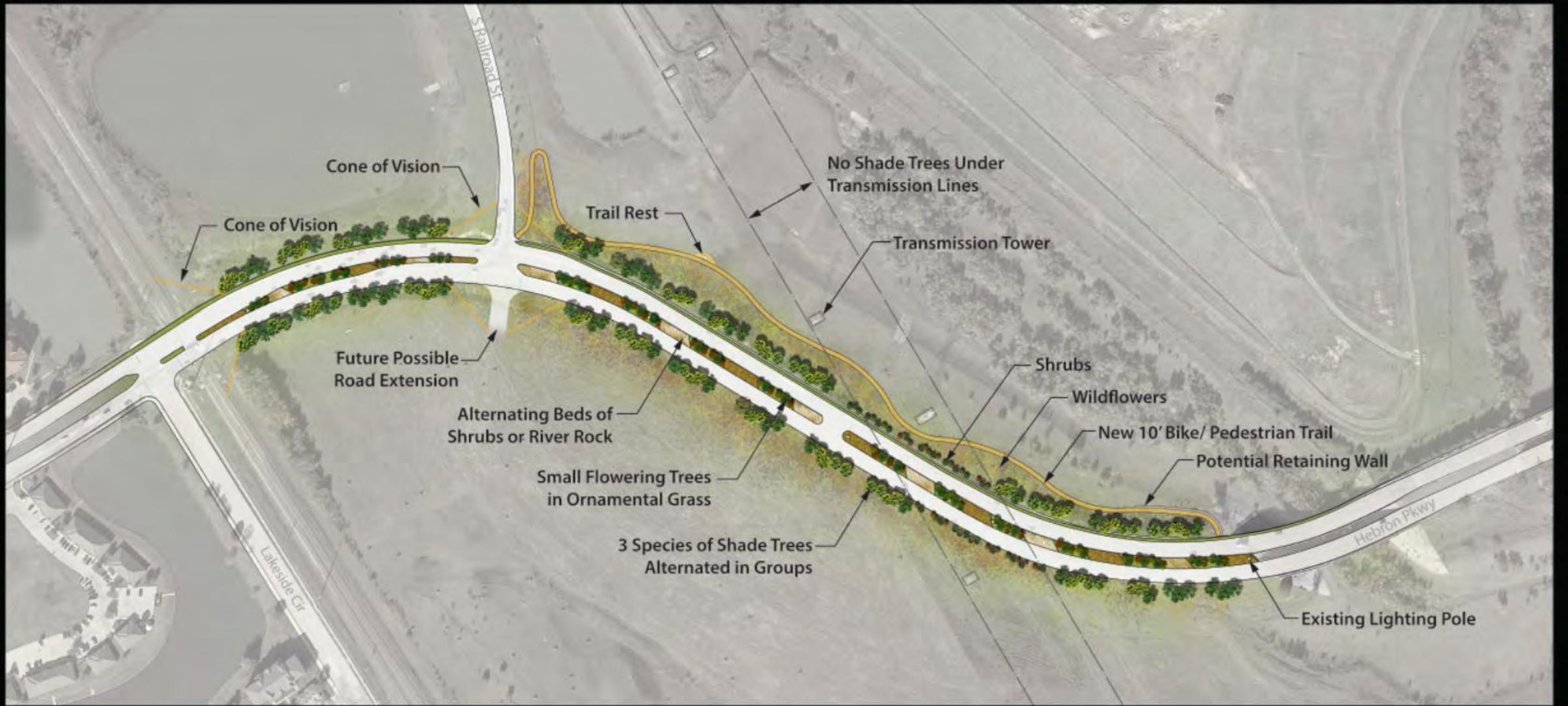


# Grade differential from street to bottom of slope



# Jacobs Streetscape Design

- ▶ Jacobs has provided a streetscape design for Hebron Parkway
- ▶ Total length of project is approximately 2,600 lf (from railroad crossing at Hebron Parkway east to the first bridge).
- ▶ Design includes parkway and median treatments consisting of:
  - ▶ 3 species of shade trees alternated in groups
  - ▶ Small flowering trees in ornamental grass
  - ▶ Alternating beds of shrubs or river rock (center median)
  - ▶ Shrubs, wildflowers, grass
  - ▶ New 10-foot wide bike/pedestrian trail (northern parkway)
- ▶ This design removes the sidewalk adjacent to the street and relocates it north as shown on the plan
  - ▶ Increases safety
  - ▶ Improves walkability/aesthetics



# Existing right-of-way



CITY OF LEWISVILLE PARKS & LEISURE SERVICES  
HEBRON PARKWAY LANDSCAPE & BIKE / PEDESTRIAN TRAIL

06/17/2016

**JACOBS**

# Improved right-of-way with streetscape



CITY OF LEWISVILLE PARKS & LEISURE SERVICES  
HEBRON PARKWAY LANDSCAPE & BIKE / PEDESTRIAN TRAIL

06/17/2016

**JACOBS**

# South side parkway

## City of Lewisville Hebron Parkway Preliminary Cost Estimate 6/24/16

### SOUTH SIDE

#### Hardscape

	Qty	unit	cost	total
SW3P	1	LS	\$ 5,000.00	\$ 5,000.00
GRADING	1000	CY	\$ 4.00	\$ 4,000.00
TRAFFIC CONTROL	6	MONTH	\$ 5,000.00	\$ 30,000.00
UNDER DRAINS	2762	LF	\$ 20.00	\$ 55,240.00
<b>SUB TOTAL</b>				<b>\$ 94,240.00</b>

#### Softscape

	Qty	unit	cost	total
65 GAL TREE	64	EA	550.00	\$ 35,200.00
45 GAL TREE	22	EA	450.00	\$ 9,900.00
HYDROMULCH - WILDFLOWERS	2.3	ACR	1500.00	\$ 3,450.00
IRRIGATION	65447	SF	0.45	\$ 29,451.15
TOPSOIL	1000	CY	12.00	\$ 12,000.00
DEMO COST	1	LS	15000.00	\$ 15,000.00
<b>SUB TOTAL</b>				<b>\$ 105,001.15</b>

<b>TOTAL</b>				<b>\$ 199,241.15</b>
Contingency 20%				\$ 39,848.23
Maintenance 2 year period	1	LS	30000.00	\$ 30,000.00
<b>TOTAL COST</b>				<b>\$ 269,089.38</b>

# Center Median

## City of Lewisville Hebron Parkway Preliminary Cost Estimate 6/24/16

### MEDIAN

#### Hardscape

	Qty	unit	cost	total
SW3P	1	LS	\$ 5,000.00	\$ 5,000.00
GRADING	3743	CY	\$ 4.00	\$ 14,972.00
TRAFFIC CONTROL	6	MONTH	\$ 5,000.00	\$ 30,000.00
UNDER DRAINS	2409	LF	\$ 20.00	\$ 48,180.00
<b>SUB TOTAL</b>				<b>\$ 98,152.00</b>

#### Softscape

	Qty	unit	cost	total
45 GAL TREE	80	EA	450.00	\$ 36,000.00
3 GAL SHRUB	3190	EA	40.00	\$ 127,600.00
1 GAL SHRUB	6582	EA	8.00	\$ 52,656.00
IRRIGATION	50536	SF	0.45	\$ 22,741.20
TOPSOIL	3743	CY	12.00	\$ 44,916.00
DEMO COST	1	LS	15000.00	\$ 15,000.00
CONCRETE MOW STRIPS	390	LF	12.00	\$ 4,680.00
<b>SUB TOTAL</b>				<b>\$ 303,593.20</b>

**TOTAL (Hard and soft) \$ 401,745.20**

Contingency 20% \$ 80,349.04

Maintenance 2 year period \* LS 40000 \$ 40,000.00

**TOTAL COST \$ 522,094.24**

# North side parkway

## City of Lewisville Hebron Parkway Preliminary Cost Estimate 6/24/16

### NORTH SIDE

#### Hardscape

	Qty	unit	cost	total
CONC TRAIL (5')	2306.4	SY	\$ 30.00	\$ 69,192.00
RET WALL (MODULAR)	665	LF	\$ 35.00	\$ 23,275.00
BENCH	1	EA	\$ 3,000.00	\$ 3,000.00
SW3P	1	LS	\$ 5,000.00	\$ 5,000.00
GRADING	1	LS	\$ 50,000.00	\$ 50,000.00
TRAFFIC CONTROL	6	MONTH	\$ 5,000.00	\$ 30,000.00
NEW ADA RAMP	1	EA	\$ 1,500.00	\$ 1,500.00
<b>SUB TOTAL</b>				<b>\$ 181,967.00</b>

#### Softscape

	Qty	unit	cost	total
65 GAL TREE	64	EA	550.00	\$ 35,200.00
30 GAL TREE	25	EA	300.00	\$ 7,500.00
HYDROMULCH - WILDFLOWERS	2.6	ACR	1500.00	\$ 3,900.00
IRRIGATION	64434	SF	0.45	\$ 28,995.30
TOPSOIL	2000	CY	12.00	\$ 24,000.00
DEMO COST	1	LS	20000.00	\$ 20,000.00
<b>SUB TOTAL</b>				<b>\$ 119,595.30</b>

<b>TOTAL (Hard and Soft)</b>				<b>\$ 301,562.30</b>
Contingency 20%				\$ 60,312.46
Maintenance 2 year period		1 LS	30000.00	\$ 30,000.00
<b>TOTAL COST</b>				<b>\$ 391,874.76</b>

# Hebron Parkway Streetscape Options

- ▶ Option 1 - south side parkway, center median and north side parkway (including 10-mile trail): \$1,183,058
- ▶ Option 2 - center median (reduced plantings) and north side parkway with trail (reduced plantings): \$800,000
- ▶ \*Option 3 - center median (further reduced plantings) and north side parkway with trail (further reduced plantings): \$500,000

\* Staff Recommendation

# Funding

- ▶ Available Capital Projects Accounts: \$538,641 - Screening Walls
- ▶ Proposed FY 16-17 Budget: \$300,000 - Screening Walls

# Council Direction

2016

Police Operations and  
City Appearance /  
Property Maintenance  
Survey



# Survey Methodology

- ❖ Attitudinal surveys are a snapshot of perceptions at a particular moment in time; attitudes can change quickly
- ❖ Random-sample telephone surveys give the highest degree of accuracy and remain the industry standard (\$15,000+)
- ❖ Opt-in online surveys can draw higher levels of participation but sacrifice scientific validity (SurveyMonkey is \$300/year)
- ❖ Opt-in surveys can provide useful data with a high response rate to partially overcome lack of a representative sample
- ❖ Online surveys tend to produce positive ratings 5 to 8 points lower than ratings from a random-sample telephone survey
- ❖ This survey was conducted online only from May 6 through May 23, 2016, and received 897 responses

# Survey Respondents

- ❖ Comparable to Census data, but not a true sampling
- ❖ Skewed toward female participants (55 percent)
- ❖ Majority are age 45 or older (69 percent)
- ❖ Two-thirds have no children in the home (66 percent)
- ❖ Most have lived in Lewisville at least 10 years (64 percent)
- ❖ Most own their residence (90 percent) - actual rate of home ownership citywide is closer to 50 percent
- ❖ ZIP codes:
  - 75057 = 9 percent
  - 75067 = 58 percent
  - 75077 = 31 percent
  - 75056 = 2 percent

# Survey Topics

- ❖ Two areas were selected for this survey, based on result from the 2014 and 2015 Resident Satisfaction Surveys
- ❖ Police Services was chosen because previous surveys showed a lower sense of overall safety among residents outside their own neighborhoods; questions in this survey were intended to determine what specific factors impact **residents' sense of safety, and how the city can make residents feel safer**
- ❖ City Appearance / Property Maintenance was chosen because Code Enforcement received satisfaction ratings near 50 percent in past surveys; questions here were intended to figure out the causes of that low satisfaction

# Key Findings - Police Services

Based only on your most recent in-person contact with Lewisville Police Department, how much do you agree or disagree with the following statement?

The LPD representative:	STRONGLY AGREE	SATISFACTION RATING
...treated me fairly	59.07%	93.52%
...was professional	60.14%	95.87%
...was helpful	55.11%	92.23%
...was courteous	58.93%	95.35%
...was knowledgeable	58.53%	94.38%
...communicated with me clearly	58.00%	94.91%
...was timely	52.32%	91.31%
...cared about me and my family	54.09%	87.07%

- ❖ Only respondents who reported some sort of contact with LPD during the previous 12 months received this question

# Key Findings - Police Services

Based on your own experiences with Lewisville Police Department, please rate the overall quality of the service provided.

ANSWER OPTIONS	RESPONSE PERCENT	RESPONSE COUNT
Excellent	39.90%	334
Good	34.53%	289
Fair	7.41%	62
Poor	2.75%	23
No Opinion	15.41%	129

- ❖ Adjusted Satisfaction Rating of 87.99 percent (47.18 percent intensely positive) and a positive ratio of 7.3-to-1
- ❖ Results of these two questions show very strong public support for LPD and its personnel

# Key Findings - Police Services

How safe or unsafe do you feel in the following locations?

ANSWER OPTIONS	VERY SAFE	SATISFACTION RATING
At a Lewisville ISD school function	36.07%	95.99%
At Lewisville festivals and concerts	30.62%	95.42%
Within your own neighborhood	33.18%	92.38%
In the city of Lewisville as a whole	12.89%	90.85%
Walking in the historic Old Town district	24.25%	90.46%
Shopping in major retail areas	16.19%	88.48%
In Lewisville parks	12.67%	80.55%
Residential areas outside your neighborhood	9.55%	78.93%

- ❖ **Disparity between “your own neighborhood” and other residential areas is consistent with past survey results**
- ❖ **Low “very safe” intensity creates a public ed opportunity**

# Key Findings - Police Services

- ❖ Given a list of 18 factors and asked how much each impacts their personal sense of safety within their own neighborhood, respondents gave the highest ratings to Nighttime Lighting and Visible Police Presence
- ❖ Asked what LPD should prioritize to increase sense of safety, respondents ranked Criminal Gangs, Illegal Drugs and Violent Crimes as the top three, followed closely by More Police on the Streets (which received the most #1 rankings)
- ❖ These questions also were asked of LPD officers. Among the 50+ responses received, results closely mirrored the overall survey results

# Key Findings - Police Services

- ❖ Asked how often they saw an LPD officer in their neighborhood, 51.18 percent said frequently/occasionally and 48.27 percent said seldom/never
- ❖ Asked how often they had seen an LPD officer on a city street outside their neighborhood, 83.01 percent said frequently/occasionally
- ❖ Asked where they most recently saw an LPD officer, 56.91 percent said on a city street; 12.23 said at an accident scene; 9.49 percent said in their neighborhood
- ❖ Asked how many times in the previous 12 months they had seen an LPD officer interacting with a motorist, 91.13 percent said they had and 35.70 percent said six+ times

# Key Findings - City Appearance

How satisfied or dissatisfied are you with the overall appearance of the following areas?

AREA	VERY SATISFIED	SATISFACTION RATING
Your own neighborhood	22.04%	79.31%
Other residential areas	5.89%	68.50%
Commercial districts	6.96%	69.37%
City streets and rights-of-way	8.94%	73.61%
Vacant lots	2.43%	46.86%
Lewisville as a whole	13.67%	79.88%

- ❖ Positive impressions overall, but very low intensity in most **areas of the city other than “your own neighborhood”**
- ❖ Citywide rating likely reflects impact of parks and greenbelts on general impression of city appearance

# Key Findings - City Appearance

- ❖ Most critical factors for the city to address overall: residential street parking (13.93%), abandoned properties (13.43%), property cleanliness (9.83%), commercial building appearance (9.08%)
- ❖ Most critical factors for the city to address within your own residential neighborhood: residential street parking (22.39%), condition of sidewalks (12.08%), high grass and weeds (9.81%), property cleanliness (9.18%)
- ❖ It is important to note that some of the highest levels of concern are associated with areas that are not addressed by code enforcement

# Key Findings - City Appearance

Based on your own personal experience with city staff regarding issues related to city appearance or property maintenance, how much do you agree or disagree with the following statements?

STATEMENT	AGREEMENT
Employee treated me in a professional and respectful manner	90.72%
Employee communicated with me clearly	86.39%
Employee was knowledgeable about how to solve the issue	81.18%
Employee asked adequate questions to determine the nature of the issue	77.66%
The people I worked with showed pride in their work	77.50%
The employee seemed concerned about my issue	76.32%
If not available, the correct employee returned call in a timely manner	74.48%
<b>My neighborhood's appearance benefitted from the city's response</b>	68.98%
The problem was adequately dealt with by the employee responding	68.21%
I received follow-up concerning the eventual outcome of my concern	48.26%

# Key Findings - City Appearance

Overall, how effective or ineffective do you think the city is in addressing the following issues within your own residential neighborhood?

ISSUE	EFFECTIVENESS RATING
Illegal dumping	71.26%
Commercial building appearance	67.69%
Parking on the grass	67.36%
Residential building appearance	66.91%
Abandoned properties	66.27%
Junk vehicles	66.19%
High grass and weeds	60.16%
Trash and litter	59.90%
Property cleanliness	59.62%
Residential fences	54.15%

# 2016 Police/City Appearance Survey

- ❖ Detailed analysis and executive summary (with recommendations) has been provided to City Council
- ❖ Many of the recommendations are related to public education efforts, but some likely will lead to proposed service enhancements that might have a future budget impact
- ❖ Some survey results also raise political questions for Council (e.g. residential street parking)
- ❖ While overall results are positive, there always is room for improvement in service delivery and public perception

Questions?

## MEMORANDUM

**TO:** Donna Barron, City Manager

**FROM:** James Kunke, Community Relations & Tourism Director

**DATE:** July 15, 2016

**SUBJECT:** **2016 Police and City Appearance/Property Maintenance Survey – Executive Summary**

The 2016 Police and City Appearance/Property Maintenance Survey was conducted from May 6 through May 23 as a way to measure public perception of police services and property maintenance enforcement services in Lewisville. A full analysis is attached. This executive summary focuses on overall public perceptions and key recommendations drawn from survey results.

The survey was conducted exclusively online, which does have some bearing on the results as described in the full analysis. Generally, online surveys tend to produce lower overall satisfaction ratings than are generated by random-sample telephone surveys, and online survey results tend to have a higher percentage of “high intensity” responses at both ends of the scale.

Nearly 900 responses were received for the 2016 Police and City Appearance/Property Maintenance Survey. The lack of random sampling makes the results somewhat anecdotal in nature, but the large response rate does add to the reliability of the results.

More than 64 percent of respondents said they had lived in Lewisville 10 years or longer, and more than 90 percent described themselves as homeowners. This lends added value to “change over time” assessments, but also means newer residents (particularly apartment dwellers) are under-represented in the survey results.

### **Police Services – Key Findings**

Lewisville residents have an overall highly positive view of Lewisville Police Department. The department’s Adjusted Satisfaction Rating in this survey is 87.99 percent, and when asked to evaluate a list of eight specific criteria, residents rated all eight factors at least 87.07 percent positive. The general perception is of a capable and professional police department that provides good or excellent service nearly 90 percent of the time.

Residents also report a high sense of personal safety, with 90.85 percent of respondents saying they feel Safe or Very Safe in the city as a whole. As with previous surveys, residents feel safer within their own residential neighborhood (92.38 percent) than in other areas of the city, and feel least safe in residential areas other than their own (78.93).

This is one of several examples in the survey results of Familiarity Bias, which states that people tend to have more positive views of people or areas they know personally than of people or areas that are unfamiliar. Simply put, if residents know there is crime being committed somewhere and are comfortable it is not happening in their own neighborhood, then it must be happening in other unfamiliar neighborhoods.

As it relates to specific types of crime, the highest levels of concern among survey respondents are for violent crime, criminal gangs, and illegal drugs. A parallel survey of police officers showed essentially the same result.

It is possible residents are being influenced here by stories or rumors about violent crimes, and that an increased effort to inform the public about actual crime stats and resolution rates would help address these concerns.

Finally, while officers are not as visible in residential neighborhoods as some respondents want, they are highly visible on public streets. More than 90 percent of survey respondents had witnessed a traffic stop within the previous 12 months, and nearly 70 percent had witnessed multiple stops. The most likely location for residents to see a police officer is on a city street or highway, cited by 56.91 percent of survey respondents as the most recent location where they had seen an officer. This serves as a good reminder that LPD officers are highly visible and are constantly in the public eye, even during what might be considered routine activities.

### **City Appearance/Property Maintenance – Key Findings**

Residents are somewhat satisfied with the appearance of the city, although survey results show a lot of desire for improvement in some areas. While 79.88 percent said they are satisfied with the appearance of Lewisville as a whole, and 79.31 percent are satisfied with the appearance of their own residential neighborhood, most areas of the city received satisfaction ratings in the 60<sup>th</sup> percentile and 28.91 percent say the city's appearance has gotten worse during their time living here. These are negative perception trends that should be addressed. These results could be interpreted as latent public support for the Community Identification Manual being considered by City Council.

It is important to note that survey data show much of the public dissatisfaction in this area is caused by factors outside of code enforcement. This portion of the survey was conducted in large part to better understand the low satisfaction ratings received by code enforcement in previous citywide surveys (50.05 percent in 2014, 50.51 percent in 2015). Staff's hypothesis was that the low ratings unfairly blamed code enforcement for issues outside that office's control.

Survey results strongly support that hypothesis. While there are code issues of concern among survey respondents (such as illegal dumping, houses in need of repair, and high grass and weeds), some of the issues receiving the greatest level of concern fall under other areas of responsibility.

Two items in particular stand out among the survey results. Respondents showed a very high level of concern for residential street parking, rating it as the most crucial factor for the city to address by a wide margin (22.39 percent). Second on that list is sidewalk maintenance, listed first by 12.08 percent of respondents. Neither of those are code enforcement issues, but according to survey respondents those two factors have the most negative impact on city appearance in residential neighborhoods.

When asked to evaluate personal interactions with city employees on issues related to city appearance and property maintenance, respondents gave higher marks to items related to the employees themselves (professional and respectful, communicated clearly, knowledgeable, showed pride) and lower marks to items related to issue resolution. This indicates residents are generally satisfied with the people doing the work, but want more visible results.

### **Police Services – Key Recommendations**

**Public Awareness of Crime Trends.** There is a discrepancy between actual crime statistics in Lewisville and public perception of crime, especially violent crime. This can be at least partially addressed through a more robust public education effort to make residents aware of crime trends, how they compare in the region and to previous years, and the actual level of crime and violent crime in Lewisville. This effort should attempt to incorporate the new online Dashboard tool in order to provide real-time information to the extent possible.

**Review Street Light Requirements.** Current requirements for street lights in residential developments should be reviewed to ensure that public safety is the top priority. In addition, street light installations in existing residential neighborhood should be reviewed to ensure developers complied with the requirements. Where there is a deficiency identified, a suitable response should be prepared.

**Public Reporting of Burned Out Street Lights.** Lewisville PD launched a low-key effort in spring 2016 asking residents to report broken or burned-out street lights. A more comprehensive effort should be made later in 2016, using the mobile app and a telephone hotline to make it easy for residents to report street light issues. The campaign needs to emphasize maintenance, not requests for new installations.

**Share Survey Results with Officers.** Survey results clearly show that the public is aware of officers' presence, especially on public streets. Results of this survey should be shared with officers in some form, both as a way of better understanding current resident concerns and as a way to remind officers that they have very high visibility and are always in the public eye.

### **City Appearance/Property Maintenance – Key Recommendations**

**Street Parking Education Campaign.** A public education effort should be made to make residents aware of current laws related to residential street parking, including an easy means for residents to report violations through the mobile app. This could be followed by a targeted enforcement effort if deemed appropriate by LPD, ideally preceded by a notification effort in the targeted area that would tie into the public education effort. It is important to note that any long-term changes related to residential street parking rules and requirements would have to be initiated by City Council because of legal and political implications.

**Review Sidewalk Maintenance Program.** The city's sidewalk maintenance program should be reviewed to ensure resident needs are being met in a timely and efficient manner. The proposed 2016-17 city budget does include increased funding for sidewalk maintenance, which is an important step. A more detailed review might reveal ways to prioritize projects and reduce the current time lag between a project being scheduled and a project being completed. In addition, to the extent possible, a real-time online map showing current and scheduled sidewalk projects could be a valuable way to increase public awareness about program demands.

**Encourage Online Issue Reporting.** Residents who use the online reporting system (website or mobile app) are able to track the status of their reported issues through completion. Increasing the number of people who use this option also would increase the level of follow-up they receive. A citywide public education effort is needed to encourage use of the online reporting system, focusing on the tracking benefits. The current reporting system also should be reviewed to assess ease of use.

**Research Options for Improved Follow-Up.** Follow-up is a challenge for most cities. Research should be conducted to see if comparable cities elsewhere have found effective ways to provide timely follow-up to residents who report an issue, and suitable methods for Lewisville should be developed and adopted. This might be an appropriate task for the new Community Outreach Specialist position being considered as part of the 2016-17 budget.

**Publicize Development of Appearance Manual (if Adopted).** City Council has expressed interest in developing a Community Identification Manual that would, if adopted, include elements related to city appearance. If this project moves forward, a regular schedule of public updates should be used to keep residents notified and engaged in the project. If a manual is adopted and implemented, a robust online tool should be used to report on successes of the program, especially those related to city appearance.

**Share Survey Results with Inspectors.** Survey results should be shared with inspectors and code enforcement officers so they are aware of current public concerns, and also to reassure those employees that the public does appreciate their efforts related to city appearance. Inspectors and code enforcement officers should be encouraged to share with management any ideas they have for positively addressing items raised in the survey results.

## **City of Lewisville – 2016 Police and City Appearance/Property Maintenance Survey**

A targeted-topic survey was conducted online from May 6 through May 23, 2016. Based on results from previous Resident Satisfaction Surveys, the questions focused on two primary service areas – police and safety, and city appearance and property maintenance. Questions were intended to identify specific causes and concerns behind satisfaction ratings received in those areas in earlier surveys. This report contains the results of the targeted-topic survey and an analysis of those results.

There were 32 potential questions in the survey, but the use of screening questions meant most respondents only saw about 30 questions. The first question received 897 responses and the last question drew 791 responses, an attrition rate of 11.82 percent that is significantly better than the 17.09 percent attrition experienced with the 2015 Resident Satisfaction Survey and is better than the industry norm.

### **Selection of Survey Topics**

Topics addressed in this survey were selected based upon unclear or unsatisfactory results seen from the 2014 and 2015 annual Resident Satisfaction Surveys.

In the 2015 survey, overall satisfaction with Police Services was 86.33 percent, fifth-highest of any city service area. Ratings for four specific service characteristics ranged from 84.84 percent to 88.01 percent. These are very good numbers overall. However, there were concerns noted in a survey question that asked respondents how safe they feel in various locations. Results for that question showed that 85.37 percent of residents felt very safe (37.80) or safe (47.57) within their own neighborhoods, and only 1.7 percent felt “very unsafe” in their neighborhood (24 people out of 1,381). But that sense of safety was significantly lower in residential areas outside their own neighborhood (64.75 percent) and in commercial areas (68.44 percent). This result is not unusual – people tend to feel safest in familiar areas closer to home – but staff wanted additional data to identify specific areas where people feel less safe and specific causes for that feeling, especially when the city is experiencing crime rates near 25-year lows.

The second topic selected for this survey is generally considered by the public to fall under the blanket of “code enforcement.” When asked to rate a list of city services, this area annually receives one of the lowest satisfaction ratings (50.05 percent in 2014, 50.51 percent in 2015). However, other survey results have not always been consistent with such low ratings. For example, the 2014 survey asked respondents to rate specific code enforcement efforts, and satisfaction there ranged from 64.50 percent to 72.39 percent.

In trying to pinpoint that apparent discrepancy, staff examined comments received from other input sources and concluded that the areas of greatest public dissatisfaction were not included with the code enforcement services listed in the 2014 survey. Much of the stated dissatisfaction appeared to stem from services not handled by Lewisville’s code enforcement division. Staff needed additional survey data to determine what specific areas are causing the low satisfaction rating

for “code enforcement.” The survey uses the term “city appearance/property maintenance” to more accurately describe the range of service areas that might be factors in the low overall satisfaction rating.

## Differences in survey types

There are many different types of surveys, but cities typically use one of four types based on the target audience and the intended uses for survey data. Lewisville has, at various times, used elements of all four of these survey types.

- **Attitudinal** – This is the most common survey type used by cities (the 2015 Resident Satisfaction Survey falls into this category). The intent of an attitudinal survey is to take a snapshot of public impressions related to a topic or series of topics. Respondents are asked to share their views on importance or quality. However, these surveys usually do not ask respondents to explain the reasons behind those opinions. Results of an attitudinal survey can point out areas of perceived strength or weakness, and when conducted several times over a period of months or years, can identify positive and negative trends in public perception.
- **Analytic** – This type of survey is used more often in academic circles and is designed to find out how people perform certain behaviors or why they hold specific opinions. In most cases, the behavior or opinion itself already has been established through an attitudinal survey or respondent screening process, or is an accepted societal norm. The city’s 2006 survey focusing on Code Enforcement was largely analytic in nature.
- **Marketing** – Retailers and service providers often use this type of survey to find out from customers and potential customers how best to influence behaviors. An example is a survey asking what laundry detergent you purchase, why you purchase it, and what you look for in a laundry detergent. Results of a marketing survey are used to develop advertising campaigns, product packaging, and product placement. Cities sometimes use marketing surveys in connection with tourism, business development, or promotion of paid services. The 2012 MCL Grand survey was primarily a marketing survey.
- **Educational** – This type of survey uses the content of the questions themselves to impart information to respondents. For example, a question might list three or four little-known facts, then ask the respondent to rate those facts. The primary intent of the question is to deliver those facts, not necessarily to gather input. Educational surveys often start and end with the same question as a means to measure whether respondents gained knowledge or awareness while taking the survey.

Most surveys incorporate elements of multiple survey types, although the core purpose and content falls into a single category. The 2016 Police and City Appearance/Property Maintenance Survey is a blend of an attitudinal survey and an analytic survey, with some marketing and educational elements included where it was possible to do so without distracting respondents from the main topic or making the survey so long people would quit before finishing.

## **Differences in survey methodology**

Random-sample telephone surveys remain the preferred method for conducting a public opinion survey. Telephone numbers can be sorted geographically, and respondents can be screened with the first couple of questions to ensure a demographic mix that closely mirrors known demographics of the survey area. Randomly selecting respondents removes personal bias in participant selection. All of these factors combine to give random-sample telephone surveys a high degree of scientific validity and a relatively low margin of error (about 4.5 percent for the city's surveys in 2003 and 2004).

Because the surveys rely on telephone connections, and usually do not reach mobile numbers, there is ongoing debate as to the continued validity of telephone survey results. However, telephone surveys have so far retained demography consistency and are still the industry standard for gathering public opinion.

Opt-in surveys tend to be more anecdotal because there is no demographic sampling. An opt-in survey might produce a demographic spread that closely resembles the population of the survey area, but it is not certain to happen. Opt-in surveys can provide useful data with a high response rate. Mail and online are common ways to conduct an opt-in survey. Researchers have found little difference between responses to mail surveys versus online, except mail respondents tend to trend slightly older and female (still within the statistical margin).

The 2016 Police and City Appearance/Property Maintenance Survey was an opt-in survey conducted exclusively online. This choice was largely an economic one. Past random-sample telephone surveys have cost about \$15,000 and have not been included in the operating budget since 2006. This choice does have an impact on the survey results that can be somewhat offset with high participation rates.

## **Results variations based on survey methodology**

Multiple studies have found that phone survey responses are more toward the positive end of the rating scale than are online survey responses. The evidence suggests that responses to "straight answer" type questions are less likely to differ significantly between the survey types than are responses to subjective questions, particularly those questions with a greater range of response options. One such study, released in November 2011 by the University of California at Davis, suggested that random-sample telephone surveys and online surveys have the potential to produce significantly different results when respondents are asked to select from a list of answers or to assign a rating to a list of items.

While researchers have not offered a uniform explanation of that difference, there are several theories. One is that online users are interacting only with their computer while telephone respondents are interacting with a human being, and people have a natural inclination to want to please the person on the other end of the telephone line and thus are less critical.

Another theory that applies to opt-in online surveys is that people with stronger opinions, and especially people with stronger negative opinions, are more highly motivated to share their views and thus are more likely to take and complete an opt-in survey than people with less intense opinions.

Regardless of the reasons behind this behavioral trend, online surveys produce a higher percentage of “intense” ratings at both end of the scale, and positive ratings tend to be 5 to 8 percent lower than ratings collected from a random-sample telephone survey.

## **Use and filtering of “no opinion” responses**

Another documented variation found when comparing results of telephone and online surveys is the frequency of “no opinion” responses. This option typically is included in a survey as a way to give respondents with no strong view a chance to respond without significant impact on the overall results. However, people answering online surveys are four to five times more likely to select “no opinion” than people answering a telephone survey.

There are several theories that attempt to explain this behavior, but the most frequently cited is that respondents do not want to appear uninformed or apathetic when interacting with a live person over the telephone, whereas they have no such reluctance when interacting only with their computer screen. The inherent desire to “please” the questioner is another potential factor, but the self-interest of wanting to appear aware and knowledgeable is generally considered to be the most significant factor causing this statistical trend.

Regardless of the reason for the behavior, it is documented fact that “no opinion” responses are much more common with online surveys, frequently to the point of having a dramatic impact on the final results. As a quick example: If 100 people answer a survey and only 20 provide a positive answer, that would generate a 20 percent satisfaction rating. However, if 60 respondents offered no opinion, then the satisfaction rating among people who did voice an opinion is 50 percent.

While some online surveys account for this by removing the “no opinion” answer option, the industry standard is to include “no opinion” as an option (specific wording can vary) but to filter out those responses when calculating results of the survey. The problem with removing the “no opinion” option entirely is that people are forced to provide some sort of answer, even though they truly do not have an impression of the topic. Several recent studies have shown that forced responses tend to mirror the answer given to the previous question, which means survey results could be manipulated by the order in which questions are listed.

Staff has opted to follow the industry standard and include “no opinion” response options, but to filter out those responses when analyzing results. Therefore, the survey results included in this report show the raw figures but have been adjusted in the analysis portion to remove the “no opinion” responses unless otherwise indicated. We believe this provides a more accurate snapshot of public perception related to city services and quality of life.

## Analysis of survey results

Following is an analysis of results from the 2016 Police and City Appearance/Property Maintenance Survey. Questions are presented in a different order than the original survey document in order to draw comparisons between related results. Each question is labeled with its numerical position in the original survey. Data shown are the raw results for each question, but the analysis beneath the raw numbers is based on results with “no opinion” responses filtered out, unless otherwise noted.

Staff did break down the overall results into geographic areas determined by ZIP code. Where there are statistically significant differences in results among geographic areas, those differences are described in the analysis below. There were only 17 responses received from ZIP code 75056 (East Lewisville and Castle Hills) and only 71 results from 75057 (35E to the Trinity River), so those results lack individual statistical value.

In anticipation of different perceptions between the general public and police officers who have daily interaction with public safety, staff asked LPD employees to complete three questions pulled from the 2016 Police and City Appearance/Property Maintenance Survey. Those results are detailed below.

## Satisfaction with Police Services

### Q1. How safe or unsafe do you feel in the following locations?

Answer Options	Very Safe	Safe	Somewhat Unsafe	Very Unsafe	No opinion	Adj. Satisfaction
At a Lewisville ISD school function	198	329	20	2	339	95.99
At Lewisville festivals and concerts	214	453	32	0	196	95.42
Within your own neighborhood	296	528	59	9	5	92.38
<b>In the city of Lewisville as a whole</b>	<b>114</b>	<b>690</b>	<b>76</b>	<b>5</b>	<b>11</b>	<b>90.85</b>
Walking in the historic Old Town district	178	486	62	8	161	90.46
Shopping in major retail areas	142	634	95	6	17	88.48
In Lewisville parks	101	541	143	12	96	80.55
Other residential areas outside your neighborhood	82	596	166	15	37	78.93

Note that the responses above have been re-ordered to list them by Satisfaction Rating. The order of responses was different on the survey document.

This is one of the few questions in the 2016 Police and City Appearance/Property Maintenance Survey that has been used in previous surveys, although the list of locations was expanded from three to eight in order to better identify areas where there is a negative public perception of safety. This question was included in the 2003, 2004, 2014 and 2015 resident satisfaction surveys, with similar results.

Overall, respondents do feel safe in all areas of Lewisville. For the first time, this question asked respondents how safe they feel in “the city of Lewisville as a whole” and more than 90 percent said they feel safe or very safe, with only 5 people saying they feel “very unsafe.” Looking at all listed areas, the greatest number of people who said they feel “very unsafe” in any particular area was 15 (residential areas other than their own neighborhood). They feel safest in their own neighborhoods, with a 92.38 satisfaction rating that includes a positive intensity rating of 33.18 percent and a 12:1 positive ratio.

The areas with the lowest safety ratings were “other residential areas” (78.93 percent) and “in Lewisville parks” (80.55 percent). Those are positive ratings, but both of these areas offer opportunities for the city to improve the perception of safety among the public.

Responses for “at Lewisville festivals and concerts” also deserve some attention. In recent years, events staff has worked closely with the public safety departments and emergency management to improve both service delivery and public perception as it relates to safety at events. Gate and on-site security presence has been increased at Western Days, in particular. That effort appears to be successful, as this response received the second-highest adjusted safety rating and the second-highest level of “very safe” responses; remarkably, not a single one of the 895 respondents said they feel “very unsafe” at city festivals and concerts.

“No opinion” responses played a significant role when respondents were asked about their sense of safety in the historic Old Town district, at Lewisville festivals and concerts, and at a Lewisville ISD function. That likely means more people answering the survey had not experienced those areas and therefore were not able to assess them. However, it also is possible that a low sense of safety caused some of those respondents not to experience those areas. Factoring the “no opinion” back into the results and looking at raw percentages, only Lewisville ISD events received an overall safety rating below 70 percent, so the general sense of safety remains positive. Of note, Lewisville ISD events drew an adjusted safety rating of 95.99 percent, highest of all areas listed in this question. This comes despite social media posts throughout the 2015 LHS football season in which people described fights and other issues that police could not verify actually took place.

Perhaps more than any other survey question, responses to this one are driven by individual perceptions. Residents who have not been crime victims, have not witnessed a crime, and have recently seen a police presence feel safe. People who have been crime victims often do not, and they are more likely to report a lack of police presence even if patrol logs show frequent visits by officers to that area. This result is found in all communities that compile survey data.

Timing also can be a factor with this question. The 2015 Resident Satisfaction Survey was conducted a few days after two high-profile crimes received extensive media and social media coverage, while the 2016 Police and City Appearance/Property Maintenance Survey was conducted during a time of relative calm. Comparing results on this question show that the sense of safety was lower for the 2015 survey than for the 2016 survey, which could at least partially be a result

of that timing. For example, 85.37 percent of respondents in 2015 felt safe or very safe in their own neighborhoods; that increased to 92.38 percent in the 2016 survey. Similarly, 64.75 percent of respondents in 2015 felt safe or very safe in other residential neighborhoods; that increased to 78.93 percent in the 2016 survey.

As an attitudinal question, the results here do not address why people feel safe or unsafe in various areas. It only establishes a comparison of safety perceptions for different areas. However, the “why” question is addressed in various ways later in the survey.

Looking at the geographic splits, residents in 75077 tend to feel safer than residents in other parts of the city, with satisfaction ratings 3-5 points higher on all responses than those living in 75067. This could be a reflection of the more diverse housing stock and more widespread commercial development seen in 75067. Taken individually, these differences do not have a great deal of statistical significance, but the consistent trend across all responses is likely reliable.

**Q3. In general, how worried or not worried are you about crime in your own residential neighborhood?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Very Worried	7.83 %	70
Somewhat Worried	30.76 %	275
Slightly Worried	39.93 %	357
Not Worried	20.69 %	185
No Opinion	0.78 %	7

**Q4. In general, how worried or not worried are you about crime in other parts of Lewisville?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Very Worried	17.94 %	160
Somewhat Worried	40.81 %	364
Slightly Worried	31.39 %	280
Not Worried	7.62 %	68
No Opinion	2.24 %	20

These result are consistent with both Q1 and Q2, showing basically the same spread of responses as with Q2 and also showing that residents feel safest in their own residential neighborhoods than in any other area. There was no significant difference among ZIP codes.

**Q2. During the time you have lived here, do you think that as a community Lewisville has become safer, stayed the same or become less safe?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Safer	14.72 %	132
Stayed the Same	48.05 %	431
Less Safe	34.34 %	308
No Opinion	2.90 %	26

Nearly half of respondents have seen no significant change in their overall sense of safety, and only 15 percent report feeling safer during their time as Lewisville residents. That might be somewhat discouraging because of the increased resources the city has allocated to public safety in the past five years through the Crime Control and Prevention District, and it does not reflect the crime rate trends during that time. However, it is not surprising to see a perception of decreased safety among one-third of respondents because Lewisville continues to see rapid development and population growth in many areas. In addition, the rapid rise of social media as a public communication outlet has resulted in greater public awareness of individual crimes (or rumored crimes) that might not have been publicized in previous years. One crime that everyone knows about is likely to have greater impact on public perception than 10 crimes that no one knows about. This is one of many results in the survey that suggest a greater effort to educate residents about overall safety is needed.

There was no significant difference among geographic districts.

Results of this question were consistent with those of similar questions in past surveys when cross-tabulated for length of residency. When asked to assess how the community has changed during their time living here, long-time residents are more likely to report a change of some sort (positive or negative) while short-time residents are far more likely to report no change or offer no opinion. That breakdown for this question is shown in the chart below. It also illustrates a trend within these specific results that people are more likely to see Lewisville as less safe the longer they have lived here, ranging from 3.23 percent among the newest residents to 42.63 percent among those living here more than 20 years.

**Q2. During the time you have lived here, do you think that as a community Lewisville has become safer, stayed the same or become less safe?**

Q32. How long have you lived in the City of Lewisville?	Safer		Stayed the Same		Less Safe		No Opinion		TOTAL	
	RAW NUMBER OF RESPONDENTS	% of the Q32 group that gave this Q2 response	RAW NUMBER OF RESPONDENTS	% of the Q32 group that gave this Q2 response	RAW NUMBER OF RESPONDENTS	% of the Q32 group that gave this Q2 response	RAW NUMBER OF RESPONDENTS	% of the Q32 group that gave this Q2 response		
Less than 1 year	5	4.24%	21	5.53%	1	0.36%	4	21.05%	31	3.92%
1-3 years	14	11.86%	62	16.32%	18	6.57%	7	36.84%	101	12.77%
4-6 years	12	10.17%	44	11.58%	25	9.12%	1	5.26%	82	10.37%
7-9 years	12	10.17%	34	8.95%	23	8.39%	1	5.26%	70	8.85%
10-20 years	33	27.97%	118	31.05%	100	36.50%	5	26.32%	256	32.36%
More than 20 years	42	35.59%	101	26.58%	107	39.05%	1	5.26%	251	31.73%
<b>TOTAL</b>	<b>118</b>	<b>14.92%</b>	<b>380</b>	<b>48.04%</b>	<b>274</b>	<b>34.64%</b>	<b>19</b>	<b>2.40%</b>	<b>791</b>	

**CHART KEY -->**

RAW NUMBER OF RESPONDENTS	% of the Q2 responses that fit this Q32 group
% of the Q32 group that gave this Q2 response	

This percentage compares to the total results on the right of the chart; it can be read as "This percentage of people giving this Q2 response have lived here Q32 length of time."

This percentage compares to the total results on the bottom of the chart; it can be read as "This percentage of people living here Q32 length of time gave Q2 response."

Purple = 8 percentage points or more above the norm

Red = 8 percentage points or more below the norm

**Q5. Please indicate how much impact each of the following factors has on your personal feeling of safety within your own resident neighborhood.**

<b>Answer Options</b>	<b>Great Impact</b>	<b>Some Impact</b>	<b>Little Impact</b>	<b>No Impact</b>	<b>No Opinion</b>	<b>Adj. Average</b>
Nighttime lighting	571	254	48	12	9	1.44
Visible police presence	572	220	63	26	10	1.48
House burglary	486	253	103	34	12	1.64
Speeding vehicles	470	270	105	32	9	1.66
Criminal gangs	534	144	76	87	49	1.66
Vehicle theft or burglary	447	288	110	36	13	1.70
Building maintenance/appearance	385	354	98	64	11	1.77
News stories about crimes	351	358	136	28	18	1.82
Social media about crimes	309	342	146	40	55	1.90
Door-to-door solicitors	339	332	157	50	16	1.91
Trash and litter	326	324	153	59	25	1.93
Illegal drugs	368	240	156	97	30	1.98
Graffiti	309	252	157	93	76	2.04
Street and building signage	211	360	224	65	26	2.17
Teenagers or kids hanging around	247	316	227	85	17	2.17
Hearing sirens nearby	161	349	248	111	18	2.36
Fear of being attacked	152	300	294	115	29	2.43
Dangerous dogs or wildlife	194	232	281	168	15	2.48

Note that the responses above have been re-ordered to list them by Adjusted Average Rating. The order of responses was different on the survey document. Adjusted Average Rating is the average response for that category, removing the “no opinion” response. A rating of “Great Impact” is valued at 1, while a rating of “No Impact” is valued at 4. Thus, a lower Adjusted Average Rating means a higher level of reported concern for that category. An average rating of 1 would be the highest possible indication of concern, while an average rating above 2 indicates a low overall level of concern caused by that factor.

This question marks the start of the analytic portion of the 2016 Police and City Appearance/Property Maintenance Survey. It is an attempt to determine why residents feel more or less safe within their own neighborhoods as a way of identifying factors that might need additional attention (or public education) from the city.

Nighttime Lighting (1.44 Adjusted Average Rating) and Visible Police Presence (1.48) are the two highest-rated factors in terms of the public's overall sense of safety within their own neighborhoods, with a significant gap between those two factors and the rest of the list. An average rating less than 1.5 means a majority of respondents listed that factor having a "Great Impact" – in this case, 63.87 percent of all respondents gave that rating to Nighttime Lighting and 64.20 percent gave that rating to Visible Police Presence. These two areas offer the biggest opportunity to improve the public's sense of safety within their own residential neighborhood, either by increasing the service level or by educating the public on existing service levels and their actual impact.

As seen in the chart above, four other factors received an Average Adjusted Rating below 1.75, which indicates an elevated but not severe level of concern. In order, those factors are House Burglary, Speeding Vehicles, Criminal Gangs, and Vehicle Theft or Burglary. Of those, the elevated rating for Criminal Gangs is perhaps the most inconsistent with actual crime trends (60 percent of all respondents listed it as being of Great Concern), and likely deserves attention in public education efforts. The other three could be addressed through both increased service levels and increased public education, depending upon available resources and anticipated positive impact.

Six of the factors listed are not significant concerns for the majority of residents, according to the survey results, with Adjusted Average Ratings above 2. A seventh ("Illegal Drugs") fell just short of that mark with an Adjusted Average Rating of 1.98, but also was one of five factors that were marked as "No Concern" by more than 10 percent of all respondents. While none of these factors should be ignored, they should not be viewed as top priorities in terms of increasing the public's overall sense of safety within their residential neighborhood.

As with results to Q1 above, geographic splits for responses to this question show residents in 75077 feeling safer than residents in other parts of the city. The most notable differences (ranging from 7 to 12 percentage points lower on "Great Impact" ratings than among 75067 residents) are found in Vehicle Theft or Burglary, House Burglary, Building Maintenance and Appearance, and Trash and Litter. The overall order of Adjusted Average Ratings was essentially the same for all ZIP codes except that residents in 75057 showed significantly less concern for Criminal Gangs; the limited sample size there could have impacted that result.

This was the first of three questions that also were sent to Lewisville Police Officers. The top-rated factors were similar to the public results, with a few notable variations. Criminal gangs were identified as the highest threat, with a rating of 1.50, followed by Visible Police Presence (1.54), and Nighttime Lighting (1.60). Building Maintenance and Appearance ranked fourth with an average rating of 1.62 (compared to seventh with a moderate 1.77 in the public survey). Illegal Drugs also received more attention in the officer survey, ranking tied for fifth with an average rating of 1.68. Receiving far less concern among officers than the public was Speeding Vehicles, which was ranked 11<sup>th</sup> by officers (2.00) but fourth by the public.

**Q6. How often do you see a Lewisville Police Officer in your neighborhood?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Frequently	8.83 %	79
Occasionally	42.35 %	379
Seldom	40.78 %	365
Never	7.49 %	67
No Opinion	0.56 %	5

Results for this question are helpful in fleshing out the Q5 response in which residents said “Visible Police Presence” has the third-most impact on their personal sense of safety in their own residential neighborhoods. Cross tabulations confirm that respondents who answered “Frequently” to this question have a high sense of safety in other questions than respondents who answered “Seldom” or “Never” to this question.

Since this question has not been asked before, and staff is unable to find a comparable city that has included this question in a public opinion survey, it is unclear what a “good” response set would be. The positive ratio of 1.06-to-1 means almost exactly half of all respondents see officers in their neighborhoods. The ratio between “Frequently” and “Never” was slightly better at 1.18-to-1. Increased visibility for the 48.27 percent who seldom or never see patrols could lead to a significant improvement in overall safety perceptions.

In seeming contrast to those results is the geographic split. Respondents in the 75077 ZIP code reported overall higher feelings of safety throughout the survey, but here they reported less police visibility in neighborhoods than the overall survey results and also had a negative ratio (more respondents said they do not see patrols than said they do). The chart below shows the breakdown by ZIP code (again, responses in the 75056 ZIP code were too few to have statistical validity).

<b>Answer Options</b>	<b>75057</b>	<b>75067</b>	<b>75077</b>	<b>75056</b>
Frequently	13	41	15	1
Occasionally	25	200	102	6
Positive Rating	53.52 %	52.28 %	47.76 %	35.29%
Seldom	28	185	111	6
Never	5	32	16	4
Negative Rating	46.48 %	47.07 %	51.84 %	58.82 %
Positive Ratio	1.15:1	1.11:1	0.92:1	0.70:1

**Q7. During the past 12 months, would you say you have seen an increase or decrease in the number of police patrols in your neighborhood?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Increase	6.15 %	55
About the Same	73.85 %	661
Decrease	13.41 %	120
No Opinion	6.59 %	59

Near three out of every four respondents reported no significant change in the number of police patrols in their neighborhood during the preceding 12 months. About twice as many respondents reported seeing a decrease in neighborhood patrols than reported seeing an increase, an important point when Visible Police Presence is such a significant factor in perceived safety.

Breaking down responses to this question by ZIP code does not result in any significant differences between geographic areas, as shown in the chart that follows. There was a slightly higher tendency toward “Decrease” for residents in 75077, but ratings in all except the statistically invalid 75056 came within 3.29 percentage points of the overall results.

<b>Answer Options</b>	<b>75057</b>	<b>75067</b>	<b>75077</b>	<b>75056</b>
Increase	7.14 % (5)	7.14 % (33)	4.49 % (11)	5.88 % (1)
About the Same	77.14 % (54)	73.38 % (339)	74.29 % (182)	58.82 % (10)
Decrease	11.43 % (8)	13.85 % (64)	14.29 % (35)	17.65 % (3)
No Opinion	4.29 % (3)	5.63 % (26)	6.94 % (17)	17.65 % (3)

**Q8. How often do you see a Lewisville Police Officer on city streets outside your neighborhood?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Frequently	41.56 %	372
Occasionally	41.45 %	371
Seldom	13.41 %	120
Never	3.02 %	27
No Opinion	0.56 %	5

Based on responses to this question, Lewisville police have no visibility problem on city streets. More than 80 percent of respondents reported seeing officers “Frequently” or “Occasionally” on city streets outside their neighborhood. Viewed in combination with responses to other questions later in the survey, this is the setting in which residents are most likely to see or encounter a Lewisville officer.

As with Q7 above, a geographic breakdown showed slightly less visibility among residents of the 75077 ZIP code, but all results for the three valid ZIP codes were within 5 percentage points of the overall responses to this question.

**Q9. Where did you most recently see a Lewisville Police Officer?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
On a city street or state highway	56.91 %	498
At an accident scene	12.23 %	107
In my neighborhood	9.49 %	83
At a school	5.94 %	52
In another residential neighborhood	4.57 %	40
In a commercial district	4.00 %	35
At a city special event or festival	3.54 %	31
At a city building or park	3.31 %	29

Note that the responses above have been re-ordered to list them by Selection Percentage (the percentage of respondents who selected a particular response option). The order of responses was different on the survey document.

This question allowed respondents to select only one of the available choices, with results that strongly support findings from Q8 above – city streets are by far the most likely place for residents to see or interact with a Lewisville police officer. Combining the top two responses (On a City Street or State Highway, and At an Accident Scene) results in 69.14 percent of all respondents who report having most recently seen a Lewisville police officer on a street. This result also could help explain why some people seem convinced that police officers spend too much time on traffic enforcement and not enough on “real crime” – a potential public education opportunity.

By comparison, the two least frequent selections for this question (At a City Special Event or Festival, and At a City Building or Park) are self-limiting because prior-year surveys show that fewer than half of all residents regularly visit those facilities or events. It probably is not surprising that “Another Residential Neighborhood” received a low response rate, since other surveys have indicated that many people do not frequently visit residential areas other than their own.

It is encouraging that “In My Neighborhood” ranked third here, considering the importance of police visibility seen in Q5 above. The number of respondents who selected Commercial District seems low (4.00 percent), although those areas are heavily congested and it is possible some sightings in those areas were grouped under City Street instead.

**Q10. Please rank the following ten things that you think Lewisville Police Department should prioritize in order to increase the general sense of safety among residents.**

This question gave respondents a list of 10 potential focus areas and asked them to rank those services areas from 1 (most important) to 10 (least important). It was not possible to give the same ranking to multiple focus areas, and it was possible to rank only some of the focus areas but not others – as a result, top-5 rankings could be slightly more reliable than bottom-5 rankings, although there is no way to determine statistical impact (if any). It is clear that some respondents skipped ranking numbers, either by choice or by oversight. For example, 801 respondents marked a focus area as their top choice but only 792 marked a second choice and 816 marked a 10<sup>th</sup> choice.

Results are being presented in three forms – average ranking to show overall prioritization; number of top-3 rankings to show most intense priority; and number of bottom-3 rankings to show least intense priority. The average ranking can be anywhere between 10.0 (all top rankings) and 1.0 (all bottom rankings), with higher numbers showing stronger support. Responses to this question ranged from 6.83 to 3.87, a compact spread of average rankings that indicates all listed options were considered valid and none was overwhelmingly more or less popular than the others other than bottom-ranked Terrorism.

<b>Service Area</b>	<b>Avg. Ranking</b>
Criminal Gangs	6.83
Illegal Drugs	6.46
Violent Crime	6.58
More Police on the Streets	6.42
Better Relationships Between Residents and the Police	5.49
Crime Prevention Classes / Neighborhood Crime Watch	5.09
Traffic Enforcement	4.87
Increased Use of Bike and Pedestrian Patrols	4.78
Supporting Victims of Crime	4.42
Terrorism	3.87

<b>Service Area</b>	<b>Top-3 Rankings (#1 Rankings)</b>
Violent Crime	415 (170)
Criminal Gangs	407 (120)
Illegal Drugs	327 (68)
More Police on the Streets	303 (166)
Better Relationships Between Residents and the Police	230 (104)
Crime Prevention Classes / Neighborhood Crime Watch	179 (49)
Traffic Enforcement	165 (34)
Increased Use of Bike and Pedestrian Patrols	150 (34)
Terrorism	131 (41)
Supporting Victims of Crime	91 (15)

<b>Service Area</b>	<b>Bottom-3 Rankings (#10 Rankings)</b>
Criminal Gangs	120 (34)
Illegal Drugs	131 (23)
More Police on the Streets	136 (28)
Violent Crime	180 (74)
Better Relationships Between Residents and the Police	234 (76)
Crime Prevention Classes / Neighborhood Crime Watch	276 (59)
Increased Use of Bike and Pedestrian Patrols	288 (82)
Traffic Enforcement	296 (109)
Supporting Victims of Crime	319 (68)
Terrorism	449 (263)

It is important to note that respondents were asked which of these items would increase the general sense of safety among residents, not which is their most serious public safety concern. That is addressed in Q17 below.

The three different presentations of results show only minor differences. The four focus areas with the highest priority rankings are Criminal Gangs, Illegal Drugs, Violent Crime, and More Police on the Streets. This is consistent with other results in this survey supporting increased police presence, but also adds context by identifying the three areas where residents want those officers focused – violent crime, gangs and drugs. While increased officers only received the fourth-highest total of top-3 rankings, it did receive the second-most #1 rankings (166, compared to 170 for Violent Crime).

Likewise, the lowest priority was assigned to the same set of four focus areas – Terrorism, Supporting Victims of Crime, Traffic Enforcement, and Increased Use of Bike and Pedestrian Patrols. That does not mean there is no resident support for those areas, only that survey respondents believe those efforts will have less impact on the public’s overall sense of safety than the higher-ranked areas would.

This was the second of three questions that also were sent to Lewisville Police Officers. Perhaps not surprisingly, the top-ranked focus area is More Police on the Streets with an average rating of 8.15 and #1 ratings from 25 of 48 respondents. Three other focus areas scored an average rating above 6 – Criminal gangs (7.21), Illegal Drugs (7.11), and Violent Crime (6.33). This results in a list that has the same top-four items as in the public survey, albeit in a different order. There is a sizeable gap between those four items and the rest, and an even larger gap between the bulk of the list and the two lowest-ranked categories – Terrorism (3.87) and Supporting Victims of Crime (3.48) – that also sat at the bottom of the public rankings.

**Q16. During the past 12 months, how many times would you estimate you have witnessed a Lewisville Police Officer in the process of interacting with a motorist?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
None	8.87 %	75
1-2 times	23.29 %	197
3-5 times	32.15 %	272
6-9 times	16.43 %	139
10 or more times	19.27 %	163

The question was largely intended to steer respondents away from crime concerns and onto traffic concerns leading into Q17 below, where they were asked to rank traffic hazards.

Since an earlier survey question revealed that officers are most visible to the public on public streets, it makes sense that a similarly high level of visibility is seen here. More than 90 percent of respondents report they witnessed a Lewisville Police Officer interacting with a motorist at least once during the previous 12 months, and nearly 70 percent did at least three times.

What is perhaps surprising is that nearly 20 percent of respondents reporting having witnessed a police traffic interaction more than 10 times during the previous 12 months, something close to a one-a-month average. This could include both traffic stops and traffic crashes, but is still a higher number than staff would have predicted. It does show that the public is very aware of police officers working on local roadways and making traffic stops, which is a good reminder that officer behavior during those incidents is very much in the public eye.

There was no significant difference seen in the geographic breakdown.

**Q17. Please rank the following eight items in order of how serious a threat they pose to your safety on Lewisville streets, starting with the most serious and ending with the least serious.**

This question gave respondents a list of eight potential safety hazards on local roads and asked them to rank those hazards from 1 (most serious) to 10 (least serious). It was not possible to give the same ranking to multiple focus areas, and it was possible to rank only some of the focus areas but not others – as a result, top-5 rankings could be slightly more reliable than bottom-5 rankings, although there is no way to determine statistical impact (if any). It is clear that some respondents skipped ranking numbers, either by choice or by oversight. For example, 794 respondents marked a focus area as their top choice but only 789 marked a second choice and 792 marked an eighth choice.

Results are being presented in three forms – average ranking to show overall prioritization; number of top-3 rankings to show most intense priority; and number of bottom-3 rankings to show least intense priority. The average ranking can be anywhere between 8.0 (all top rankings) and 1.0 (all bottom rankings), with higher numbers showing stronger support. Responses to this question ranged from 6.04 to 2.58, a significant spread of average rankings that indicates a statistically valid difference between the top and bottom of the list.

<b>Roadway Hazard</b>	<b>Avg. Ranking</b>
Distracted Drivers	6.04
Aggressive Driving / Road Rage	5.63
Alcohol or Drug Impaired Drivers	5.25
Road Construction	4.94
Speeding	4.93
Commercial Vehicles (Tractor-Trailers)	3.41
Weather	3.22
Seatbelt / Child Restraint Issues	2.58

<b>Roadway Hazard</b>	<b>Top-3 Rankings (#1 Rankings)</b>
Distracted Drivers	554 (230)
Aggressive Driving / Road Rage	485 (121)
Alcohol or Drug Impaired Drivers	391 (130)
Speeding	319 (94)
Road Construction	293 (119)
Weather	125 (38)
Commercial Vehicles (Tractor-Trailers)	106 (18)
Seatbelt / Child Restraint Issues	99 (44)

<b>Roadway Hazard</b>	<b>Bottom-3 Rankings (#8 Rankings)</b>
Distracted Drivers	102 (35)
Aggressive Driving / Road Rage	112 (29)
Alcohol or Drug Impaired Drivers	179 (34)
Speeding	201 (94)
Road Construction	293 (36)
Commercial Vehicles (Tractor-Trailers)	457 (107)
Weather	503 (184)
Seatbelt / Child Restraint Issues	607 (341)

The three different presentations of results show only minor differences. The three hazard categories with the highest priority rankings were identical in all three presentations – Distracted Drivers, followed by Aggressive Driving/Road Rage and Alcohol/Drug Impaired Drivers. The three hazard categories with the lowest priority rankings were the same in all three presentations, with a minor change in the order – Seatbelt/Child Restraint, Weather, and Commercial Vehicles. As stated in Q10 above, this does not mean those three areas are not viewed as serious hazards, only that survey respondents believe those items present a less serious hazard than the higher-ranked items.

This was the third of three questions that also were sent to Lewisville Police Officers. The list was almost identical in both sample groups. Officers gave more importance to impaired drivers and speeding than did the public, with 60 percent of the surveyed officers ranking impaired driving as the most serious threat to road safety. Complete rankings among the officers are Alcohol/Drug Impaired Drivers (6.64), Aggressive Driving/Road Rage (5.42), Distracted Drivers (5.30), Speeding (4.79), Road Construction (4.40), Commercial Vehicles (3.48), Weather (3.41), and Seatbelts/Child Restraints (2.80).

**Q11. During the past 12 months, how many times have you had contact with the Lewisville Police Department either in person, online or by phone?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
None	47.52 %	402
1 - 2 times	41.13 %	348
3 - 5 times	8.27 %	70
6 - 9 times	1.30 %	11
10 times or more	1.77 %	15

Results here show that more than half of respondents had contact with LPD within the previous 12 months, but only 11.34 percent had what one might consider frequent contact (three or more times). The reasons for those contacts are addressed in Q12 and Q13 below. There was no statistically significant difference found in the geographic breakdown.

**Q12. During the past 12 months, which of the following contacts have you had with Lewisville Police Department?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Count</b>
1. No Contact	43.65 %	368
2. Requested Information	18.86 %	159
3. At a City Festival or Concert	16.84 %	142
4. Visited the Website	12.46 %	105
5. Victim of Crime	10.08 %	85
6. Traffic Citation	6.52 %	55
7. Witness to Crime	6.29 %	53
8. Submitted an Online Report (Web)	4.63 %	39
9. Attended a Safety Presentation	4.03 %	34
10. Witness to a Traffic Crash	3.56 %	30
11. Involved in the Traffic Crash	3.32 %	28
12. Roadside Assistance	1.90 %	16
13. Written Warning	1.30%	11
14. Submitted an Online Report (App)	1.19 %	10
15. Arrested	0.24 %	2

This question presented respondents with a list of 14 common interactions the public might have with Lewisville Police Department. Respondents were able to mark as many selections from the list as they wanted, which is why response percentages total more than 100 percent. Responses are re-ordered here to list by percentage of responses received; they were listed differently in the survey document.

The percentage of respondents reporting No Contact (43.65) is slightly less than the similar response on Q10 above (47.52), likely because the first question set a 12-month timeframe while this question did not. However, the difference between the two percentages is statistically minimal.

The types of contact reported most frequently by the 843 survey respondents who answered this question were Requested Information (18.86 percent), At a City Festival or Concert (16.84 percent), Visited the Website (12.46 percent), and Victim of Crime (10.08 percent). This shows that most public contact with Lewisville Police Department is informational or incidental, and a relatively small percentage of interactions involve criminal offenses or traffic incidents. It highlights the importance of positive communication by police personnel, especially officers in the field and front-line call-takers.

**Q13. Which of the following best describes the most recent contact you had with Lewisville Police Department?**

This question presented respondents with the same list of potential interactions as was seen in Q12, but asked respondents to select only the most-recent interaction they had with Lewisville Police Department. The primary purpose of this question was to prepare respondents for the following question (Q14) that asked them to assess that single interaction.

<b>Answer Options</b>	<b>Response Percent</b>	<b>Count</b>			
1. No Contact	38.53 %	324	9. Involved in the Traffic Crash	2.62 %	22
2. Requested Information	12.84 %	108	10. Witness to a Traffic Crash	2.50 %	21
3. At a City Festival or Concert	10.58 %	89	11. Attended a Safety Presentation	2.26 %	19
4. Victim of Crime	8.92 %	75	12. Written Warning	1.19%	10
5. Traffic Citation	6.18 %	52	13. Roadside Assistance	0.95 %	8
6. Witness to Crime	5.47 %	46	14. Submitted an Online Report (App)	0.59 %	5
7. Visited the Website	4.28 %	36	15. Arrested	0.36 %	3
8. Submitted an Online Report (Web)	2.73 %	23			

Since the number of respondents to this question (841) was only two people fewer than on the preceding Q12 (843), it is unclear why the number of people reporting No Contact dropped here from 368 to 324. Otherwise, there was minor shuffling of the results here compared to Q12, with the biggest change being a three-spot drop for Visited the Website.

**Q14. Based only on your most recent in-person contact with Lewisville Police Department, how much do you agree or disagree with the following statements?**

<b>Answer Options</b>	<b>Strongly Agree</b>		<b>Strongly Disagree</b>		<b>No Opinion</b>	<b>Satisfaction %</b>
<b>The LPD representative...</b>	<b>Agree</b>	<b>Disagree</b>	<b>Disagree</b>	<b>Agree</b>		
...treated me fairly	319	186	20	15	275	93.52 %
...was professional	335	199	12	11	256	95.87 %
...was helpful	291	196	24	17	287	92.23 %
...was courteous	330	204	12	14	256	95.36 %
...was knowledgeable	302	185	18	11	300	94.38 %
...communicated with me clearly	319	203	17	11	267	94.91 %
...was timely	259	193	26	17	319	91.31 %
...cared about me and my family	251	153	34	26	348	87.07 %

Because the No Opinion responses on this question ranged from 31 percent to 43 percent of all respondents, factoring out those results has a tremendous impact on the overall Satisfaction Ratings. Raw results ranged from a low of 49.75 percent to a high of 65.68 percent, while all but one of the adjusted Satisfaction Ratings is in the 90<sup>th</sup> percentile. This is an excellent example of why staff follows common market practice for online opt-in surveys by factoring out the No Opinion responses.

Results here show very strong positive impressions of Lewisville Police Department personnel by those people with whom they interact. Seven of the eight evaluation categories received a Satisfaction Rating above 91 percent, with a range so compact that ranking them in order is statistically pointless (the highest rating of 95.87 percent went to “The LPD Representative Was Professional”).

The lowest rating is 87.07 percent (Cared About Me and My Family). While this is an excellent Satisfaction Rating for any city service, it also represents the only real opportunity these survey results offer for improvement. That could be as simple as more widely publicizing Police Department efforts on behalf of the community, and crime victims in particular. The next-lowest rating (Timely) had a Satisfaction Rating of 91.31 percent.

Results for this question in the 2016 Police and City Appearance/Property Maintenance Survey are notably better than comparable results in the Resident Satisfaction Survey from both 2014 and 2015. Both of those surveys had about 50 percent more participants and offered fewer evaluation options than the 2016 survey document. As a point of reference, Satisfaction Ratings from the two previous surveys are shown here.

How would you rate the Lewisville Police Department in each of the following areas? (adjusted satisfaction ratings shown for each listed category)		
	2014	2015
Speed in responding to calls	85.32%	84.84%
Courtesy	85.80%	86.45%
Professionalism	87.84%	88.01%
Customer Service	84.52%	85.49%

**Q15. Based on your own experiences with Lewisville Police Department, please rate the overall quality of the service provided.**

Answer Options	Response Percent	Response Count
Excellent	39.90 %	334
Good	34.53 %	289
Fair	7.41 %	62
Poor	2.75 %	23
No Opinion	15.41 %	129

If these survey results are a report card for Lewisville Police Department, this question represents the final exam. Coming near the end of the Police Services portion of the survey, respondents already have thought about their own sense of safety, factors impacting the community’s sense of safety, and specific elements of police service and public interaction. This question is placed near the end of the Police Services question because doing so (per the industry norm) is most likely to provide an accurate assessment of prevailing public opinion.

The relatively high number of respondents offering No Opinion (15.41 percent of all respondents) is unexpected at this point in the survey, but does warrant factoring out those responses for an Adjusted Satisfaction Rating of 87.99 percent with an intensely positive rating of 47.18 percent and a positive ratio of 7.3:1. In simple terms, this means nearly half of Lewisville residents are extremely happy with the services provided by Lewisville Police Department, a strong majority are happy, and only about one resident in 10 (12.01 percent) is unhappy with LPD services. Note that this overall high level of satisfaction likely contributed to the overwhelming voter support in May’s re-authorization election for the Crime Control and Prevention District, as the election was held during the survey period.

The seeming disparity between being happy with LPD services and having concerns about personal sense of safety points to external factors that cannot be controlled by the city, but certainly can be influenced through a combination of service enhancements and public education efforts.

## Satisfaction with City Appearance and Property Maintenance

### Q18. How satisfied or dissatisfied are you with the overall appearance of the following areas?

This question presented a list of six common areas within the city, and asked respondents to indicate their level of satisfaction with the overall appearance of each area. The question is intended to be used in conjunction with results of subsequent questions to identify specific concerns that residents have about what they generally would classify as “code enforcement” issues.

Adjusted to remove the “no opinion” responses, results here show an overall positive impression among respondents but identify some areas with lower levels of satisfaction. In addition, there are some noted differences in the breakdown of results by ZIP code. Listed in order of satisfaction rating (combining “very satisfied” with “satisfied” and filtering out the “no opinion” responses), results for the six evaluation areas are:

<b>Area</b>	<b>Satisfaction Rating (Intensity)</b>
Your Own Neighborhood	79.31 (22.04)
Other Residential Areas	68.50 (5.89)
Commercial Districts	69.37 (6.96)
City Streets and ROWs	73.61 (8.94)
Vacant Lots	46.86 (2.43)
Lewisville as a Whole	79.88 (13.67)

It is interesting to note that survey results show a higher level of satisfaction with the appearance of the city overall than with any single area within the city. While that might seem surprising, it likely is a product of the high rating respondents gave to their own neighborhoods and the familiarity bias seen in Q1 at the start of this survey. Respondents are far more satisfied with the appearance of their own neighborhood – which they can at least partially control, and where they spend a majority of their time – than with the appearance of other residential areas or of commercial districts. This is particularly noticeable in the 22.04 percent of respondents who say they are “Very Satisfied” with the appearance of their own neighborhood, nearly twice the intensity rating for the city overall. That high satisfaction level at home likely has a strong influence on respondents’ perceptions of the city as a whole.

In addition, respondents were not asked to rate the appearance of city parks and greenbelts. The condition and quantity of those areas, combined with the public preference for green space identified in earlier surveys, could be having a positive impact on the public’s perception of overall city appearance. This is largely conjecture, however, since the question was not specifically asked.

The area with the lowest level of satisfaction is Vacant Lots (46.86 percent, with 16.86 percent Very Dissatisfied). Responses to subsequent questions provide some context to this response by assessing specific aspects of appearance and property maintenance.

Respondents living in the 75077 ZIP code show a higher satisfaction rating with their own neighborhood (84.08) than do respondents in any other ZIP code. Results from the 75057 ZIP code are lower on every selection, with a limited sample size of 69-71 responses. There also is a difference between how 75077 residents view other residential areas (generally more positive) as compared to residents in other parts of the city, where there is a greater diversity of housing stock. Otherwise, the geographic breakdowns were very similar to the overall results. Results for 75056 are omitted below because of the statistically invalid sample size (17 respondents).

<b>Answer Options</b>	<b>75057</b>	<b>75067</b>	<b>75077</b>	<b>Overall</b>
Your Own Neighborhood	67.61	77.78	84.08	79.31
Other Residential Areas	67.14	65.45	74.89	68.50
Commercial Districts	64.79	71.21	65.53	69.37
City Streets and ROWs	68.12	77.26	72.46	73.61
Vacant Lots	32.86	45.82	53.62	46.86
Lewisville as a Whole	78.26	79.65	82.23	79.88

**Q19. Thinking about the city as a whole, please rate your level of concern for each of the following factors in overall appearance.**

This question begins the process of trying to identify specific concerns the public might have about city appearance and property maintenance. It presented a list of 16 issues and asked respondents to rate their level of concern with each item. Respondents were not asked to rank the issues by order of concern, so the best means this individual question offers for determining which issues create the greatest public concern is by looking at the Concern Rating (combining “very concerned” with “somewhat concerned” and filtering out the “no opinion” responses) and the Intensity Rating (the percentage of respondents who selected “very concerned” for each issue).

These methods produce two similar, but notably different, lists. The third list below attempts to combine the two rankings, with priority given to Intensity Rating because it is a clearer indicator of a high level of concern (note that Q20 below asks respondents to rank this same list of issues):

**Listed by Concern Rating**

1. Abandoned Properties	66.45
2. Illegal Dumping	63.49
3. Houses in Need of Repair	63.18
4. Property Cleanliness	62.88
5. Residential Street Parking	62.25
6. Fences in Disrepair	60.85
7. High Grass and Weeds	60.33
8. Trash and Litter	59.85
9. Junk Vehicles	58.69
10. Condition of Sidewalks	57.73
11. Res. Building Appearance	57.14
12. Com. Building Appearance	54.28
13. Lack of Sidewalks	54.16
14. Screening Walls	45.98
15. Stray Animals	40.74
16. Temporary Signs	27.93

**Listed by Intensity**

1. Illegal Dumping	36.77
2. Residential Street Parking	31.57
3. Junk Vehicles	31.15
4. High Grass and Weeds	30.91
5. Houses in Need of Repair	30.90
6. Trash and Litter	30.30
7. Fences in Disrepair	28.86
8. Abandoned Properties	28.06
9. Property Cleanliness	27.75
10. Lack of Sidewalks	25.48
11. Condition of Sidewalks	24.78
12. Res. Building Appearance	22.43
13. Stray Animals	16.75
14. Com. Building Appearance	16.14
15. Screening Walls	13.99
16. Temporary Signs	8.17

**Listed by Combined Ranking**

1. Illegal Dumping	3 (2/1)
2. Residential Street Parking	7 (5/2)
3. Houses in Need of Repair	8 (3/5)
4. Abandoned Properties	9 (1/8)
5. High Grass and Weeds	11 (7/4)
6. Junk Vehicles	12 (9/3)
7. Fences in Disrepair	13 (6/7)
8. Property Cleanliness	13 (4/9)
9. Trash and Litter	14 (8/6)
10. Condition of Sidewalks	21 (10/11)
11. Lack of Sidewalks	23 (13/10)
12. Res. Building Appearance	23 (11/12)
13. Com. Building Appearance	26 (12/14)
14. Stray Animals	28 (15/13)
15. Screening Walls	29 (14/15)
16. Temporary Signs	32 (16/16)

As is often the case with this type of question, there is more consistency at the top and bottom of the list with more variation in the middle. However, there are some notable differences even at the top of the lists.

Issues ranking near the top of all three lists are mostly related to debris (illegal dumping, junk vehicles) and residential property maintenance (houses and fences in need of repair, high grass and weeds). Those are known issues that receive significant enforcement attention from city staff. Also showing high levels of concern are parking on residential streets and abandoned properties.

Parking on residential streets ranked among the top five in all three lists, and second in the combined ranking. This is a difficult issue to manage because parking is legal on residential streets in most circumstances, but excess or inappropriate parking on residential streets is a frequent complaint received by the city. Several years ago, the Neighborhood Preservation Committee reviewed street parking (among other issues) but no immediate solution was identified. Short of an ordinance change, public education about the law is the best option available to the city in trying to address this concern.

Abandoned properties, while not common, tend to be highly visible and take longer to remedy than other issues, causing a higher level of overall public awareness and concern but with moderate intensity. It also shows evidence of being a localized problem, with much higher concern in the Old Town area than in the rest of

the city. Staff has been working on an online reporting system that would allow residents to monitor the status of severely distressed properties in the hope that increased information might change perceptions and help lower the level of immediate concern.

Screening walls received a low level of concern and also appears to be a localized issue. Other areas showing low levels of public concern are temporary signs (last in both overall concern and intense concern), stray animals, and general appearance of both commercial and residential buildings.

There also are differences based on ZIP code. The level of concern expressed by 75077 residents is lower than the overall results in all but two categories (abandoned properties and residential street parking), and only two issues received an Intensity Rating of more than 30 percent in that ZIP code (illegal dumping and residential street parking). By comparison, seven of 16 categories received an Intensity Rating of 30 percent or higher in both 75057 and 75067. The top-five concerns in each of the three ZIP codes was different, shown below according to Intensity Rating:

<b>75057</b>	<b>75067</b>	<b>75077</b>
1. Residential Street Parking (35.71)	1. Illegal Dumping (38.66)	1. Illegal Dumping (31.90)
2(t). Abandoned Properties (34.29)	2. High Grass and Weeds (32.74)	2. Residential Street Parking (31.12)
2(t). Trash and Litter (34.29)	3. Junk Vehicles (32.27)	3. Houses in Need of Repair (28.75)
4. Junk Vehicles (31.82)	4. Trash and Litter (32.24)	4(t). Fences in Need of Repair (28.22)
5. Property Cleanliness (31.43)	5. Houses in Need of Repair (32.14)	4(t). High Grass and Weeds (28.22)

**Q20. Looking at the same list of factors, which one do you believe to be the most critical for the city to address?**

Respondents were presented with the same list of issues from Q19, but this time could only select one issue as their top priority. The resulting list is very similar to the rankings described in Q19 above, with a couple of significant differences. The chart below lists the issues by Concern Rating, which here represents the percentage of the 804 respondents who selected each item.

<b>Issue</b>	<b>Rating</b>				
1. Residential Street Parking	13.93	6. Houses in Need of Repair	7.34	12. Res. Building Appearance	3.11
2. Abandoned Properties	13.43	7. High Grass and Weeds	6.97	13. Screening Walls	2.99
3. Property Cleanliness	9.83	8. Condition of Sidewalks	6.34	14. Stray Animals	2.24
4. Com. Building Appearance	9.08	9. Lack of Sidewalks	6.22	15. Junk Vehicles	1.00
5. Trash and Litter	8.08	10. Illegal Dumping	4.35	16. Temporary Signs	0.87
		11. Fences in Disrepair	4.23		

The biggest difference between this list and the lists seen in Q19 above is that Commercial Building Appearance received the fourth-highest level of concern when respondents had to choose just one issue, even though nearly half of respondents in Q19 (44.35 percent) said they have slight or no concern about this issue and only 16.14 percent said they were Very Concerned. Based on these results, it would seem more than half of the respondents included in the 16.14 percent rating in Q19 consider this to be the highest priority for the city to address.

Similarly, illegal dumping was first or second on the Concern Rating lists in Q19 but here places 10<sup>th</sup> overall with just 4.35 percent of respondents listing it their top priority. This indicates that, while a high percentage of residents consider illegal dumping to be a general concern, they don't consider it widespread enough to warrant an increase in city enforcement efforts compared to other listed issues. Likewise, junk vehicles is near the bottom of the results here despite strong Concern Ratings in Q19, showing that this also is a general concern but not a priority among residents when compared to other needs.

These results can be grouped into three priority levels based on gaps in the percentages. The three highest-rated issues are nearly a full point ahead of the rest of the field, and the bottom seven issues are nearly two full percentage points below the ninth item on the list. If staff were to take direction from the results of this survey question, added emphasis would be placed on street parking (which is problematic, as described in Q19 above), abandoned properties, and property cleanliness. Technically, only one of those three issues falls under Code Enforcement in Lewisville, but all three contribute to the low Satisfaction Rating received by Code Enforcement in the annual Resident Satisfaction Survey.

It also is worth noting that, while the two items related to sidewalks each received only about 6 percent of the results in this question, combined they were listed as the top priority for 12.56 percent of respondents. If taken as a single issue, sidewalks would rank third overall on this list.

Results from the 75067 and 75077 ZIP codes detailed below are very similar to the overall results when ranked by percentage of responses, sharing four items in the top five. Both geographic areas also point to a clear (but different) top-ranked priority. With only 71 responses spread over 16 options, results from the 75057 ZIP code lack statistical validity and are not detailed here.

**75067**

1. Abandoned Properties (16.63)
2. Residential Street Parking (11.82)
3. Property Cleanliness (8.97)
4. High Grass and Weeds (8.53)
5. Comm. Building Appearance (8.10)

**75077**

1. Residential Street Parking (20.33)
2. Property Cleanliness (11.62)
3. Commercial Building Appearance (10.37)
4. Abandoned Properties (8.30)
5. Trash and Litter (7.88)

**Q21. Thinking now about only your own residential neighborhood, please rate your level of concern for each of the following factors in overall appearance.**

The survey continues to drill down into resident concerns with the next pair of questions, presenting the same list of 16 issues as was used in the Q19/Q20 pair but this time asking respondents to consider only their own residential neighborhood instead of the city as a whole. As with Q19, respondents were not asked here to rank the issues by order of concern, so results are evaluated by looking at the overall Concern Rating (combining “very concerned” with “somewhat concerned” and filtering out the “no opinion” responses) and Intensity Rating (the percentage of respondents who selected “very concerned” for each issue).

**Listed by Concern Rating**

1. Residential Street Parking	51.46
2. Property Cleanliness	44.42
3. Fences in Disrepair	44.29
4. High Grass and Weeds	44.26
5. Condition of Sidewalks	44.03
6. Trash and Litter	41.41
7. Houses in Need of Repair	39.49
8. Res. Building Appearance	37.14
9. Junk Vehicles	31.50
10. Abandoned Properties	29.84
11. Stray Animals	29.09
12. Illegal Dumping	28.36
13. Lack of Sidewalks	27.13
14. Com. Building Appearance	26.55
15. Screening Walls	26.48
16. Temporary Signs	15.06

**Listed by Intensity**

1. Residential Street Parking	28.26
2. High Grass and Weeds	23.20
3. Property Cleanliness	22.97
4. Trash and Litter	21.03
5. Houses in Need of Repair	20.25
6. Fences in Disrepair	20.15
7. Condition of Sidewalks	18.36
8. Abandoned Properties	16.58
9. Res. Building Appearance	16.14
10. Junk Vehicles	15.95
11. Illegal Dumping	15.59
12. Stray Animals	14.03
13. Lack of Sidewalks	11.88
14. Screening Walls	8.83
15. Com. Building Appearance	8.33
16. Temporary Signs	4.88

**Listed by Combined Ranking**

1. Residential Street Parking	1 (1/1)
2. Property Cleanliness	5 (3/2)
3. High Grass and Weeds	6 (2/4)
4. Fences in Disrepair	9 (6/3)
5. Trash and Litter	10 (4/6)
6. Houses in Need of Repair	12 (5/7)
7. Condition of Sidewalks	12 (7/5)
8. Res. Building Appearance	17 (9/8)
9. Abandoned Properties	18 (8/10)
10. Junk Vehicles	19 (10/9)
11. Illegal Dumping	23 (11/12)
12. Stray Animals	23 (12/11)
13. Lack of Sidewalks	26 (27/13)
14. Screening Walls	29 (14/15)
15. Com. Building Appearance	29 (15/14)
16. Temporary Signs	32 (16/16)

Results of this question are most enlightening when compared to results from Q19 above, which asked respondents to state their level of concern for the same list of issues but on a citywide basis. Here, they were asked to consider only their own residential neighborhood. Both the overall level of concern, and the percentage of intense concern, dropped dramatically in the responses to Q21 here. Whereas 13 of 16 issue areas had a Concern Rating above 50 percent in the citywide question, here only Residential Street Parking received a Concern Rating above 50 percent (51.46). The intensity rating showed similar comparative results: in this question, the highest rating was 28.26 percent (residential street parking), which would have ranked eighth among the citywide Q19 results.

The same trend is seen in some specific issue categories. Illegal dumping was the highest-rated concern in the citywide Q19 results, but here ranked 11<sup>th</sup> overall out of 16 issues. Likewise, abandoned properties ranked fourth overall and junk vehicles ranked sixth overall in the citywide Q19 results, but here both ranked in the bottom half of results (9<sup>th</sup> and 10<sup>th</sup>, respectively). Whatever concern residents have for those three issues, they are not major concerns within respondents' own residential neighborhoods.

Residential street parking, however, was the top choice by a wide margin in both Concern Rating and Intensity Rating in the Q21 results after ranking second overall in the citywide Q19 results, which indicates a consistently high level of concern related to this very difficult and complex issue. Condition of sidewalks also received a higher level of concern on the neighborhood level, ranking seventh here but just 10<sup>th</sup> in the citywide Q19 results.

A geographic breakdown shows even more dramatic differences between neighborhood-focused and citywide perceptions. In fact, these results are an almost perfect example of Familiarity Bias (which holds that people tend to have more positive overall impressions about people and places with which they have frequent direct experience, and more intensely negative perceptions about people and places with which they have little or no contact). Results shown below for the 75057, 75067 and 75077 ZIP codes give very strong evidence that Lewisville residents are happy with the part of the city where they live, but are statistically likely to have a more negative perception of other areas within the city. For example, residents in the 75067 ZIP code (comprising more than half of the total respondents) give Concern Ratings of more than 30 percent to seven issues citywide, but none within their own neighborhoods.

The top-five concerns in each of the three ZIP codes are shown below according to Intensity Rating:

**75057**

1. Residential Street Parking (36.76)
2. Property Cleanliness (31.34)
3. Houses in Need of Repair (30.88)
4. Lack of Sidewalks (30.30)
5. Res. Building Appearance (28.13)

**75067**

1. Residential Street Parking (29.40)
2. High Grass and Weeds (24.89)
3. Property Cleanliness (24.11)
4. Trash and Litter (23.08)
5. Fences in Disrepair (21.69)

**75077**

1. Residential Street Parking (24.47)
2. High Grass and Weeds (19.75)
3. Fences in Disrepair (19.33)
4. Property Cleanliness (18.49)
5. Houses in Need of Repair (17.65)

**Q22. Looking at the same list of factors, which one do you believe to be the most critical for the city to address within your own residential neighborhood?**

As with the citywide Q20 above, respondents were presented with the same list of issues and asked to select only one issue as their top priority within their own residential neighborhood. The resulting list is very similar to the rankings described in Q21 above, with a couple of significant differences. The chart below lists the issues by Concern Rating, which here represents the percentage of the 804 respondents who selected each item.

<b>Issue</b>	<b>Rating</b>				
1. Residential Street Parking	22.39	6. Trash and Litter	6.04	12. Com. Building Appearance	3.14
2. Condition of Sidewalks	12.08	7. Houses in Need of Repair	5.79	13. Screening Walls	3.14
3. High Grass and Weeds	9.81	8. Abandoned Properties	5.03	14. Illegal Dumping	2.39
4. Property Cleanliness	9.18	9. Stray Animals	4.03	15. Temporary Signs	1.64
5. Fences in Disrepair	6.42	10. Res. Building Appearance	3.90	16. Junk Vehicles	1.38
		11. Lack of Sidewalks	3.65		

Nearly one-fourth of all respondents listed residential street parking as the most critical area for the city to address related to appearance and property maintenance in their own residential neighborhoods. Combined with results from the three preceding questions, there can be no doubt that this is an issue of high concern for Lewisville residents.

The condition of sidewalks made a big jump here, from seventh overall in Q21 above to a strong second-place ranking here. This continues a trend first seen in the two citywide questions that becomes even more pronounced in the two neighborhood-focused questions, that residents are concerned with the perceived level of sidewalk maintenance, especially in their own residential neighborhood.

Also receiving high responses as priority issues in neighborhoods are high grass and weeds and property cleanliness. It is important to note that, despite the low Satisfaction Rating received by Code Enforcement each year in the annual Resident Satisfaction Survey, results of the 2016 Police and City Appearance/Property Maintenance Survey point to issues outside the city’s code enforcement umbrella as the main culprits. Residents do not differentiate between code enforcement, building inspections, public services or even, in some cases, police services – they simply see issues of concern and want the city to address them. Historically, it has been Code Enforcement that suffered from those concerns in satisfaction surveys.

Results from the 75067 and 75077 ZIP codes detailed below are again very similar to the overall results when ranked by percentage of responses, both reporting the same five priority issues and both having the same two issues ranked first and second. With only 67 responses to this question spread over 16 options, results from the 75057 ZIP code lack statistical validity and are not detailed here.

**75067**

1. Residential Street Parking (20.71)
2. Condition of Sidewalks (12.69)
3. High Grass and Weeds (10.47)
4. Property Cleanliness (8.02)
5. Fences in Disrepair (6.46)

**75077**

1. Residential Street Parking (27.50)
2. Condition of Sidewalks (13.33)
3. Property Cleanliness (11.67)
4. High Grass and Weeds (9.58)
5. Fences in Disrepair (7.50)

**Q23. During the past 12 months, have you contacted the city about something related to city appearance or property maintenance that you felt was not up to an acceptable standard or was in violation of city ordinances?**

**Q24. Based on your own personal experience with city staff regarding issues related to city appearance or property maintenance, how much do you agree or disagree with the following statements?**

The first question here (Q23) was used as a screening mechanism for the second question (Q24). Of the 808 people who answered the first question, 220 (27.23 percent) answered affirmatively and were routed to the second question. The remaining respondents did not see Q24.

The second question (Q24) presented respondents with a series of 10 statements about their personal experience with city staff related to city appearance and property maintenance issues, and asked respondents to state whether they strongly agreed, agreed, disagreed or strongly disagreed with each statement. The Adjusted Satisfaction Rating is calculated by combining the “strongly agree” and “agree” responses, factoring out the “no opinion” responses.

The employee treated me in a professional and respectful manner	90.72 %
The employee communicated with me clearly	86.39 %
The employee was knowledgeable about how city ordinances could help solve the issue	81.18 %
The employee asked adequate questions to determine the nature of the problem	77.66 %
The people I worked with showed pride in their work	77.50 %
The employee seemed concerned about my issue	76.32 %
If not available, the correct employee returned my call in a timely manner	74.48 %
My neighborhood’s appearance benefitted from the city’s response to my concern	68.98 %
The problem was adequately dealt with by the employee responding	68.21 %
I received follow-up concerning the eventual outcome of my concern	48.26 %

Note that the responses above have been re-ordered to list them by Satisfaction Rating. The order of responses was different on the survey document.

Satisfaction ratings from this question are good overall, with seven receiving a “passing” mark of better than 70 percent and two others falling just short of that mark. The highest ratings went to statements describing the employees themselves, while the three lowest ratings went to statements describing the outcome. Intensity Ratings for eight of the 10 categories surpassed 35 percent, topped by “professional and respectful manner” with 44.33 percent of respondents selecting “Strongly Agree” for that statement.

Lack of follow-up is a problem for property maintenance enforcement in most cities, and is a difficult situation to address because enforcement officers already face a heavy workload that would become untenable if significant time were devoted to follow-up contacts. However, since this is a common problem among

cities, it is very possible that there are cities comparable to Lewisville that have found a way to improve in this area. It is worth noting that the city’s online reporting system does include a follow-up mechanism that is generally effective, but that does not seem to have helped correct the perceived lack of follow-up.

There were no significant differences in the geographic breakdown of results to these questions.

**Q25. Overall, how effective or ineffective do you think the city is in addressing the following issues within your own residential neighborhood?**

<b>Enforcement Issue</b>	<b>Effectiveness Rating</b>
Illegal Dumping	71.26
Comm. Building Appearance	67.69
Parking on the Grass	67.36
Res. Building Appearance	66.91
Abandoned Properties	66.27
Junk Vehicles	66.19
High Grass and Weeds	60.16
Trash and Litter	59.90
Property Cleanliness	59.62
Residential Fences	54.15

Nine of the 10 enforcement issues presented in this question also were among the 16 areas listed in the four Concern Rating questions earlier in the survey (“Parking on the Grass” was added to this question).

The range of Effectiveness Rating scores received for the 10 enforcement issues was fairly narrow, from a high of 71.26 to a low of 54.15 for a spread of slightly more than 17 percentage points. There was even less variation among Intensity Ratings, from 18.62 (parking on the grass) down to 7.39 (property cleanliness).

Because this question has not been asked before in this form, there is no baseline to measure a “good” or “bad” score. If the traditional grading system is applied, there is only one “passing” mark and a lot of “D” grades. However, with the small spread and the lack of historical survey data, staff’s best attempt at analyzing these results is to compare the scores with one another.

Taken as a whole, and compared to the Concern Rating questions earlier in the survey, the results appear to show a general desire for more visible results in many areas. The areas where respondents appear to see the least visible impact (whether from the high number of violations or a desire for increased enforcement) are

fences, general property cleanliness, trash and litter, and high grass and weeds – all four scored at or below 60 percent perceived effectiveness. All four also are high targets for enforcement officers and are among the most frequently mitigated violations. These results could reflect a general misunderstanding about the enforcement timeline, which could be addressed through public education efforts or improved follow-up mechanics.

There were no significant variations found in the geographic breakdown, although residents in the 75077 ZIP code did report slightly higher Effectiveness Ratings (about 3-5 percentage points) across the board. While that variation is within the statistical margin of error, the trend across the full range of responses indicates the actual perceptions in that area are more positive than in other areas.

**Q26. During the time you have lived in Lewisville, do you think the overall appearance of your own residential neighborhood has improved, stayed the same, or gotten worse?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Improved	16.41 %	130
Stayed the Same	53.54 %	424
Gotten Worse	28.91 %	229
No Opinion	1.14 %	269

More than half of all respondents reported seeing no change in their neighborhood’s appearance during the time they have lived in Lewisville, and about 75 percent more respondents reported a decline in appearance (28.91 percent) than reported improvements (16.41 percent). Considering the age of many Lewisville neighborhoods, and the fact that maintenance and appearance issues tend to become more severe as a residential area ages, that is not particularly surprising. However, that also is not the response staff would prefer to see on this question.

As with other questions in this and previous surveys that ask respondents to rate over time, those respondents who have lived in Lewisville the longest are most likely to report a change (positive or negative) while newer residents are more likely to report no change.

Breaking results down by ZIP code produces very similar results, with some minor variations. Residents in 75067 are more likely to report a decline in neighborhood appearance (31.88 percent) than residents in other areas, while residents in 75077 are more likely to report no change (57.96 percent). The area most likely to report positive changes is 75057, where 32.39 percent of limited sample size (71 people) said appearance of their neighborhood had improved. This could be a result of major street and utility projects in the Old Town area, along with multiple public and private developments in the area.

## Who took the satisfaction survey?

### Q29. Gender

Answer Options	Response Percent	Response Count
Male	44.54 %	351
Female	55.46 %	437

### Q33. Which of these age groups includes your age?

Answer Options	Response Percent	Response Count
18 - 24 years	0.63 %	5
25 - 34 years	11.76 %	93
35 - 44 years	19.09 %	151
45 - 54 years	24.15 %	191
55 - 64 years	22.88 %	181
65 and Older	21.49 %	170

### Q34. Do you have any children under the age of 18 living in your home? If yes, in which of the following age categories would your children be classified?

Answer Options	Response Percent	Response Count
No children	65.82 %	516
Under age 6	13.52 %	106
Ages 7 - 12	13.65 %	107
Ages 13 - 18	15.56 %	122

**Q35. How long have you lived in the City of Lewisville?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Less than one year	3.92 %	31
1 - 3 years	12.77 %	101
4 - 6 years	10.37 %	82
7 - 9 years	8.85 %	70
10 - 20 years	32.36 %	256
More than 20 years	31.73 %	251

**Q27. Which of the following best describes your primary residence?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
I own a house, duplex, townhome or mobile home in Lewisville	90.40 %	716
I rent a house, duplex, townhome or mobile home in Lewisville	5.68 %	45
I rent an apartment in Lewisville	2.90 %	23
I live in a retirement center or similar facility in Lewisville	0.00 %	0
I do not live in Lewisville	1.01 %	8

**Q28. What is the ZIP Code for the street address of your primary residence?**

<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
75057	8.93 %	71
75067	58.11 %	462
75077	30.82 %	245
75056	2.14 %	17

As with all previous online city surveys, the majority of respondents were female and the average age skewed toward an older population with no minor children living at home. A slightly higher percentage (64.09 percent) than in previous surveys have lived in Lewisville 10 years or longer. More than 90 percent are homeowners, with 58 percent living in the 75067 ZIP code.

While these demographics do not accurately reflect Census data and thus do not provide the representative sample needed for true statistical accuracy, they are very consistent with all previous online surveys conducted by the city so trending among the online surveys can be considered largely reliable.

# Signal Box Banner Wraps

Dimensions:

Approximately 3.5' x 4'



# Theme #1

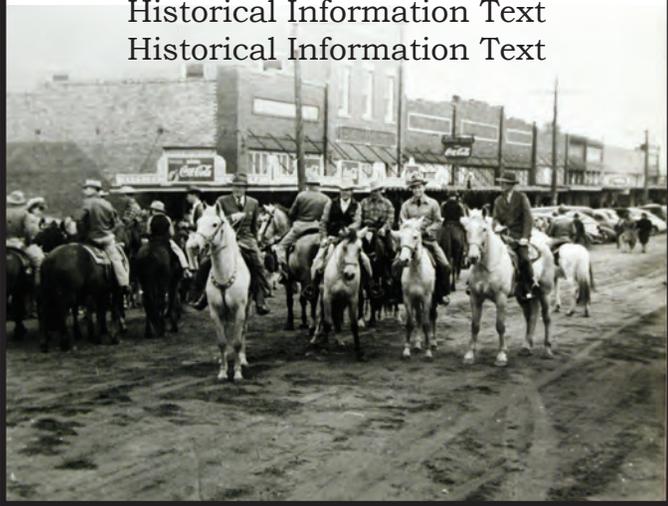
## Historic



**LEWISVILLE**

Deep Roots. Broad Wings. Bright Future.

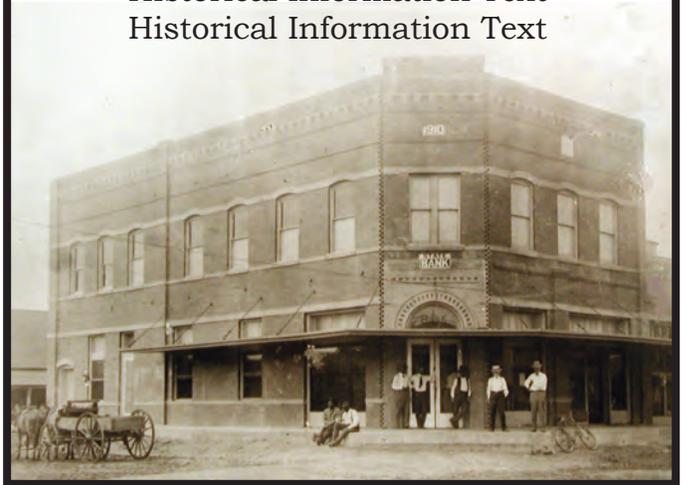
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**LEWISVILLE**

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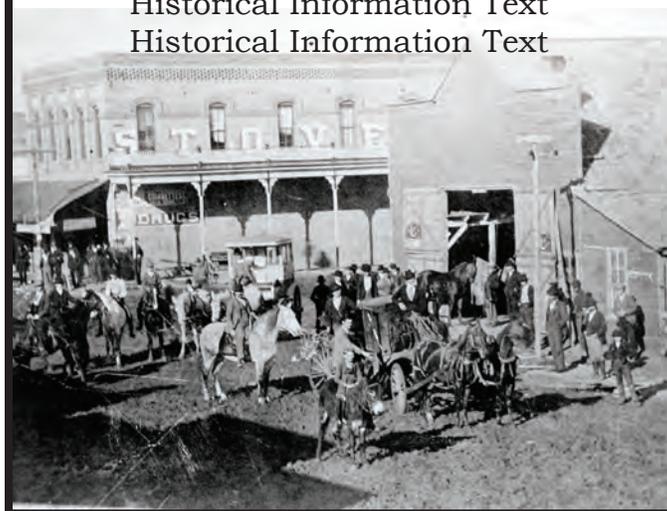
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**LEWISVILLE**

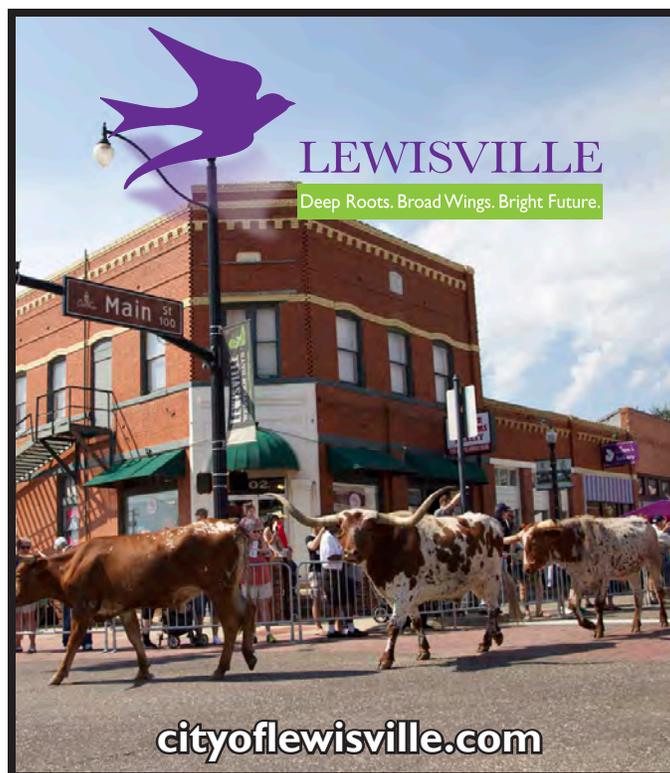
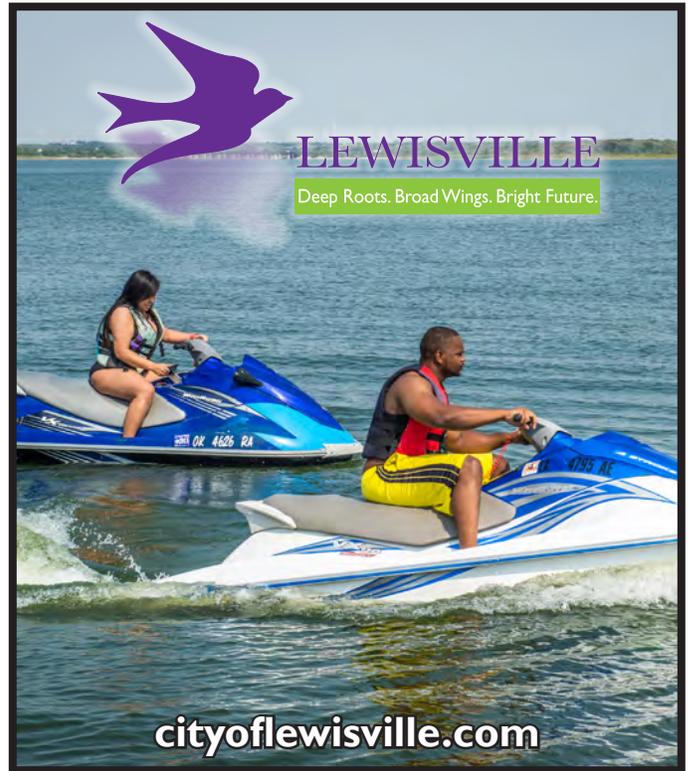
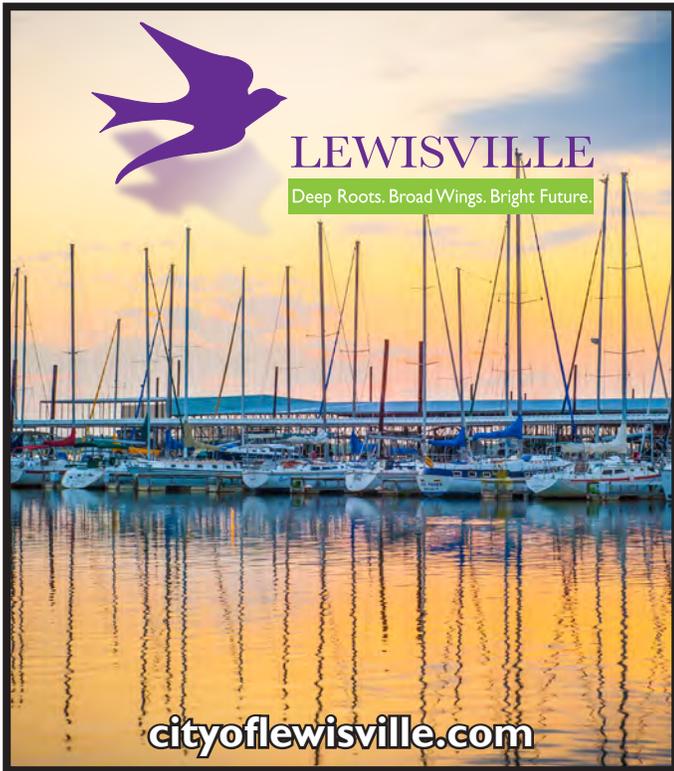
Deep Roots. Broad Wings. Bright Future.

Historical Information Text  
Historical Information Text



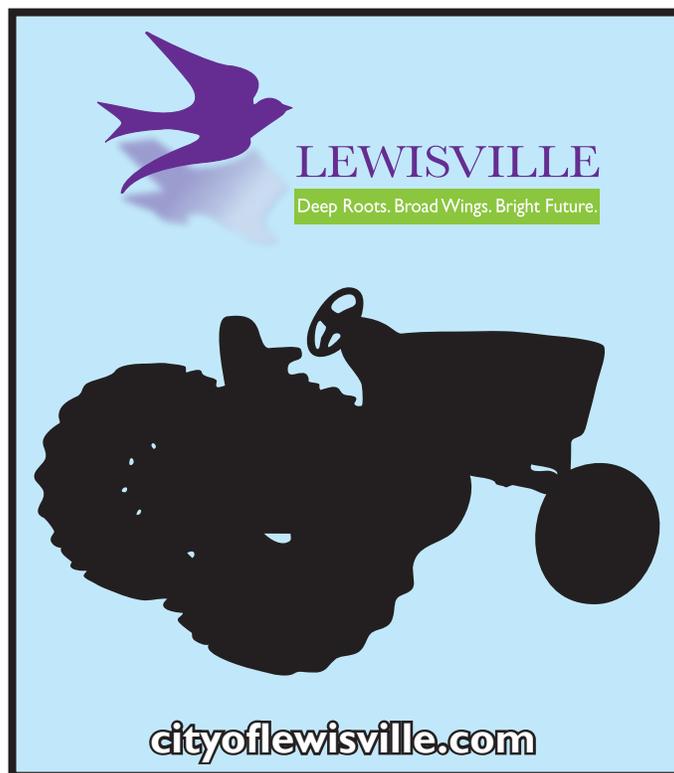
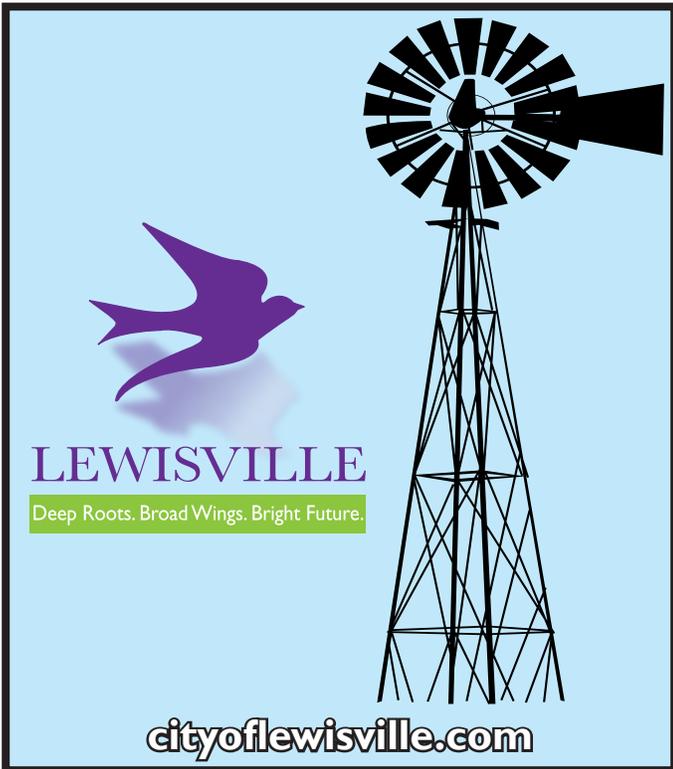
# Theme #2

# Contemporary



# Theme #3

# Silhouette



## MEMORANDUM

**TO:** Donna Barron, City Manager

**FROM:** James Kunke, Community Relations & Tourism Director

**DATE:** July 22, 2016

**SUBJECT: Old Town Signal Control Cabinet Wraps**

Staff was asked to research the feasibility and cost of applying decorative vinyl wraps to traffic signal control boxes in the Old Town core, specifically the intersections of Main, Mill, Church and Charles streets.

A number of cities around the country have used vinyl wraps to cover utility boxes and beautify targeted areas of their community. Chicago and Jackson Hole are two prominent examples. The city of Surrey, California, even has a program that allows residents to submit their own photos for consideration in the wrap program. Those cities also report that using a graffiti-resistant UV coating on the vinyl wraps has reduced maintenance and cleaning costs.

Earlier this year, Carrollton installed decorative wraps on many signal boxes in that city. Carrollton used a local company (Signarama) to print and install its wraps. Some of the other cities contacted use larger design firms that also would be available for Lewisville. Those companies usually wrap all sides and the top of the selected utility box. Because this is a trial program, staff would instead use a local vendor and attach vinyl panels to as many as three sides on each box. If the program is well-received, the more elaborate wraps could be used in the future.

An estimate from Signarama showed that the four selected boxes could be treated for a total of about \$1,200. Money is available in the Community Relations & Tourism budget. The wraps would last about 4-7 years, based on experiences in other cities.

Staff would like Council input regarding the design theme to be used for the four Old Town signal boxes. Other cities have used anything from generic scenery images to contemporary designs to marketing messages. Carrollton used current photos of city facilities and services as a way to promote those services.

Attached are three design concepts developed by staff. The first uses historic photos in greyscale or sepia tones to enhance the historic feel of the Old Town core. The second uses contemporary photos from around the city to increase recognition of those locations. The third uses 20s-style silhouettes of recognizable items reflecting the city's rural heritage. The images provided are intended to illustrate the three design concepts; actual design likely will vary somewhat based on available images and the size and shape of the signal control boxes.

Once input is received from Council, staff would attempt to have the four Old Town boxes covered before the Western Days festival in September.



Julie Heinze &lt;jheinze@cityoflewisville.com&gt;

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**Fwd: 2276 Uecker Lane Zoning Change Request**

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**Richard Luedke** <rluedke@cityoflewisville.com>  
To: Julie Heinze <jheinze@cityoflewisville.com>

Tue, Jul 26, 2016 at 3:07 PM

—— Forwarded message ——

From: **Chip Tabor** <chiptabortx@gmail.com>  
Date: Tue, Jul 26, 2016 at 1:14 PM  
Subject: 2276 Uecker Lane Zoning Change Request  
To: Richard Luedke <rluedke@cityoflewisville.com>  
Cc: Karen Wilson <karen@ecoconsciousrealestate.com>

Richard

Thanks for your call today regarding this zoning case. The seller and I have continued to discuss options to find an approach that will ultimately gain support from the City for the type of development that enables the transaction to close between us. We are discussing how a PD might be created and look forward to discussion with you on August 2.

As a part of discussions on next steps the Seller and I have agreed to withdraw the MD zoning change request on the property.

—

Chip Tabor  
2144558834 (Personal Mobile)

## MEMORANDUM

**TO:** Donna Barron, City Manager

**FROM:** Nika Reinecke, Director of Economic Development and Planning

**DATE:** August 1, 2016

**SUBJECT:** **Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Multi-Family One (MF-1) to Planned Development-Mixed Use (PD-MU), With Five Associated Variances, on an Approximately 5.082-Acre Tract of Land out of the S. Luttrell Survey Abstract 743, Located at 3000 N. Stemmons Freeway, as Requested by G&A Consultants, LLC on Behalf of H198, LLC, the Property Owner (Case No. PZ-2016-07-18).**

### BACKGROUND

The Planned Development (PD) district allows for innovative community design concepts which may not meet all regulations of the City's standard zoning categories, but ensures a high quality development with enhanced amenities and a customized design tailored for a particular site. The property for the proposed PD is currently zoned Multi-Family One (MF-1) and has been a mobile home and RV park for over 40 years. The majority of the surrounding land is owned by the U.S. Army Corp. of Engineers (USACE) and is used as open space and boat docks, with I-35E and the DART rail line on the western border of the site. The DCTA rail station is located on the south side of Garden Ridge Boulevard in close proximity to this site. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of July 19, 2016.

### ANALYSIS

The proposed PD will have a base zoning of Mixed Use (MU) for Tower Bay Lofts, a proposed multi-story multi-family complex with lake views. The concept plan outlines a single building to be constructed in one phase with 308 residential units, courtyards with amenities and a multi-story parking garage. The majority of the building will be four stories with penthouse units proposed on a fifth floor at various corners. The site features four separate courtyards with varying amenities such as fire pits, patio tables and chairs, grills, water features, a pool with chaise loungers, picnic area, a roof deck lounge and fitness area, putting green, doggie park/spa, play areas as well as a club house. The proposed units range from an efficiency apartment of 575 square feet to a penthouse of 1,713 square feet. The minimum proposed dwelling unit size is 575 square feet, which exceeds the minimum requirement of 500 square feet. The unit average will be 908 square feet whereas the minimum average required is 650 square feet. Each unit is proposed to have an outdoor patio/balcony. Architecturally, the building façade will contain a combination of brick and stone with stucco, metal and wood accents and both horizontal and vertical articulations. Corner penthouse units will have tower features and rooftop terraces. The

Subject: Tower Bay Lofts PD  
August 1, 2016  
Page 2

proposed multi-story parking garage will be integrated into the design of the building. Staff is working to finalize the secondary access and trail alignment with the USACE.

The following five variances are associated with this development:

- a. To waive the deceleration lane requirement.

#### Section 6-103(e) – Access Management, Auxiliary Lanes

This section requires a deceleration lane at each driveway along the frontage roads of IH-35E. This service road has a low volume of traffic since it dead ends into the parking lot and boat ramp for Tower Bay Park and Copperas Branch Park East. Due to the low traffic volumes, the deceleration lanes are not warranted. In the future, staff will propose an amendment to the Thoroughfare Plan to remove the major traffic carrier designation on this section of the IH-35E service road. Staff recommends approval of the variance.

- b. To allow a 145.1' driveway spacing in lieu of the required 230' driveway spacing.

#### Section 6-103(c)(2)(a) – Access Management, Access Spacing

This section requires a minimum spacing of 230 feet between driveways on adjacent lots along the frontage roads of IH-35E. The proposed spacing of the driveways is 145.1 feet. The redevelopment of the site will remove the existing driveway to the site. The service road along the property frontage has a low volume of traffic since it dead ends into the parking lot and boat ramp for Lake Lewisville. Since the deceleration is not warranted, the 230 foot driveway spacing is also not warranted. Staff recommends approval of the variance.

- c. To allow a reduction in required parking from two (2) parking spaces per unit to 1.73 parking spaces per unit

#### Section 6-162(a)(9) - Parking Requirements based on use - Multi-Family

This section requires two (2) spaces for each dwelling unit. The required parking for the 308 unit Multi-Family building would be 616 spaces. The request is to provide 534 spaces or 1.73 spaces per unit. Based on the fact that 63% of the units are one bedroom, the owner has determined that the building can effectively operate with the reduced parking ratio. Staff has determined that based on the information presented, the reduced parking ratio will not affect the ability to properly operate the building. Staff recommends approval of the variance.

Subject: Tower Bay Lofts PD  
August 1, 2016  
Page 3

d. To allow a 3.5' landscape buffer in lieu of the required 10' landscape buffer

#### Section 6-123(b) Multi-Family and Non-Residential Landscaping Requirements

This section requires a ten (10) foot landscape strip along the frontage of the property that would include one (1) tree every fifty (50) feet or five hundred (500) square feet. Due to the density of the site, this cannot be achieved. The request is to reduce the landscape buffer to 3.5' in lieu of the required 10' landscape buffer. Staff recommends approval of the variance.

e. To allow ornamental trees in the landscape buffer in lieu of trees on the approved tree list for private property

#### Section 6-121(i)(2) Approved tree list for landscaping on private property

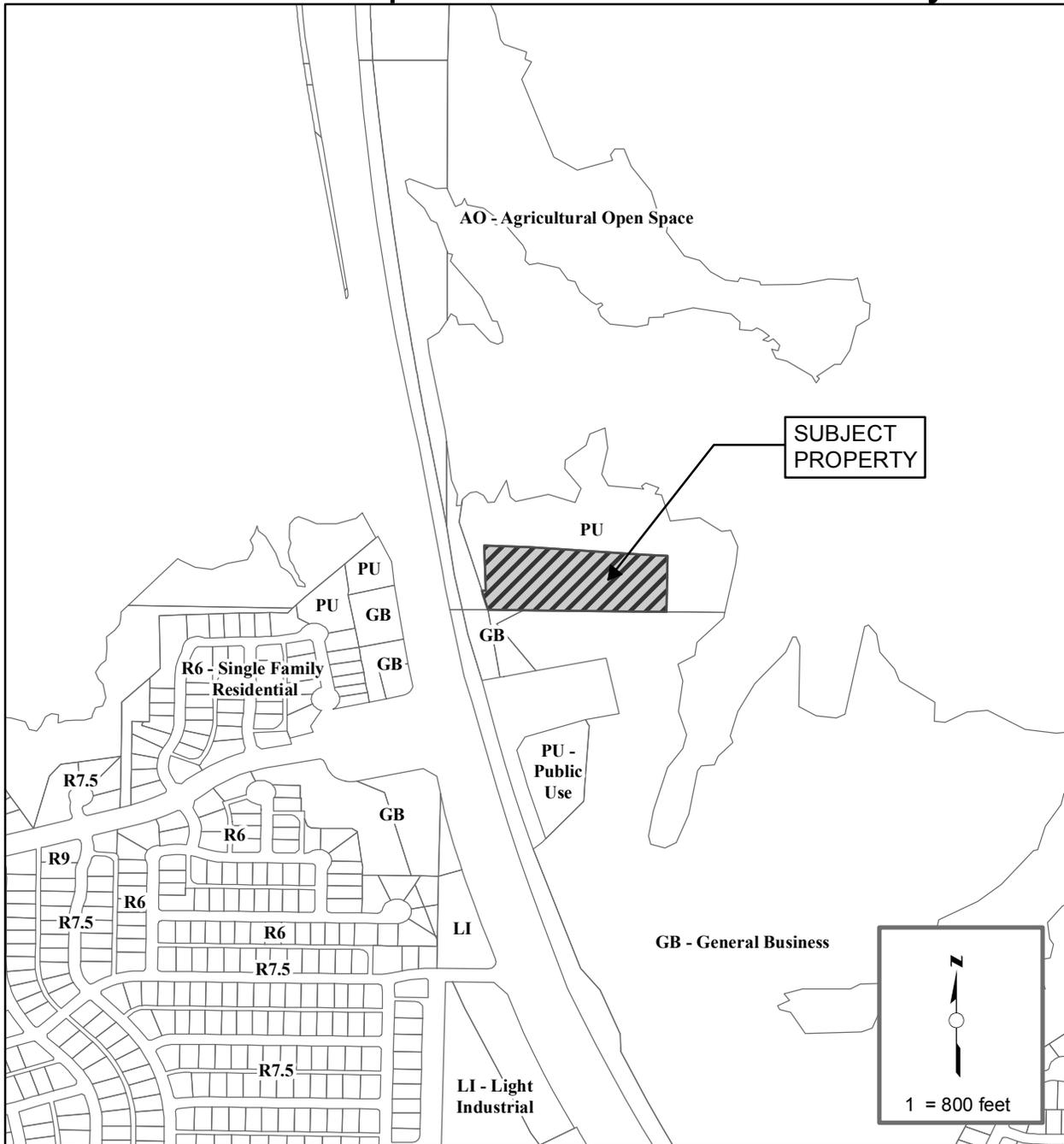
This section requires a tree from the approved tree list for required landscaping on private property. The applicant is proposing to provide ornamental trees (Yaupon Holly, River Birch, or Crape-Myrtle) in lieu of the trees on the approved tree list in order to better accommodate the trees in the reduced width landscape strip. Staff recommends approval of the variance.

The purpose of the Planned Development zoning district is to accommodate innovative design concepts and provide flexibility in order to achieve a more desirable development. This site is a property with many development challenges in a highly desirable location within the City. The proposal offers a variety of apartment units with projected high rental rates. The location of this development is within walking distance to the most northern DCTA rail station, creating a preferred transit oriented development with higher density in this area, which is in alignment with the "New Neighborhood Choices" provision of the Lewisville 2025 Plan.

### **RECOMMENDATION**

It is City staff's recommendation that the City Council approve the proposed ordinance and five associated variances as set forth in the caption above.

# Location Map - 3000 N Stemmons Fwy.



**ZONING CASE NO.PZ-2016-07-18**

**PROPERTY OWNER:** H198, LLC  
**APPLICANT:** G&A CONSULTANTS, LLC  
**PROPERTY LOCATION:** 3000 N. STEMMONS FREEWAY (5.082-ACRES)  
**CURRENT ZONING:** MULTI-FAMILY 1 (MF1)  
**REQUESTED ZONING:** PLANNED DEVELOPMENT – MIXED USE (PD-MU)

# Aerial Map - 3000 N Stemmons Fwy.



**MINUTES  
PLANNING AND ZONING COMMISSION  
JULY 19, 2016**

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**Item 1:**

The Lewisville Planning and Zoning Commission meeting was called to order at 6:30 p.m. Members present: James Davis, Steve Byars, Mary Ellen Miksa, Alvin Turner, William Meredith and Kristin Green. Member John Lyng was absent.

Staff members present: Richard Luedke and Mary Paron-Boswell.

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**Item 4:**

- A. **Public Hearing:** Consideration of a Zone Change Request From Multi-Family One (MF-1) to Planned Development-Mixed Use (PD-MU), on an Approximately 5.082-Acre Tract of Land out of the S. Luttrell Survey Abstract 743; Located at 3000 N. Stemmons Freeway; as Requested by G&A Consultants, LLC on Behalf of H198, LLC, the Property Owner. (Case No. PZ-2016-07-18).

Staff provided an overview of the project and indicated that the new 308 unit up-scale apartment complex project would replace the existing mobile home and RV park. The complex will integrate the proposed six story parking garage into the building's façade. The building materials would be a mixture of brick, stone and stucco with metal and wood accents and both vertical and horizontal articulations. Penthouse units would also feature rooftop terraces, and a rooftop deck would provide panoramic views of the lake with indoor and outdoor places to congregate. Outdoor patios and balconies for the individual units are proposed. The site would feature four courtyard areas with a variety of amenities. Additional trails are proposed to connect to the existing Trinity Trail to the north, the DCTA Trail to the south, Highland Lakes Park to the west and to the existing boat docks located on the USACE property. Staff indicated that five variances were being requested with the project and that staff had no objection to the requested variances. Staff also indicated that the location of this development is within walking distance to the DCTA rail station, creating a preferred transit oriented development with higher density in this area in alignment with the "New Neighborhood Choices" provision of the Lewisville 2025 Plan. MaryEllen Miksa asked if there was a need for a deceleration lane. Staff indicated that it was not warranted at this location. Kristin Green asked if the applicant was proposing additional landscaping to make up for the reduced landscape strip. Staff indicated that the proposal illustrates additional trees along the perimeter of the site to compensate for the reduced landscape strip. James Davis asked if the site would be impacted by the I-35E widening. Staff responded that the site will not be impacted since the widening is taking place on the west side of the rail line.

The public hearing was the opened and Al Crozier, owner and developer of the property gave a presentation referencing that he has been looking at this property for over 10 years and was recently able to purchase it. He indicated that he was interested in completing the trail linkages

and was excited that the residents would have the option to access the train station for commuting. Mr. Crozier discussed plans to create a sky lounge with lake views. He has secured the financing to complete this project which will take two years to build. He discussed the architectural detail to incorporate the garage into the façade. James Davis asked what the projected average rent would be for an apartment. Mr. Crozier explained that the minimum rent would be \$1.68 per square foot; however, he expected the actual rent to be closer to \$2.00 per square foot. Steve Byars asked when construction would begin. Mr. Crozier indicated that construction would take approximately two years and that he hoped they could begin in summer of 2017. Alvin Turner if there were any issues associated with traffic on Eagle Point Drive from Sneaky Petes. Mr. Crozier indicated that his team looked into traffic patterns in the area and found no potential traffic issues. William Meredith asked if the proposed amenities would be open to the public. Mr. Crozier indicated that the trails would be open to the public but that the building's amenities would be only for the residents of the building and their guests. There being no one else present to speak, the public hearing was then closed. James Davis and Steve Byars acknowledged their support for the project. *A motion was made by Kristen Green to recommend approval of the zone change request, seconded by Alvin turner. The motion passed unanimously (6-0).*

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## **SECTION 17-15. - "MF-1" MULTI-FAMILY ONE DISTRICT REGULATIONS**

- (a) *Use.* A building or premise shall be used only for the following purposes:
- (1) Multi-family dwellings.
  - (2) Dormitories for students.
  - (3) Fraternity or sorority house.
  - (4) Nursing and convalescent homes.
  - (5) Day nurseries.
  - (6) Church worship facilities.
  - (7) Buildings and uses owned or operated by public governmental agencies.
  - (8) Schools, private, with full curriculum accredited by the State of Texas equivalent to that of a public elementary or high school.
  - (9) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
  - (10) Accessory buildings and uses, customarily incidental to the above uses, and located on the same lot therewith, not involving the conduct of a retail business except as provided herein.
  - (11) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
  - (12) Gas and oil drilling accessory uses (SUP required).
  - (13) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
- (b) *Height.* No building shall exceed thirty-five (35) feet or two (2) stories in height except that a building may be erected to a height of eighty (80) feet and eight (8) stories if set back from all required yard lines a distance of one (1) foot for each two (2) feet of additional height above thirty-five (35) feet.
- (c) *Area.*
- (1) *Size of yards.*
    - a. *Front yard.* There shall be a front yard having a required depth of not less than twenty-five (25) feet. Furthermore, required parking shall not be allowed within the required front yard.
    - b. *Side yard.* There shall be a side yard on each side of the lot having a width of not less than twenty-five (25) feet.
    - c. *Rear yard.* There shall be a rear yard having a depth of not less than twenty-five (25) feet.
  - (2) *Size of lot.*
    - a. *Lot area.* No building shall be constructed on any lot of less than forty-five hundred (4,500) square feet. No building containing two (2) or more dwelling units shall be constructed on any lot of less than nine thousand (9,000) square feet.
    - b. *Lot Width.* The width of the lot shall not be less than fifty (50) feet at the front street building line, nor shall its average width be less than fifty (50) feet.
    - c. *Lot Depth.* The average depth of the lot shall not be less than one hundred (100) feet, except that a corner lot, having a minimum width of not less than eighty (80) feet, may have an average depth of less than one hundred (100) feet provided that the minimum depth is no less than eight (80) feet.
    - d. *[Exception]* Where a lot having less area, width and/or depth than herein required existed in separate ownership upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a one-family dwelling thereon.
  - (3) *Minimum dwelling size.*
    - a. The minimum floor area of each two (2), three (3), or four (4) family dwelling unit shall contain a minimum of eight hundred (800) square feet of livable floor space,

exclusive of garages, porches, breezeways, entry hallways or incidental storage, for each family to be housed in said building.

- b. Every other building or portion thereof hereafter erected, reconstructed, altered or enlarged, shall contain an average of eight hundred (800) square feet and a minimum of six hundred fifty (650) feet square feet of liveable floor space, exclusive of garages, porches, breezeways, entry halls or incidental storage, for each family to be housed in said building.
  - c. The eight hundred (800) square foot average shall apply to the total number of units to be constructed under the same building permit where five (5) or more buildings are to be erected under the same building permit.
- (4) *Lot coverage.* In no case shall more than forty percent (40%) of the total lot area be covered by the combined area of the main buildings and accessory buildings.
- (5) *Density.* In no case shall the density of units per platted acre exceed twenty (20) units per acre. Drainage right-of-way which is dedicated to the city as a condition for development may be included in the total area for computing density. Otherwise, density shall be based on the size of the platted lot.

## **SECTION 17-26. – “PD” Planned Development District**

- (a) *General Purpose and Description.* The Planned Development District is a district which accommodates planned associations of uses developed as integral land use units such as industrial districts, offices, commercial or service centers, shopping centers, residential developments of multiple or mixed housing including attached single-family dwellings or any appropriate combination of uses which may be planned, developed, or operated as integral land use units either by a single owner or a combination of owners. A Planned Development (PD) District may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this Ordinance. While greater flexibility is given to allow special conditions or restrictions, which would not otherwise allow the development to occur, procedures are established herein to ensure against misuse of increased flexibility. The minimum area for a Planned Development (PD) District shall be five (5) acres.
- (b) *Permitted Uses.* An application for a PD District shall specify the base district(s), the use or the combination of uses proposed. Uses which may be permitted in a PD must be specified if not permitted in the base district. In the case of residential PD districts for single-family or duplex categories, the proposed lot area shall be no smaller than the lot sizes allowed in the base zoning district except for minor reductions in a small percentage of the lots in order to provide improved design. In selecting a base zoning district, the uses allowed in the base district must be similar or compatible with those allowed in the PD. PD designations shall not be attached to Special Use Permit (SUP) requirements. Special Use Permits allowed in a base zoning district are allowed in a PD only if specifically identified at the time of PD approval.
- (c) *Planned Development Requirements.*
- (1) Development requirements for each separate PD District shall be set forth in the amending Ordinance granting the PD District and shall include, but may not be limited to: uses, density, lot area, lot width, lot depth, yard depths and widths, building height, building elevations, building material coverage, floor area ratio, parking, access, screening, landscaping, accessory buildings, signs, lighting, hours of operation, project phasing or scheduling, management associations, and other requirements as the City Council and Planning and Zoning Commission may deem appropriate.
  - (2) In the PD District, uses shall conform to the standards and regulations of the base-zoning district to which it is most similar. The base zoning district shall be stated in the granting Ordinance. All applications to the City shall list all requested deviations from the standard requirements set forth throughout this Ordinance (applications without this list will be considered incomplete) specifically any deviation not requested is deemed to comply with this Ordinance even if shown graphically on a Site Plan. The Planned Development District shall conform to all other sections of this Ordinance unless specifically excluded in the granting Ordinance.
  - (3) The Ordinance granting a PD District shall include a statement as to the purpose and intent of the PD granted therein. A specific list is required of modifications in each district or districts and general statement citing the reason for the PD request.
- (d) In establishing a Planned Development District in accordance with this section, the City Council shall approve and file as part of the amending Ordinance appropriate plans and standards for each Planned Development District. To facilitate understanding of the request during the review and public hearing process, the Planning and Zoning Commission and City Council shall require a Concept Plan. All PD applications shall have a written proposal explaining all aspects of the requested PD including any deviations from this Ordinance. The Concept Plan shall be submitted by the applicant at the time of the PD request. The plan shall show the applicant's intent for the use of the land within the proposed Planned Development District in a graphic manner and as may be required, supported by written documentation of proposals and standards for development. The City may prepare application form(s), which further describe and explain the following requirements:
- (1) Residential Concept Plan - A Concept Plan for residential land use shall show the following:

- a. General use
- b. Thoroughfares
- c. Preliminary lot arrangements
- d. Size, type and location of buildings and building sites
- e. Access
- f. Density
- g. Building height
- h. Fire lanes
- i. Screening
- j. Landscaped areas
- k. Project scheduling and phasing
- l. Any other pertinent development data

(2) Non-Residential Concept Plan - A Concept Plan for uses other than residential uses shall set forth the land use proposals in a manner to adequately illustrate the type and nature of the proposed development. Data which may be submitted by the applicant, or required by the City staff, Planning and Zoning Commission, or City Council, may include but is not limited to the following:

- a. Types of use(s)
- b. Topography and boundary of PD area
- c. Physical features of the site
- d. Existing streets, alleys and easements
- e. Location of future public facilities
- f. Building height and location
- g. Parking areas and ratios
- h. Fire lanes
- i. Project scheduling and phasing
- j. Landscape plans
- k. Screening
- l. Building elevations
- m. Any other information to adequately describe the proposed development and to provide data for approval which is to be used in drafting the required Engineering Site Plan.

(e) *Approval Process and Procedure.* The procedure for establishing a Planned Development District shall follow the procedure for zoning amendments as set forth in Section 17-37. This procedure is further expanded as follows for approval of Concept Plans.

- (1) The Planning and Zoning Commission shall recommend and the City Council shall approve a Concept Plan in public hearings. One public hearing at the Planning and Zoning Commission and one at the City Council for the PD request is adequate when:
  - a. Information on the Concept Plan and attached application is sufficient to determine the appropriate use of the land and the required Engineering Site Plan and/or preliminary/final plat will not deviate substantially from it; or
  - b. The applicant submits adequate data with the request for the Planned Development District to fulfill the requirement for an Engineering Site Plan and/or preliminary/final plat.
- (2) The amending Ordinance establishing the Planned Development District shall not be approved until the Concept Plan is approved.
- (3) An Engineering Site Plan shall be submitted for approval within one (1) year from the date of approval of the Concept Plan for all or some portion of the Concept Plan. If an Engineering Site Plan is not submitted within one (1) year, the Concept Plan is subject to

review by the Planning and Zoning Commission and City Council. If some portion of the project is not started within two (2) years, the Planning and Zoning Commission and City Council may review the original Concept Plan to ensure its continued validity. If the City determines the Concept Plan is not valid, a new Concept Plan must be approved prior to submittal of an Engineering Site Plan for the PD District. Although a new Concept Plan may be required to be approved, this does not affect the validity of the PD in terms of uses, density, and other development standards permitted in the PD.

- (4) When a PD District is being considered, a written report from the Director of Economic Development and Planning or his/her designated representative, discussing the impact on planning, engineering, water utilities, electric, sanitation, building inspection, tax, police, fire, and traffic, and written comments from the applicable public agencies shall be submitted to the Planning and Zoning Commission prior to the Commission making any recommendations to the City Council.
- (f) All Planned Development Districts approved in accordance with the provisions of this Ordinance in its original form, or by subsequent amendments thereto, shall be referenced on the Zoning District Map, and a list of such Planned Development Districts together with the category of uses permitted therein, shall be maintained as part of this Ordinance.
- (g) *Planned Unit Development Ordinances Continued.* Prior to adoption of this Ordinance, the City Council has established various Planned Unit Development Districts, all of which are to be continued in full force and effect. The ordinances or parts of ordinances approved prior to this Ordinance shall be carried forth in full force and effect as are the conditions, restrictions, regulations, and requirements which apply to the respective Planned Unit Development Districts shown on the Zoning Map at the date of adoption of this Ordinance.

## **SECTION 17-22.8.2 - "MU" MIXED USE DISTRICT REGULATIONS**

(a)

*Use.* The MU district is intended to provide a planning, regulatory, and management framework for the design, development, and operation of mixed-use centers which promote social interaction, community identity, and efficient use of land and resources. The MU district should also support and encourage a variety of transportation options, including transit, bicycles, and walking.

Uses may include, but are not limited to:

- (1) Department stores and similar retail stores.
- (2) Professional service offices, such as doctors, attorneys, architects, engineers, real estate, insurance and veterinarian clinics with no outside runs.
- (3) Restaurants, including those with outdoor seating areas.
- (4) Apartments (for sale or for rent units) and single family attached dwelling units (townhouses).
- (5) Grocery stores.
- (6) Video rental stores, movie theaters and other indoor amusements.
- (7) Barber and beauty shops.
- (8) Book, card, gift and stationary stores.
- (9) Dry cleaning and laundry services.
- (10) Gasoline service stations, excluding those with motor or transmission repair services (SUP required).
- (11) Florists.
- (12) Day nurseries.
- (13) Hotels.
- (14) Automobile parking structures.
- (15) Church worship facilities.
- (16) Buildings and uses owned or operated by public governmental agencies.
- (17) Other retail, office and service uses of a similar nature provided that the business supplies the everyday needs of the immediate neighborhood and is subject to the following conditions:
  - a. The incidental display or sale of merchandise placed on private sidewalks in front of the store selling the merchandise shall be allowed during store operating hours. Uses involving overnight outside display of merchandise shall be prohibited except for seasonal sales for periods not to exceed 30 consecutive days and a maximum 60 days per year (i.e. Christmas tree sales and sidewalk sales).
  - b. Outside storage is prohibited.
  - c. Platted front and side yards shall not be used for storage of merchandise, equipment, or waste containers, except as noted in section "a." above.
  - d. The use not be objectionable because of odor, excessive light, smoke, dust, noise, vibration, or similar nuisance.
  - e. Only residential uses shall be allowed in Apartment and Townhouse units except commercial uses qualifying as a Home Occupation.
- (18) Temporary buildings for uses incidental to construction work on the premises. Such buildings shall be removed upon the completion or abandonment of construction work.
- (19) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, dust, noise, vibration or similar nuisance.
- (20) Bed and breakfast (SUP required).
- (21) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
- (22) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
- (23) Brewery, distillery, or winery.
- (24) Hotels, motels and inns with rooms containing a cooktop or oven (SUP required).

(b) *Height.* No building shall exceed (80) feet in height, except that a building may be erected to a height of more than 80 feet if set back from all required yard lines a distance of one (1) foot for each two (2) feet of additional height above 80 feet.

- (c) *Area.*
- (1) *Size of yards.*
- a. *Front yard.* There shall be a front yard having a minimum depth of twenty (20) feet except that a setback of not less than twenty five (25) feet shall be provided adjacent to a state or federal highway.
  - b. *Side yard.* A side yard of not less than fifteen (15) feet shall be provided on the side of a lot adjoining a side street, except that a setback of not less than twenty five (25) feet shall be provided adjacent to a state or federal highway otherwise no side yard setback is required.
  - c. *Rear yard.* No rear setback is required except that a setback of not less than twenty five (25) feet shall be provided adjacent to a state or federal highway.
- (d) *Apartment use.*
- (1) *Minimum dwelling size.* The floor area of any apartment unit shall contain a minimum of 500 square feet of livable floor space, but units within any single building must contain an average of 650 square feet of livable floor space, excluding garages, porches, breezeways, common entry halls or common storage.
- (e) *Single family attached (townhouse) use.*
- (1) *Minimum dwelling size.* The floor area of each townhouse unit shall contain a minimum of 1,200 square feet of livable floor space, exclusive of garages, porches, breezeways, common entry halls or common storage.
- (2) *Size of lot.*
- a. *Lot area.* No building shall be constructed on any lot less than 1,700 square feet per dwelling unit.
  - b. *Lot width.* The width of a lot shall not be less than 20 feet at any point.
  - c. *Lot depth.* The depth of a lot shall not be less than 75 feet at any point.
- (f) *Concept plan required.*
- (1) At the time of submitting a request for a change in zoning to mixed use, the applicant shall include a concept plan for the proposed development. The concept plan is a comprehensive narrative, complete with illustrations, outlining the proposed development in detail. The concept plan shall show the applicant's intent for the use of the land within the proposed zoning district in a graphic manner and as may be required, supported by written documentation of proposals and standards for development.
- (2) The concept plan shall include and is not limited to the following:
- a. Thoroughfares and access
  - b. Preliminary lot layout
  - c. Size, type and location of buildings and building sites
  - d. Density, number of dwelling units, square feet of non-residential uses
  - e. Screening
  - f. Concept landscape plan
  - g. Lighting plan
  - h. Building elevations in color (1 set)
  - i. Exterior finish material and architectural character
  - j. Open Space and amenities
  - k. Phasing plan
  - l. Project scheduling
  - m. Items not consistent with the city's general development ordinance; and requested variances
  - n. Traffic study (if needed)
  - o. Physical features of the site

- p. General uses and location of buildings
- (3) The plat and engineering site plan shall be substantially consistent with the concept plan approved with the zoning request. If the number of dwelling units, total amount of non-residential uses, proposed open space and amenities differs from the concept plan by more than ten percent (10%) the applicant will be required to file a new zone change request. Changes to the concept plan not impacting the above conditions including changes in the building layout may be approved by the planning and zoning commission with an amended concept plan and narrative submittal explaining the conditions for change. Denials may be appealed to the city council for a final resolution.

This Section (Office Use Only)	
Case:	
PZ:	CC:
Sign/s Picked Up By:	



**LEWISVILLE**  
 Deep Roots. Broad Wings. Bright Future.

**ZONE CHANGE APPLICATION**

Owner/s (name): TO BE FORMED SINGLE ASSET ENTITY - ALFRED CROZIER	
Company Name: "	
Mailing Address: 1603 LBT FREEWAY, SUITE 750 DALLAS TX 75284	
Work #: 713-395-98008	Cell #: SAME
E-Mail: acrozier@abbydev.net	
Owner Signature (Owner/s Must Sign or Submit Letter of Authorization):	Date: 5/13/16
Printed Name: ALFRED CROZIER	

Applicant/Agent (name): Randi Rivera / Bobby Dollak	
Company Name: B&A Consultants, LLC	
Mailing Address: 111 Hillside Dr., Lewisville, TX 75057	
Work #: 972.436.9712	Cell #:
E-Mail: randi@gacon.com	
Applicant/Agent Signature: Randi Rivera	Date: 5/13/16
Printed Name: Randi Rivera	

Current Zoning: MF-1	Requested Zoning: PD w/ MU	Acres: 5.082
Legal Description (Lot/ Block/Tract/Abstract): Tract 1, Shelton Luttrell Survey, Abstract No. 743		
Address/Location: 3000 N. Stemmons Fwy		

**Application and Sign Fees:**

	Less than 1/2 acre	\$ 150.00
	1/2 acre up to 4.99 acres	\$ 250.00
✓	5 acres up to 24.99 acres	\$ 400.00

	25 acres up to 49.99 acres	\$ 750.00
	50 acres up to 99.99 acres	\$1,000.00
	100 acres and more	\$1,500.00

Qty: _____	Zone Change Signs - \$35 each. 1 sign required for each 5 acres (max. 5 per site)	\$ _____
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Sign(s) must be posted a minimum of ten (10) days prior to the Planning & Zoning hearing date.

Amount Due (application & sign fee)	\$ 400.00
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SITE PLANNING CIVIL ENGINEERING PLATTING  
**CONSULTANTS, INC.**  
LAND SURVEYING LANDSCAPE ARCHITECTURE

July 14, 2016

Ms. Nika Reinecke  
Director of Economic Development and Planning  
City of Lewisville  
131 Church St  
Lewisville TX, 75057

**RE: Tower Bay Lofts  
Variance Request Letter  
G&A Job No. 16022**

Ms. Reinecke:

Please accept this letter as an explanation of the requested variances for approximately 5 acres of land known as the Tower Bay Lofts, generally located northeast of the intersection of I-35E and Garden Ridge Boulevard.

- A. To waive the requirement of a deceleration lane along a major traffic carrier.

Section 6-103.E.1-8 of the general development ordinance states that a deceleration lane is required along a major traffic carrier such as the I-35E service road. This service road has a low volume of traffic since it dead ends into the parking lot and boat ramp for the lake. The owner is requesting that this requirement be waived since the site will not be experiencing a high traffic volume situation.

- B. To allow a driveway spacing along a frontage road of 145.1'.

Section 6-103.C.2A of the general development ordinance states that driveways along frontage roads, such as the I-35E service road, shall be a minimum of 230' apart. The proposed drives are 145.1' apart. This service road has a low volume of traffic since it dead ends into the parking lot and boat ramp for the lake. The owner is requesting that a spacing of 145.1' be allowed in lieu of the required 230' since the site will not be experiencing a high traffic volume situation.

- C. To allow a reduction in the required parking from 2 parking spaces per unit to 1.73 parking spaces per unit.

Section 6-162.A-9 of the general development ordinance (parking requirements based on use, dwelling, multi-family) parking requirements for multi-family is 2 spaces for each dwelling unit; except that deed restricted senior apartments shall be calculated at 1.2 parking spaces for each dwelling unit. The 308 unit multi-family building required parking would be 616 spaces. The request is to provide 534 spaces or 1.73 spaces per unit. Based on the fact that 63% of the units

are one bedroom the owner has determined that the building can effectively operate with the reduced parking ratio.

- D. To allow a 3.5' landscape buffer in lieu of the required 10' landscape buffer.

Section 6-123.B of the general development ordinance (multi-family and non-residential landscaping requirements) requires a 10 foot landscape strip along the frontage of the property that would include 1 tree for every 50 feet or 500 square feet. Due to the density of the site this cannot be achieved. The owner has requested that a 3.5' landscape buffer be allowed in lieu of the required 10' landscape buffer.

- E. To allow ornamental trees in the landscape buffer in lieu of the required private landscape requirements.

Section 6-123.B of the general development ordinance (multi-family and non-residential landscaping requirements) requires a 10' landscape strip along the frontage of the property that includes 1 tree for every 50 feet or 500 square feet. Due to the reduced landscape buffer the owner has requested the planting of the ornamental trees in lieu of the required tree planting in the landscape buffer.

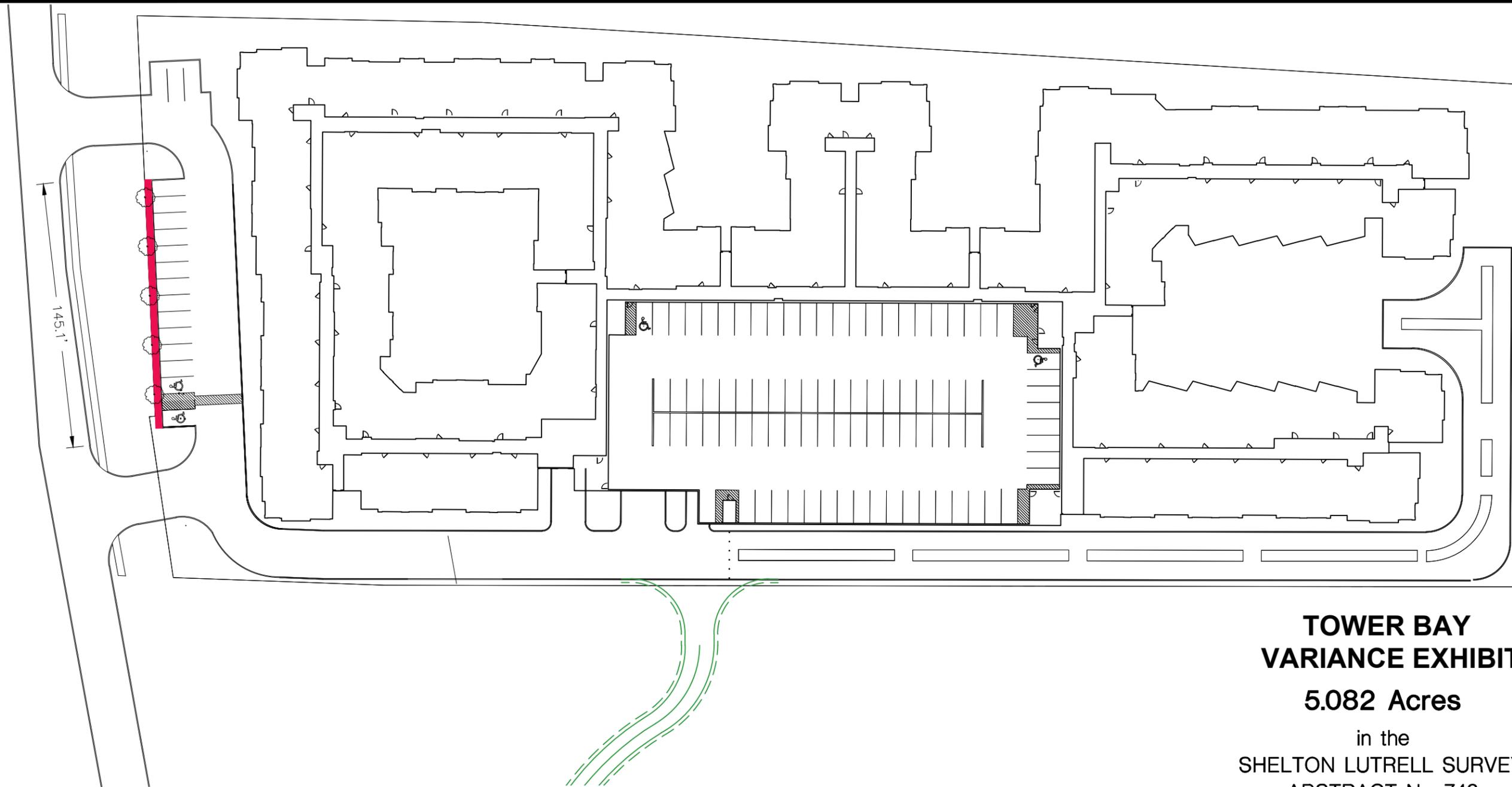
Thank you in advance for your consideration of these requests. Please do not hesitate to contact me with any questions or comments regarding this application.

Sincerely,



Josh Barton, E.I.T.

File: Z:\2016\16022\Drawings\Exhibit\Exhibits\16022 Variance Exhibit  
Plotted: 7/14/2016 4:54 PM, by Josh Barton. Saved: 7/14/2016 4:53 PM, by Josh



**TOWER BAY  
VARIANCE EXHIBIT**  
**5.082 Acres**  
in the  
SHELTON LUTRELL SURVEY,  
ABSTRACT No. 743  
CITY OF LEWISVILLE  
DENTON COUNTY, TEXAS

"VARIANCES APPROVED BY CITY COUNCIL ON \_\_\_\_\_"

- A. TO WAIVE THE REQUIREMENT OF A DECELERATION LANE ALONG A MAJOR TRAFFIC CARRIER.
- B. TO ALLOW A DRIVEWAY SPACING ALONG A FRONTAGE ROAD OF 145.1'.
- C. TO ALLOW A REDUCTION IN THE REQUIRED PARKING FROM 2 PARKING SPACES PER UNIT TO 1.73 PARKING SPACES PER UNIT.
- D. TO ALLOW A 3.5' LANDSCAPE BUFFER IN LIEU OF THE REQUIRED 10' LANDSCAPE BUFFER.
- E. TO ALLOW ORNAMENTAL TREES IN THE LANDSCAPE BUFFER IN LIEU OF THE REQUIRED PRIVATE LANDSCAPE REQUIREMENTS.

Revisions:



**SITE PLANNING CIVIL ENGINEERING PLATTING**  
**CONSULTANTS, LLC**  
LAND SURVEYING LANDSCAPE ARCHITECTURE



111 Hillside Drive • Lewisville, TX 75057 • P: 972.436.9712 • F: 972.436.9715  
144 Old Town Blvd. North, Ste 2 • Argyle, TX 76226 • P: 940.240.1012 • F: 940.240.1028  
TBPE Firm No. 1798 TBPLS Firm No. 10047700

DRAWN BY: RT 7/14/2016

SCALE: 1" = 60' JOB. No. **16022**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE LEWISVILLE CITY COUNCIL, AMENDING THE ZONING ORDINANCE BY REZONING AN APPROXIMATELY 5.082-ACRE TRACT OF LAND OUT OF THE S. LUTTRELL SURVEY, ABSTRACT NO. 743; LOCATED AT 3000 NORTH STEMMONS FREEWAY; FROM MULTI-FAMILY ONE DISTRICT (MF-1) ZONING TO PLANNED DEVELOPMENT-MIXED USE DISTRICT (PD-MU) ZONING; CORRECTING THE OFFICIAL ZONING MAP; PRESERVING ALL OTHER PORTIONS OF THE ZONING ORDINANCE; DETERMINING THAT THE PUBLIC INTERESTS AND GENERAL WELFARE DEMAND THIS ZONING CHANGE AND AMENDMENT THEREIN MADE; PROVIDING FOR A REPEALER, SEVERABILITY, AND A PENALTY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, applications were made to amend the Official Zoning Map of Lewisville, Texas by making applications for same with the Planning and Zoning Commission of the City of Lewisville, Texas, as required by State statutes and the Zoning Ordinances of the City of Lewisville, Texas, said Planning and Zoning Commission has recommended that rezoning of the approximately 5.082-acre property described in the attached Exhibit “A” (the “Property”) be **approved**, and all the legal requirements, conditions and prerequisites having been complied with, the case having come before the City Council of the City of Lewisville, Texas, after all legal notices, requirements, conditions and prerequisites having been complied with; and,

**WHEREAS**, the City Council of the City of Lewisville, Texas, at a public hearing called by the City Council of the City of Lewisville, Texas, did consider the following factors in making a determination as to whether this requested change should be granted or denied: effect on the congestion of the streets; the fire hazards, panics and other dangers possibly present in the securing of safety from same; the effect on the promotion of health and the general welfare; effect on adequate

light and air; the effect on the overcrowding of the land; the effect of the concentration on population; the effect on the transportation, water, sewerage, schools, parks and other public facilities; and,

**WHEREAS**, the City Council further considered among other things the character of the district and its peculiar suitability for particular uses and with the view to conserve the value of buildings, encourage the most appropriate use of land throughout this City; and,

**WHEREAS**, the City Council of the City of Lewisville, Texas, does find that there is a public necessity for the zoning change, that the public interest clearly requires the amendment, that the zoning changes do not unreasonably invade the rights of adjacent property owners; and,

**WHEREAS**, the City Council of the City of Lewisville, Texas, does find that the change in zoning lessens the congestion in the streets; helps secure safety from fire, panic and other dangers; promotes health and the general welfare; provides adequate light and air; prevents the overcrowding of land; avoids undue concentration of population; facilitates the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; and,

**WHEREAS**, the City Council of the City of Lewisville, Texas, has determined that there is a necessity and need for this change in zoning and has also found and determined that there has been a change in the conditions of the property surrounding and in close proximity to the Property since it was originally classified and, therefore, feels that a change in zoning classification for the Property is needed, is called for, and is in the best interest of the public at large, the citizens of the City of Lewisville, Texas, and helps promote the general health, safety, and welfare of this community.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:**

**SECTION 1.** The Zoning Ordinance of the City of Lewisville, Texas, be, and the same is hereby amended and changed in that the zoning of the Property is hereby changed to **PLANNED DEVELOPMENT – MIXED USE DISTRICT (PD-MU) ZONING** and in compliance with the proposed narrative, planned development regulations, concept plan, elevations and trail map exhibit, attached hereto as Exhibit “B”; and

**SECTION 2.** The City Manager, or her designee, is hereby directed to correct the official zoning map of the City of Lewisville, Texas, to reflect this change in zoning.

**SECTION 3.** That in all other respects the use of the tract or tracts of land hereinabove described shall be subject to all the applicable regulations contained in said City of Lewisville Zoning Ordinance and all other applicable and pertinent ordinances of the City of Lewisville, Texas.

**SECTION 4.** That the zoning regulations and districts as herein established have been made in accordance with the comprehensive plan for the purpose of promoting health, safety, and the general welfare of the community. They have been designed with respect to both present conditions and the conditions reasonably anticipated to exist in the foreseeable future, to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; facilitate the adequate provisions of transportation, water, sewage, parks and other public requirements, and to make adequate provisions for the normal business, commercial needs and development of the community. They have been made with reasonable consideration, among other things of the character of the district, and its peculiar suitability for the particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

**SECTION 5.** This Ordinance shall be cumulative of all other ordinances of the City of Lewisville, Texas, affecting zoning and shall not repeal any of the provisions of said ordinances, except in those instances where provisions of those ordinances which are in direct conflict with the provisions of this Ordinance.

**SECTION 6.** That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of the zoning affecting any portion of the Property shall be declared to be invalid, the same shall not affect the validity of the zoning of the balance of the tract or tracts of land described herein.

**SECTION 7.** Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

**SECTION 8.** The fact that the present Zoning Ordinance and regulations of the City of Lewisville, Texas are inadequate to properly safeguard the health, safety, peace and general welfare of the inhabitants of the City of Lewisville, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance shall become effective from and after the date of its final passage, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF \_\_\_\_\_ TO \_\_\_\_\_, ON THIS THE 1ST DAY OF AUGUST, 2016.**

**ORDINANCE NO.** \_\_\_\_\_

**Page 5**

**APPROVED:**

\_\_\_\_\_  
Rudy Durham, MAYOR

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, CITY ATTORNEY

**ORDINANCE NO.** \_\_\_\_\_

Exhibit A  
Legal Description

Exhibit B  
Narrative  
Planned Development Regulations  
Concept Plan  
Elevations  
Trail Map Exhibit

LEGAL DESCRIPTION

5.082 ACRES

Being all that certain lot, tract or parcel of land situated in the Shelton Luttrell Survey, Abstract Number 743, City of Lewisville, Denton County, Texas, and being part of that certain called 7.19 acre tract described in deed to Henry L. Sullivan recorded in Volume 352, Page 396 of the Deed Records of Denton County, Texas, and being all of that certain called 1.77 acre tract of land and all of that certain called 0.08 acre tract of land described in Quitclaim Deed from the United States of America to Henry L. Sullivan recorded in Volume 805, Page 379 of the Deed Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a United States Army Corps of Engineers (USACE) concrete monument with brass cap stamped D-43-A found at the northwest corner of said 0.08 acre tract;

THENCE S 88°52'50" E, 189.01 feet (called 188.35 feet) with the north line of said 0.08 acre tract to a USACE concrete monument with brass cap stamped D-42 found at the northeast corner thereof, being the northwest corner of said 1.77 acre tract;

THENCE S 86°35'10" E, 568.62 feet with the north line of said 1.77 acre tract to a USACE concrete monument with brass cap stamped D-35-A found at the northeast corner thereof;

THENCE S 00°11'00" W, 275.10 feet (called 274.95 feet) with the east line of said 1.77 acre tract to a USACE concrete monument with brass cap stamped D-34-A found at the southeast corner thereof;

THENCE N 89°55'00" W, 620.11 feet (called 619.75 feet) with the south line of said 1.77 acre tract to a USECE concrete monument with brass cap stamped D-32 found at the southwest corner thereof, being on the south line of said 7.19 acre tract and being on the north line of that certain called 100 acre tract of land described in deed to Frank O. Long recorded in Volume 270, Page 487 of the Deed Records of Denton County, Texas, and being the easterly northwest corner of that certain called 91 acre tract of land described in deed to the United States of America recorded in Volume 380, Page 51 of the Deed Records of Denton County, Texas;

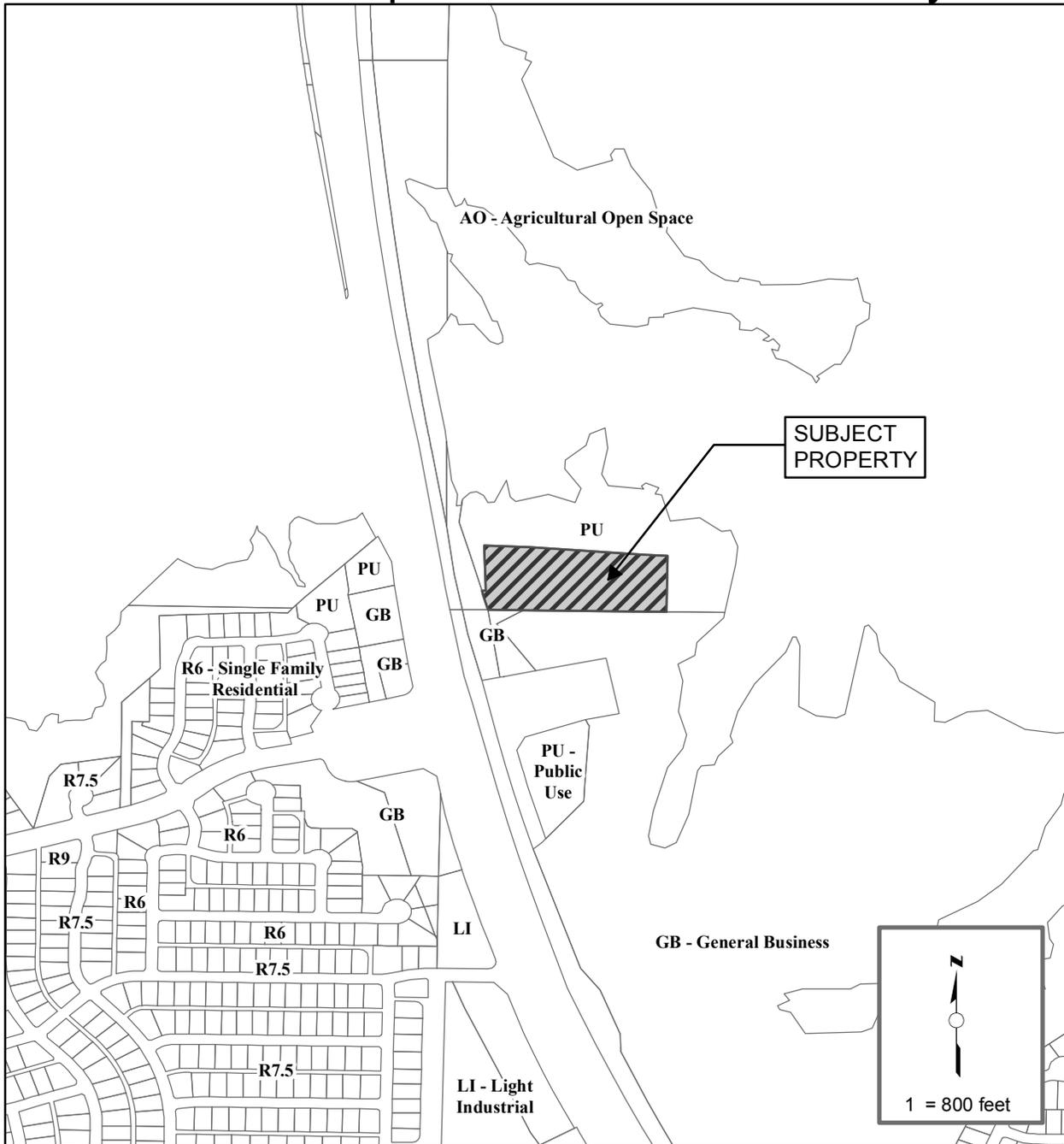
THENCE N 87°56'00" W, 115.81 feet with the south line of said 7.19 acre tract, the north line of said 100 acre tract and the westerly north line of said 91 acre tract to the east line of I.H. 35E as evidenced by that certain called 0.12 acre tract described in Cause No. 4736, Styled Denton County v. H. L. Sullivan and wife, Mrs. H. L. Sullivan dated September 26, 1958, recorded in Volume 13, Page 543 of the Civil Minutes of the Commissioners Court of Denton County, Texas, being the southeast corner thereof and being the northeast corner of that certain called 1.66 acre tract of land described as Tract I in Cause No. 4543, Styled Denton County v. Frank O. Long and wife, Mrs. Frank O. Long dated November 26, 1957;

THENCE N 08°30'00" W, 89.09 feet (called 88.3 feet) with the east line of said I.H. 35E and the east line of said 0.12 acre tract to the northeast corner thereof, being on a south line of that certain called 3.85 acre tract of land described in deed to the United States of America recorded in Volume 382, Page 305 of the Deed Records of Denton County, Texas;

THENCE N 86°25'40" E, 3.26 feet a south line of said 3.85 acre tract to the southwest corner of the aforementioned 0.08 acre tract;

THENCE N 02°35'50" W, 219.48 feet (called 219.40 feet) with the west line of said 0.08 acre tract to the POINT OF BEGINNING and containing approximately 5.082 acres of land.

# Location Map - 3000 N Stemmons Fwy.



**ZONING CASE NO.PZ-2016-07-18**

**PROPERTY OWNER:** H198, LLC

**APPLICANT:** G&A CONSULTANTS, LLC

**PROPERTY LOCATION:** 3000 N. STEMMONS FREEWAY (5.082-ACRES)

**CURRENT ZONING:** MULTI-FAMILY 1 (MF1)

**REQUESTED ZONING:** PLANNED DEVELOPMENT – MIXED USE (PD-MU)



SITE PLANNING CIVIL ENGINEERING PLANNING  
**CONSULTANTS, LLC**  
LAND SURVEYING LANDSCAPE ARCHITECTURE

TBPE Firm No. 1798

TBPLS Firm No. 10047700

# EXHIBIT B

## Narrative

July 8, 2016

Ms. Nika Reinecke  
Director of Economic Development & Planning  
City of Lewisville  
151 Church Street  
Lewisville, TX 75057

**RE: TOWER BAY LOFTS**  
**Proposed PD Zoning Request**  
(G&A Job No. 16022)

Ms. Reinecke:

Please accept this letter, on behalf of Mr. Al Crozier, as an explanation of the proposed PD Zoning Request for approximately five acres of land located at 3000 N. Stemmons Freeway (I-35E), directly adjacent to Lake Lewisville and north of the Garden Ridge overpass and the DCTA station.

The property has been used as a mobile home park for at least the past four decades. It is currently accessed from the northbound service road for I-35E. It is zoned Multi-family – 1 (MF-1) and it is surrounded by City Park (CP) zoning to the north/east and General Business (GB) to the south. Being in such close proximity to the lake, the property is bordered by FEMA floodplain on the north, east, and south portions. Topographically, the site is relatively flat. This property is a prime location for redevelopment due to its access/frontage on I-35E and transit rail, existing topography, rectangular configuration, and, most importantly, its visibility of Lake Lewisville.

Tower Bay Lofts will be the first of its kind in the area by offering upscale living on Lake Lewisville in a four-story, 308 unit building that is rich in amenities with breathtaking views overlooking the lake. The project will feature landscaped courtyards, a roof deck lounge and fitness area, a doggie park/spa, pool courtyard facing the lake, Wi-Fi café, and clubhouse.

The proposed residential building is designed using a “wrapped” method which surrounds structured parking and configured in a way to maximize the number of units with lake views. In total, the proposed maximum density is 61 units per acre. Tower Bay Lofts includes a wide variety of unit types such as, efficiency units, two bedroom units, and multi-story units with penthouses on the top story. All units will include an outdoor patio/balcony. Below is a table showing the breakdown of the different unit types and anticipated rental rates:

Unit Type	Quantity	Rent per Square Foot
Efficiency/ 1 bedroom 1 bath	196	1.87
Two Bedroom	96	1.43
Multi-story (Penthouse)	16	1.85
TOTAL	308	1.69

The proposed PD has been drafted to allow the maximum height and density based on ultimate build-out.

The site will continue to be accessed by the northbound service road of I-35E. We are proposing two points of ingress/egress from the service road with a total of 17 surface parking spaces in close proximity to the main entrance, which is located at the southwestern corner of the building. This configuration will allow guests to park with ease and enter the leasing area and/or clubhouse. There will be additional guest/visitor parking in the garage and residents will have assigned parking areas within the garage as well. The garage includes a total of 530 parking spaces. Please see architectural sheet A1-01 for a further tabulation of the parking. It is accessed by the proposed fire lane that runs parallel along the southern property line with a hammer-head turnaround for adequate maneuverability for fire trucks. The parking garage will also house the mail room for residents and garbage collection service for the complex. An access for emergency personnel only is proposed to tie into the roadway that accesses the overpass of Garden Ridge. This emergency access will be gated, with a Knox box, and is proposed to be 12-foot wide with 2 feet of clearance on each side. It may also be used for pedestrian access in order to connect to the proposed regional trail system and DCTA station. In addition, we are proposing seating opportunities that will be located just beyond the 12-foot drive. Please refer to the Concept Plan for more details on the proposed site layout.

The proposed building architecture was designed to capture some elements from the existing tower that has been on the property for a long period of time. The exterior facades will be a combination of stone and brick with stucco, metal, and wood accents. The building features both horizontal and vertical articulation to enhance the architectural interest while creating a distinct style. The building massing will consist of tower features at the corners as rooftop terraces for the multi-story/penthouse units. These terraces will feature arched openings to look out onto the lake with columns and metal roofs. Another tower feature is located on the south façade for the rooftop lounge, fitness area, and doggie park and it is surrounded by windows to create a more open feel and maximize lake views. The parking structure is also located on the south side of the building and it will seamlessly blend into the proposed architectural style. We are proposing to place a faux-façade with openings on the southern face of the parking structure that matches the other exteriors. Please refer to the attached Conceptual Elevations for a more detailed look at the building architecture.

Tower Bay Lofts – PD Zoning Request  
June 22, 2016  
Page 3 of 3

Water and sanitary sewer will be required to be extended to the site in order to provide adequate services. There is an existing 12-inch waterline in Eagle Point Road, which is to the south, and an existing 8-inch waterline that runs behind the Slalom Shop and DCTA parking area to the southwestern corner of the subject property. In order to establish a loop system, we are proposing another offsite 8-inch water to run parallel with the existing 8-inch but tie into the property at the southeastern corner. For sewer services, an offsite 4-inch force main will be required from a proposed lift station at the southeastern corner of the property and parallel to the proposed 8-inch waterline in a southerly direction and eventually underneath I-35E in an existing utility sleeve to the existing sanitary sewer in McGee Lane.

We anticipate that the overall project value will be \$40 Million. The possible ad-valorem tax benefit can be estimated to be \$869,928 (County \$104,800; City \$174,436; School \$590,692) per year which equates to \$17,398,560 Million for the next 20 years.

The project will be completed in one phase with an anticipated start date of June 2017 and a construction duration of approximately 24 months.

We are very excited to bring this project to the City of Lewisville. We believe that Tower Bay Lofts will help catalyze new development in the northern portion of the city along the I-35E corridor while providing a new and upscale living option for residents.

Sincerely,



Josh Barton, E.I.T.

## TOWER BAY LOFTS – CITY OF LEWISVILLE, TEXAS 7/14/16

### Planned Development Regulations

#### SECTION 1

##### 1.01 Project Location

The project site location, Shelton Lutrell Survey, Abstract No. 743, in the City of Lewisville, Denton County, Texas, recorded in volume 2684, page 543. Site is situated on the east side of Interstate 35, south and west of Lake Lewisville and consist of approximately 5 acres, as described in Exhibit "A".

##### 1.02 Base Zoning District

The base zoning district for this Planned Development (PD) shall be Mixed Use District (MU), as identified in Section 17-22.8.2 in the Zoning Ordinance of the City of Lewisville.

#### SECTION 2

##### 2.01 General Description

- a. The project shall consist a maximum four (4) story apartment building with mezzanines for a height of 65' from grade. The unit mix to include, efficiency units, two bedroom units and multistory units with penthouse/studio/bedroom towers or roof dormers above the roof line. Vehicle access will be provided to I-35 service roads at two locations. Additional fire access will also be provided to I-35 service roads. The parking garage will be no more than six (6) levels above grade with a roof top deck with a height of 80' from grade.
- b. The conceptual layout of the site is shown in Exhibit "B".

##### 2.02 Uses

The uses of this PD shall include all uses permitted by right as listed in the MU Zoning District and including the following:

- a. off street parking, and
- b. maintenance facility and private recreational facilities including, but not limited to swimming pools, clubhouse facilities, leasing office, fitness/lounge/roof deck, courtyards, parks and dog parks.

##### 2.03 Density

There shall be a maximum of 61 dwelling units per acre (308 units).

##### 2.04 Parking

There shall be a minimum of 1.73 spaces per unit.

## 2.05 Building Materials

- a. A minimum of eighty (80%) percent of each exterior façade of the multifamily structure shall have a finish of; natural stone, man-made stone, brick, split-face block of any combination thereof as depicted on the conceptual elevations.
- b. The use of glass metal, stucco, wood, cementitious fiberboard, hardi-board, tile or EIFS as an exterior building material shall be limited to a maximum of twenty (20%) percent.
- c. Percentage calculations shall exclude doors, portals, windows and fenestrations of the total wall surfacing below the top plate line of the elevations.
- d. The proposed building architecture shall be generally consistent with the approved conceptual elevations as shown in Exhibit "C".

## 2.06 Architectural Standards

- a. Windows shall be provided with trim. Windows shall not be flush with the exterior wall treatment and shall be provided with an architectural surround at the jamb.
- b. Building frontages greater than one hundred (100) feet in length shall have recesses, projections, windows, arcades or other architectural features to interrupt the length of the building façade.
- c. Fronts and sides of the building visible from the public right-of-way shall include changes in relief such as columns, cornices, bases, fenestration and/or fluted masonry for at least fifteen (15%) percent of the exterior wall area.

## 2.07 Minimum Dwelling size

The required minimum floor area for a multi-family dwelling unit shall be 500 square feet and shall exclude common corridors, basements, open and screened porches/decks and garages. The average of all units within the building shall be 650 square feet of livable floor space excluding porches, breezeways, common entry halls or common storage. The following shall be the minimum square feet requirement per unit:

- a. Efficiency unit, 500 square feet;
- b. One bedroom unit, 600 square feet, and
- c. Two bedroom unit, 850 square feet.

## 2.08 Lot coverage

No more than eighty (80%) percent of the total lot area shall be covered by the multifamily and garage structure.

2.09 Front Yard

The minimum depth of the front yard shall be twenty-five (25') feet.

2.10 Side Yard

A side yard setback is not required.

2.11 Rear Yard

The minimum depth of the rear yard shall be fifteen (15') feet.

2.12 Building Height

- a. The permitted height of all the multifamily structures shall not exceed four (4) stories, 65'-0" from grade to the top peak of the tower elements.
- b. The permitted height of garage structures shall be six (6) stories with a roof deck/lounge on the top level, 80'-0" from grade to the top peak of the tower element.

2.13 Garbage and Trash Collection

The garbage and trash collection will be provided by the private collection service contracted by the City. All dumpsters shall be screened from public view.

2.14 Amenity Center-Club/Leasing Facility-Lounge

- a. The project may include, but is not limited to, an amenity center, clubhouse/leasing facility and or roof deck lounge/fitness center, a swimming pool, cabanas and landscaping to be owned, operated and maintained by the property owner.
- b. The minimum square footage of the clubhouse/leasing facility shall be fifteen hundred (1500) square feet providing for two (2) restrooms, two (2) offices, common area, and appropriated storage. The leasing office function may be combined with the club facility at Developer's option.
- c. Parking for the leasing facility will be provided at one (1) parking space for each two hundred (200) square feet of floor area.

2.15 Landscape

- a. Due to the increased distance of the service road from the highway and being further separated by the rail, the minimum landscape buffer requirement of ten (10') feet may be reduced to be three and a half (3.5') feet along the service road.
- b. Ornamental trees may be used in lieu of shade trees within the three and a half (3.5) foot landscape buffer along the service road, as shown on the Conceptual Landscape Plan, Exhibit "D".

2.16 Trail Access

Pedestrian access will be provided in order to show connection points to the future city trails as shown on the City's Trails Map which will eventually allow this development to connect to the DCTA station and Katy Trail system.. This access may be any combination of private walkways and public sidewalk/trail. Please refer to the Pedestrian Access as shown on Exhibit F.

2.17 Fire Access

A 26'-0" wide fire access road shall be provided around the south, east and west sides of the property. The existing access road shall provide access to the north side of property. Two access points are provided to the property from the Interstate 35 access road.

2.18 Phasing and Schedule

The project shall be completed in one phase with an anticipated start date of June 2017 and a construction duration of approximately 24 months.

2.19 Lighting

The project lighting will comply with the lighting requirements as listed in the City's Code of Ordinances.

**SECTION 3**

3.01 City Requirements Comparison Chart

The following chart represents the City requirements and the proposed requirements for this PD.

Item	Required	Proposed
Parking for Mutli-Family Units	2 spaces per unit (616 Spaces)	1.73 spaces per unit (534 Spaces)
Street Landscape Buffer	10'	3.5'

Landscape Trees in Street Buffer	Shade Trees	Ornamental Trees
Driveway Spacing	230'	145.1'
Deceleration Lane	Along Frontage	Waive Requirement

**Attachments:**

- Exhibit A – Legal Description
- Exhibit B – Concept Plan
- Exhibit C – Building Elevations
- Exhibit D – Conceptual Landscape Plan
- Exhibit E – Preliminary Utility Layout Exhibit
- Exhibit F – Pedestrian Access Exhibit
- Exhibit G – Survey Metes and Bounds Exhibit
- Exhibit H – Variance Exhibit

**VARIANCES REQUESTED:**

- A. TO WAIVE THE REQUIREMENT OF A DECELERATION LANE ALONG A MAJOR TRAFFIC CARRIER.
- B. TO ALLOW A DRIVEWAY SPACING ALONG A FRONTAGE ROAD OF 145.1'
- C. TO ALLOW A REDUCTION IN THE REQUIRED PARKING FROM 2 PARKING SPACES PER UNIT TO 1.73 PARKING SPACES PER UNIT.
- D. TO ALLOW A 3'5" LANDSCAPE BUFFER IN LIEU OF THE REQUIRED 10' LANDSCAPE BUFFER.
- E. TO ALLOW ORNAMENTAL TREES IN THE LANDSCAPE BUFFER IN LIEU OF THE REQUIRED PRIVATE LANDSCAPE REQUIREMENTS.

**TOWER BAY AMENITIES ELEMENT COURTYARD A**  
 (2) GRILL/COUNTER AREA  
 FOUNTAIN WATER FEATURE  
 FIRE PIT  
 MULTIPLE PATIO CHAIRS, PATIO TABLES WITH CHAIRS AND PICNIC TABLE  
 ARTIFICIAL TURF PLAY AREA  
 DECORATIVE PAVING

**TOWER BAY AMENITIES ELEMENT COURTYARD B**  
 MULTIPLE PATIO TABLES AND CHAIRS  
 DECORATIVE PAVING  
 BEAN BAG TOSS  
 ARTIFICIAL TURF PLAY AREA  
 TRELIS SEATING AREA  
 BARBEQUE GRILL

**TOWER BAY AMENITIES ELEMENT COURTYARD C**  
 (2) FIRE PITS  
 RAISED PLANTER SEATING AREA  
 DECORATIVE PAVING

**TOWER BAY AMENITIES ELEMENT COURTYARD D**  
 POOL W/ TANNING SHELF, WATER VOLLEYBALL, FREE SWIM AREAS  
 MULTIPLE PATIO TABLES W/ GRILL/COUNTER AREA  
 MULTIPLE PATIO TABLES WITH CHAIRS  
 CHAISE LOUNGES  
 TRELIS SEATING AREA WITH HOT SPA  
 PUTTING GREEN  
 DECORATIVE PAVERS

TOWER BAY LOFTS			
UNIT TABULATION - MIX		#15216	
TYPE	AREA	%	TOTAL AREA
E1(a)	575	8.260%	4,600
A1(a,c,d)	979	15.911%	33,271
A1(b)	754	12.022%	15,834
A2(b)	899	14.303%	2,796
A2(a,c,d)	735	11.608%	55,860
A3(a)	772	12.390%	9,264
A4(a,b)	860	13.441%	21,840
B1(a,c,d)	1,036	16.412%	29,008
B1(b)	1,116	17.513%	4,464
B2-PH	1,084	16.905%	9,594
B3(a,b,c,d)	1,199	18.811%	43,956
B4(a)	1,315	20.703%	31,560
B4(b)	1,445	22.703%	5,780
B5-PH(a)	1,584	24.800%	12,472
B5-PH(b)	1,713	26.853%	3,428
<b>TOTAL</b>	<b>308</b>	<b>100.000%</b>	<b>279,336</b>

AVERAGE UNIT SIZE	
REQUIRED	650.00
PROVIDED	908.88

MINIMUM UNIT SIZE	
REQUIRED	500 S.F.
PROVIDED	875 S.F.
ONE BEDROOM	850 S.F.
TWO BEDROOM	850 S.F.

BUILDING FLOORS				
	1ST	2ND	3RD	4TH
NO. FLOORS	1	1	1	1
E1(a)	2	2	2	2
A1(a,c,d)	13	12	12	12
A1(b)	3	6	6	6
A2(b)	1	1	1	1
A2(a,c,d)	19	19	19	19
A3(a)	2	2	4	4
A4(a,b)	8	8	8	2
B1(a,c,d)	7	7	7	7
B1(b)	1	1	1	1
B2-PH	1	1	1	1
B3(a,b,c,d)	9	9	9	9
B4(a)	8	8	8	2
B4(b)	1	1	2	4
B5-PH(a)	1	1	1	1
B5-PH(b)	1	1	1	1
UNITS/FLOOR 74	75	79	79	79
UNITS/FLOOR 76	76	79	79	308

GARAGE TABULATION				
DIRECT	0	0	0	0
ASSIGNABLE	141	89	89	211
<b>TOTAL</b>	<b>141</b>	<b>89</b>	<b>89</b>	<b>530</b>

APARTMENT MIX	
BUILDING	308 TOTAL (PERCENT TOTAL)
ONE BEDROOM	196 UNITS (64%)
TWO BEDROOM	112 UNITS (36%)

SITE TABULATION	
SITE AREA	5.082 ACRES (221,379 SF)

SITE COVERAGE (IMPERVIOUS)	
BUILDING	93,943 / 42.44%
GARAGE	29,817 / 13.47%
HARDSCAPE	56,109 / 25.34%
OPEN SPACE	41,510 / 18.75%
<b>TOTAL</b>	<b>221,379 / 100%</b>

BUILDING TABULATION				
BUILDING	4-STORY / 52' PENTHOUSE / 61'			
STORY	OC	F.F. ELEV.	AREA (SF)	
1/1 (CLUB/LEASING)	R/2/A/3	45,000'-42,000'	88,887 / 5,057	
2	R-2	55,719'	30,556	
3	R-2	66,500'	93,594	
4	R-2	77,281'	93,594	
PENTHOUSE	R-2	88,063'	10,367	
GARAGE	6 ABOVE GRADE - LEVEL / 74' **			
STORY	OC	F.F. ELEV.	AREA (SF)	
B	S-2	34,292'	20,735	
1	S-2	45,000'-42,000'	29,714	
2	S-2	55,719'	29,623	
3	S-2	66,500'	29,623	
4	S-2	77,281'	29,623	
5	S-2	88,063'	29,623	
1/1 ROOF-TOP DECK	S-2A/3	98,844'	13,370 / 5,976	
<b>BUILDING TOTAL AREA</b>	<b>570,342 SF</b>			

PARKING TABULATION						
PARKING REQUIRED						
LEASING (PUBLIC):						
2,544 S.F. / 200 =	13 SPACES					
APARTMENTS:						
308 X 1.73 =	534 SPACES					
<b>TOTAL PARKING REQUIRED =</b>	<b>547 SPACES</b>					
PARKING PROVIDED						
PARKING GARAGE:						
LEVELS						
B	1	2	3	4	5	6
61	80	89	89	87	87	37
<b>TOTAL</b>	<b>530 SPACES</b>					
SURFACE:						
17 SPACES						
<b>TOTAL PARKING PROVIDED</b>	<b>547 SPACES</b>					

\*\*AT MIDPOINT OF ROOF  
 \*\*AT MIDPOINT OF ROOF AT ROOF-TOP DECK  
 GENERAL:  
 -THE NORTH ASPECT OF THE BUILDING SHALL BE PROTECTED WITH EXTERIOR FIRE SPRINKLERS  
 -THIS PROJECT SHALL BE COMPLETED IN ONE PHASE



**EXHIBIT "B" CONCEPT PLAN**  
 SCALE: 1"=30'-0"

REVISIONS

**TOWER BAY LOFTS**  
 APARTMENTS IN  
 LEWISVILLE, TX

REVIEW PRINTS FOR PERMITS  
 SUBMISSION WITH CITY PERMIT  
 NO OTHER CONSTRUCTION

**BGO**  
 architects

4202 Beltway Rd.  
 Addison, TX 75001  
 214.520.8878  
 bg architects.com

DATE  
**07-14-16**

PROJECT  
**15216**

SHEET NUMBER  
**A1-01**  
 EXHIBIT B  
 CONCEPT PLAN

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**5 COURTYARD - NORTH ELEVATION**  
SCALE: 1/4"=1'-0"

MATERIAL PERCENTAGES	
MASONRY (BLOCK, STONE, BRICK)	4,510.95 S.F. 80.28%
NON MASONRY (STUCCO, FIBER CEMENT SIDING)	1,208.04 S.F. 19.72%
TOTAL	6,116.99 S.F. 100%



**S1 - STONE**  
MANUFACTURER:  
ROCK MATERIALS  
COLOR: MILSAP  
SANDSTONE

**RANDOM CUT**



**B11 - BLOCK**  
MANUFACTURER:  
FEATHERLITE  
COLOR: TEXAS  
CREAM

**SPLIT FACE BLOCK**



**B1 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: DOVE  
GRAY  
SIZE: KING

MORTAR:  
**WALL & WINDOW TRIM**



**B2 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: CASTLE  
RIDGE  
SIZE: KING

MORTAR:  
**WALL, BANDING SURROUNDS, ARCH TRIM, TOWER ARCH TRIM, TOWER FASCIAS, WINDOW TRIM & RAISED ELEMENTS**



**P1 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: PEARLY  
WHITE SW7009

**PRIMARY TRIM, ARCH TRIM, ACCENT TRIM, FASCIAS, GUTTERS, BRACKETS & EAVES**



**P2 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: REPOSE  
GRAY SW7015

**BOARD SIDING, BODY STUCCO & RAISED ELEMENTS**



**P3 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: NETWORK  
GRAY SW7073

**STUCCO & RECESSED INSERTS**



**P4 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: GRAYS  
HARBOR SW6236

**STUCCO, RECESSED INSERTS, BANDING SURROUNDS.**



**P5 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: ROOKWOOD  
DARK BROWN  
SW2808

**DOORS, DOWN-SPOUTS, RAILINGS, ALL METAL DETAILS, GUAR-DRAILS & FENCE**



**W1 - WINDOWS**  
MANUFACTURER:  
PLY-GEM  
COLOR: BEIGE

**WINDOWS FRAMES**



**R1 - ROOF**  
MANUFACTURER:  
EAGLE ROOFING  
PRODUCTS  
COLOR: TUCSON  
BLEND, CAPISTRANO  
PROFILE

**BARREL CONCRETE ROOF TILE**



**R2 - ROOF**  
MANUFACTURER:  
BERRIDGE  
COLOR: FOREST  
GREEN

**METAL ROOF**



06-22-16  
REVISIONS

**TOWER BAY LOFTS**  
Lewisville, TX

REVIEW PRINTS FOR PD  
SUBMISSION WITH CITY  
NOT APPROVED FOR PERMIT  
OR CONSTRUCTION

**BGO architects**  
4000 Parkway Drive  
Addicks, TX 75001  
714.507.0970  
bgoarchitects.com

DATE  
06-22-16  
PROJECT  
15216

SHEET NUMBER  
**A4-05**  
COURTYARD  
ELEVATION

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**1 BUILDING - WEST ELEVATION**  
SCALE: 1/8"=1'-0"

MATERIAL PERCENTAGES	
MASONRY (BLOCK, STONE, BRICK)	6,536.39 S.F. 93.33%
NON-MASONRY (STUCCO, FIBERGLASS SIDING)	467.3 S.F. 6.67%
TOTAL	7,003.68 S.F. 100%



- S1 - STONE**  
MANUFACTURER: ROCK MATERIALS  
COLOR: MILSAP SANDSTONE  
**RANDOM CUT**
- B1 - BLOCK**  
MANUFACTURER: FEATHERLITE  
COLOR: TEXAS CREAM  
**SPLIT FACE BLOCK**
- B1 - BRICK**  
MANUFACTURER: ACME BRICK  
COLOR: DOVE GRAY  
SIZE: KING  
MORTAR:  
**WALL & WINDOW TRIM**
- B2 - BRICK**  
MANUFACTURER: ACME BRICK  
COLOR: CASTLE RIDGE  
SIZE: KING  
MORTAR:  
**WALL, BANDING SURROUNDS, ARCH TRIM, TOWER ARCH TRIM, TOWER FASCIAS, WINDOW TRIM & RAISED ELEMENTS**
- P1 - PAINT**  
MANUFACTURER: SHERWIN WILLIAMS  
COLOR: PEARLY WHITE SW7009  
**PRIMARY TRIM, ARCH TRIM, ACCENT TRIM, FASCIAS, GUTTERS, BRACKETS & EAVES**
- P2 - PAINT**  
MANUFACTURER: SHERWIN WILLIAMS  
COLOR: REPOSE GRAY SW7015  
**BOARD SIDING, BODY STUCCO & RAISED ELEMENTS**
- P3 - PAINT**  
MANUFACTURER: SHERWIN WILLIAMS  
COLOR: NETWORK GRAY SW7073  
**STUCCO & RECESSED INSETS**
- P4 - PAINT**  
MANUFACTURER: SHERWIN WILLIAMS  
COLOR: GRAYS HARBOR SW6236  
**STUCCO, RECESSED INSERTS, BANDING SURROUNDS,**
- P5 - PAINT**  
MANUFACTURER: SHERWIN WILLIAMS  
COLOR: ROOKWOOD DARK BROWN SW2808  
**DOORS, DOWN-SPOUTS, RAILINGS, ALL METAL DETAILS, GUAR-DRAILS & FENCE**
- W1 - WINDOWS**  
MANUFACTURER: PLY-GEM  
COLOR: BEIGE  
**WINDOWS FRAMES**
- R1 - ROOF**  
MANUFACTURER: EAGLE ROOFING PRODUCTS  
COLOR: TUCSON BLEND, CAPISTRANO PROFILE  
**BARREL CONCRETE ROOF TILE**
- R2 - ROOF**  
MANUFACTURER: BERRIDGE  
COLOR: FOREST GREEN  
**METAL ROOF**

	<p><b>TOWER BAY LOFTS</b> Lewisville, TX</p>	<p>REVIEW PRINTS FOR BO SUBMISSION WITH CITY NOT APPROVED FOR PERMIT OR CONSTRUCTION</p>	<p><b>BGO architects</b> 4202 Highway Drive Addicks, TX 75001 214.520.8878 bgoarchitects.com</p>	<p>DATE <b>06-22-16</b></p> <p>PROJECT <b>15216</b></p>	<p>SHEET NUMBER <b>A4-01</b> BUILDING ELEVATION</p>
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**4** BUILDING - NORTH ELEVATION  
SCALE: 1"=20'

MATERIAL PERCENTAGES	
MASONRY (BLOCK, BRICK)	14,107.22 S.F.   81.07%
NON-MASONRY (STUCCO, FIBER CEMENT SIDING)	3,294.10 S.F.   18.93%
<b>TOTAL</b>	<b>17,401.32 S.F.   100%</b>



**S1 - STONE**  
MANUFACTURER:  
ROCK MATERIALS  
COLOR: MILSAP  
SANDSTONE

**RANDOM CUT**



**B1 - BLOCK**  
MANUFACTURER:  
FEATHERLITE  
COLOR: TEXAS  
CREAM

**SPLIT FACE BLOCK**



**B1 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: DOVE  
GRAY  
SIZE: KING

MORTAR:

**WALL & WINDOW  
TRIM**



**B2 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: CASTLE  
RIDGE  
SIZE: KING

MORTAR:

**WALL, BANDING  
SURROUNDS,  
ARCH TRIM,  
TOWER ARCH TRIM,  
TOWER FASCIAS,  
WINDOW TRIM &  
RAISED ELEMENTS**



**P1 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: PEARLY  
WHITE SW7009

**PRIMARY TRIM,  
ARCH TRIM,  
ACCENT TRIM,  
FASCIAS, GUTTERS,  
BRACKETS & EAVES**



**P2 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: REPOSE  
GRAY SW7015

**BOARD SIDING,  
BODY STUCCO &  
RAISED ELEMENTS**



**P3 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: NETWORK  
GRAY SW7073

**STUCCO & RECESSED  
INSETS**



**P4 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: GRAYS  
HARBOR SW6236

**STUCCO, RECESSED  
INSERTS, BANDING  
SURROUNDS.**



**P5 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: ROOKWOOD  
DARK BROWN  
SW2808

**DOORS, DOWN-  
SPOUTS, RAILINGS,  
ALL METAL DETAILS,  
GUAR-DRAILS  
& FENCE**



**W1 - WINDOWS**  
MANUFACTURER:  
PLY-GEM  
COLOR: BEIGE

**WINDOWS FRAMES**



**R1 - ROOF**  
MANUFACTURER:  
EAGLE ROOFING  
PRODUCTS  
COLOR: TUCSON  
BLEND, CAPISTRANO  
PROFILE

**BARREL CONCRETE  
ROOF TILE**



**R2 - ROOF**  
MANUFACTURER:  
BERRIDGE  
COLOR: FOREST  
GREEN

**METAL ROOF**

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	REVISIONS 06-22-16	<b>TOWER BAY LOFTS</b> Lewisville, TX	REVIEW PRINTS FOR PD SUBMISSION WITH CITY NOT APPROVED FOR PERMIT OR CONSTRUCTION	DATE 06-22-16	SHEET NUMBER A4-04
				PROJECT 15216	BUILDING ELEVATION



**1 BUILDING - WEST ELEVATION**  
SCALE: 1/4"=1'-0"

MATERIAL PERCENTAGES	
MASONRY (BLOCK, STONE, BRICK)	6,536.39 S.F. 93.33%
NON-MASONRY (STUCCO, FIBER CEMENT BOARD)	467.3 S.F. 6.67%
<b>TOTAL</b>	<b>7,003.68 S.F. 100%</b>



**S1 - STONE**  
MANUFACTURER:  
ROCK MATERIALS  
COLOR: MILSAP  
SANDSTONE  
**RANDOM CUT**

**BL1 - BLOCK**  
MANUFACTURER:  
FEATHERLITE  
COLOR: TEXAS  
CREAM  
**SPLIT FACE BLOCK**

**B1 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: DOVE  
GRAY  
SIZE: KING  
MORTAR:

**B2 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: CASTLE  
RIDGE  
SIZE: KING  
MORTAR:

**P1 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: PEARLY  
WHITE SW7009

**P2 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: REPOSE  
GRAY SW7015

**P3 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: NETWORK  
GRAY SW7073

**P4 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: GRAYS  
HARBOR SW6236

**P5 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: ROOKWOOD  
DARK BROWN  
SW2808

**W1 - WINDOWS**  
MANUFACTURER:  
PLY-GEM  
COLOR: BEIGE  
**WINDOWS FRAMES**

**R1 - ROOF**  
MANUFACTURER:  
EAGLE ROOFING  
PRODUCTS  
COLOR: TUCSON  
BLEND, CAPISTRANO  
PROFILE  
**BARREL CONCRETE  
ROOF TILE**

**R2 - ROOF**  
MANUFACTURER:  
BERRIDGE  
COLOR: FOREST  
GREEN  
**METAL ROOF**

**WALL & WINDOW  
TRIM**

**WALL, BANDING  
SURROUNDS,  
ARCH TRIM,  
TOWER ARCH TRIM,  
TOWER FASCIAS,  
WINDOW TRIM &  
RAISED ELEMENTS**

**PRIMARY TRIM,  
ARCH TRIM,  
ACCENT TRIM,  
FASCIAS, GUTTERS,  
BRACKETS & EAVES**

**BOARD SIDING,  
BODY STUCCO &  
RAISED ELEMENTS**

**STUCCO & RECESSED  
INSETS**

**STUCCO, RECESSED  
INSETS, BANDING  
SURROUNDS,**

**DOORS, DOWN-  
SPOUTS, RAILINGS,  
ALL METAL DETAILS,  
GUAR-DRAILS  
& FENCE**

**TOWER BAY LOFTS MULTI FAMILY SCHEMATIC MATERIALS BOARD**  
LEWISVILLE, TX



**3** BUILDING - EAST ELEVATION  
SCALE: 1/4"=1'-0"

MATERIAL PERCENTAGES	
MASONRY (BLOCK, BRICK, BRICK)	4,600.03 S.F. 86.27%
NON-MASONRY (STUCCO, FIBER CEMENT SIDING)	732.09 S.F. 13.73%
TOTAL	5,332.12 S.F. 100%



**S1 - STONE**  
MANUFACTURER:  
ROCK MATERIALS  
COLOR: MILSAP  
SANDSTONE

RANDOM CUT



**B1 - BLOCK**  
MANUFACTURER:  
FEATHERLITE  
COLOR: TEXAS  
CREAM

SPLIT FACE BLOCK



**B1 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: DOVE  
GRAY  
SIZE: KING

MORTAR:

WALL & WINDOW  
TRIM



**B2 - BRICK**  
MANUFACTURER:  
ACME BRICK  
COLOR: CASTLE  
RIDGE  
SIZE: KING

MORTAR:

WALL, BANDING  
SURROUNDS,  
ARCH TRIM,  
TOWER ARCH TRIM,  
TOWER FASCIAS,  
WINDOW TRIM &  
RAISED ELEMENTS



**P1 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: PEARLY  
WHITE SW7009

PRIMARY TRIM,  
ARCH TRIM,  
ACCENT TRIM,  
FASCIAS, GUTTERS,  
BRACKETS & EAVES



**P2 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: REPOSE  
GRAY SW7015

BOARD SIDING,  
BODY STUCCO &  
RAISED ELEMENTS



**P3 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: NETWORK  
GRAY SW7073

STUCCO & RECESSED  
INSETS



**P4 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: GRAYS  
HARBOR SW6236

STUCCO, RECESSED  
INSETS, BANDING  
SURROUNDS,



**P5 - PAINT**  
MANUFACTURER:  
SHERWIN WILLIAMS  
COLOR: ROOKWOOD  
DARK BROWN  
SW2808

DOORS, DOWN-  
SPOUTS, RAILINGS,  
ALL METAL DETAILS,  
GUAR-DRAILS  
& FENCE



**W1 - WINDOWS**  
MANUFACTURER:  
PLY-GEM  
COLOR: BEIGE

WINDOWS FRAMES



**R1 - ROOF**  
MANUFACTURER:  
EAGLE ROOFING  
PRODUCTS  
COLOR: TUCSON  
BLEND, CAPISTRANO  
PROFILE

BARREL CONCRETE  
ROOF TILE



**R2 - ROOF**  
MANUFACTURER:  
BERRIDGE  
COLOR: FOREST  
GREEN

METAL ROOF

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REVISIONS

TOWER BAY LOFTS

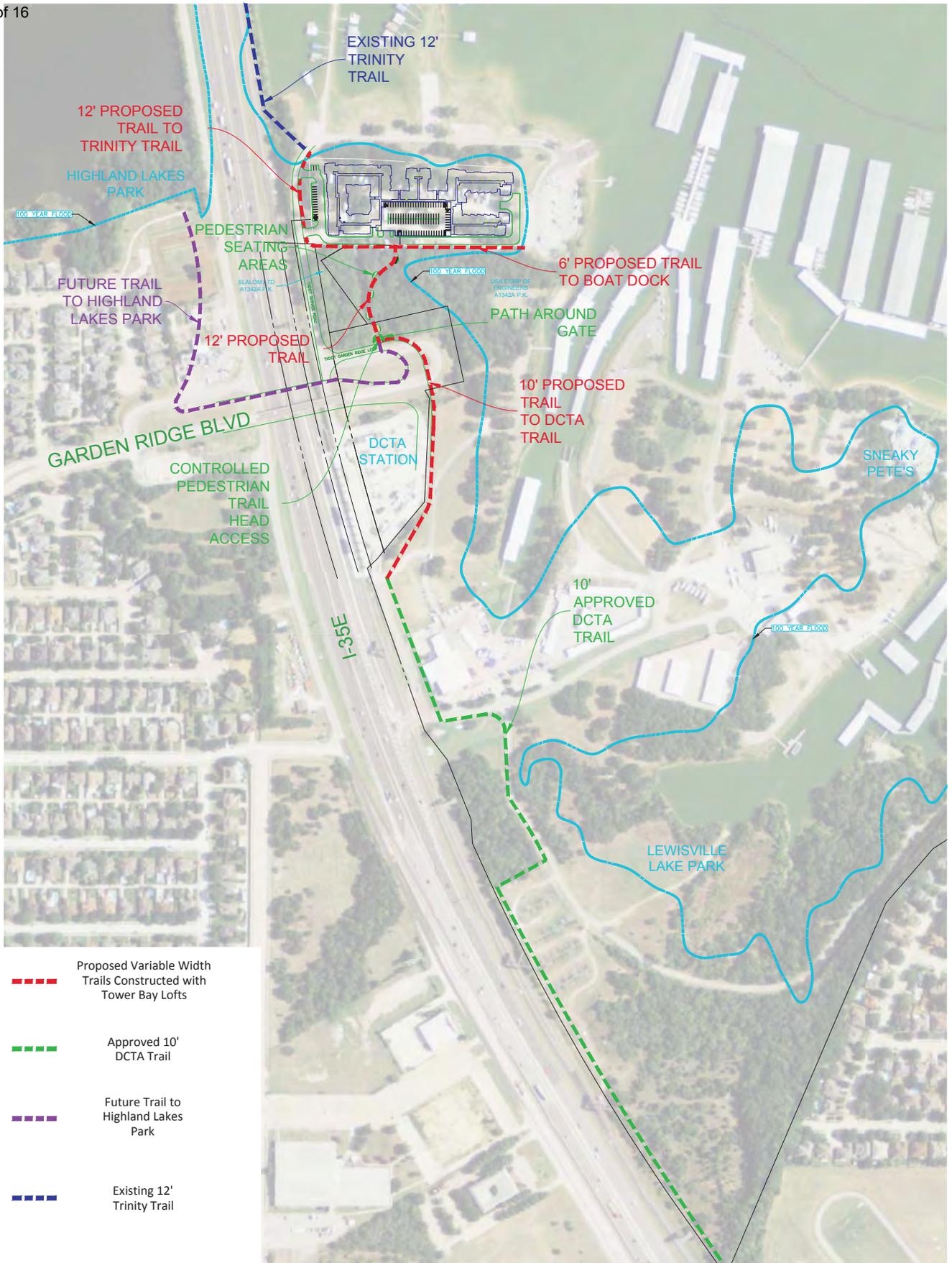
Lewisville, TX

REVIEW PRINTS FOR PD  
SUBMISSION WITH CITY  
NOT APPROVED FOR PERMIT  
OR CONSTRUCTION



DATE  
06-22-16  
PROJECT  
15216

SHEET NUMBER  
A4-03  
BUILDING  
ELEVATION



- - - - - Proposed Variable Width Trails Constructed with Tower Bay Lofts
- - - - - Approved 10' DCTA Trail
- - - - - Future Trail to Highland Lakes Park
- - - - - Existing 12' Trinity Trail

## MEMORANDUM

**TO:** Donna Barron, City Manager

**FROM:** Cleve Joiner, Director of Neighborhood Services

**DATE:** July 26, 2016

**SUBJECT:** **Public Hearing: Consideration of a Resolution Authorizing the Adoption of the Community Development Block Grant (CDBG) 2016 Annual Action Plan and Amendments to the Citizen Participation Plan and Authorization for the City Manager to Submit the Plan to the U.S. Department of Housing and Urban Development; and Acknowledge Receipt of the Recommended FY 2016-2017 City Social Service Agency Fund Budget of \$170,000 From the CDBG Advisory Committee.**

### BACKGROUND

This agenda item accomplishes three ends: (1) provides for the adoption of the CDBG Annual Action plan; (2) makes amendments to the Citizen Participation Plan as required by a recent HUD Rule; and (3) allows the City Council to acknowledge receipt of the CDBG Advisory Committee's recommended FY 2016-2017 Social Service Agency budget.

The Advisory Committee voted 7-0 on June 7, 2016 on the CDBG and Social Service Agency budget recommendations below. They also voted 5-0 on July 19, 2016 to recommend approval of the Annual Action Plan and Citizen Participation Plan amendments.

### ANALYSIS

#### Adoption of Annual Action Plan

Each year the City must submit an Annual Action Plan proposing to spend Community Development Block Grant (CDBG) funds on priorities identified in the city's 2012 Five-Year Consolidated Plan for Housing and Community Development for the CDBG program. This year's CDBG allocation to the City will be \$599,101 compared to \$616,796 in FY 2015-2016.

The Annual Action Plan was made available for public review during a 30 day public comment period from July 1, 2016 through August 1, 2016 when a Public Hearing before City Council is scheduled for consideration of a resolution authorizing adoption of the plan. The plan includes a chart with comments from public hearings of the CDBG Advisory Committee last fall.

The 2016-2017 Annual Action Plan fulfills HUD requirements in order to receive CDBG entitlement grant funds for Housing, Community Development and Public Service projects. At their June 7, 2016 meeting, the Committee, by a vote of 7-0, recommended a draft budget which has been incorporated into the Annual Action Plan. The Annual Action Plan has been developed

Subject: CDBG Annual Action Plan  
July 26, 2016  
Page 2

in accordance with HUD regulations and the City's Five Year Consolidated Plan. The plan also includes city strategies for its CDBG program such as rationale for geographic targeting, explanation of funding sources, leveraging and coordination with community agencies. This year social service agencies were allocated funds based on an open application cycle.

The Annual Action Plan calls for funding social services as noted in the chart below and for continued funding for the First-time Homebuyer program in support of affordable housing (\$42,000). Also recommended for funding is sewer manhole rehabilitation (\$194,000), land acquisition by Habitat for Humanity of Denton County (\$25,000), and the Lewisville Housing Rehabilitation Program (\$128,416). Land purchased by Habitat will be used to build a house in Lewisville with priority made for placement in target revitalization neighborhoods. The award for manhole rehabilitation for 2016-2017 is based on the same proposal from 2015. It was funded last year but then cancelled to re-allocate the funds for concrete street rehabilitation instead.

#### Amendment to Citizen Participation Plan

The Annual Action Plan also includes amendments to the Citizen Participation Plan, which was last revised as part of the City's 2012 Consolidated Plan for Housing and Community Development. New requirements were written into HUD regulations for consultation and public outreach as a result of a new Fair Housing Rule adopted by HUD. The new rule requires cities and housing authorities using certain types of HUD funds to amend their Citizen Participation Plan to include fair housing considerations. It also requires the City to have a consultation process with organizations that advocate for fair housing and members of protected classes per the 1968 Fair Housing Act, as amended. The amended Citizen Participation Plan will be used in developing a Fair Housing Assessment to be submitted to HUD in January 2017. The Fair Housing Assessment in turn must be considered when setting strategic goals in the 2017 Consolidated Plan to be submitted to HUD by August 15, 2017.

#### Receipt of Proposed Budget for City Social Service Agency Fund

Concurrent with the consideration of proposals for CDBG funding, the CDBG Advisory Committee also scored and reviewed proposals for the Social Service Agency budget. The Social Service Agency budget allocation has been set at \$170,000 for a number of years and was used as the target budget. The Social Service Agency recommendations are also presented in the attached draft budget to give Council the opportunity to review or comment. The committee's recommendations for the social service agencies has been included in the FY16-17 proposed base budget.

#### Recommended Changes in Social Services Programming

- New Programs:

- New Hope Learning Center for a school age day care program providing childcare for low income, at-risk children ages kindergarten through 5<sup>th</sup> grade during all teacher workdays, holidays, and summer break.
- CCA for family assistance services providing case management for assistance programs including food, rent/utility assistance and life skills training (previously funded for adult health care).
- Health Services of North Texas for indigent health care providing medical visits to their clinic (previously funded for HIV nutrition).
- Returning Program:
  - Special Abilities of North Texas (SANT) for vocational and health services for disabled clients (the program was not funded last year).
- Unfunded:
  - Considered but not recommended for funding were Knight Light Charities for Crisis Relief, and Relevant Life Church for Financial Emergency Response.

The committee used an informal minimum of \$5,000 for allocations. While not recommending a formal change in policy and procedures, the committee and program staff agreed that smaller amounts of funding are impractical considering the time agencies spend on applying and reporting and the City's effort to administer grants.

**CDBG & City Fund - Joint Budget FY 16-17**

<b>Agency/Project</b>	<b>Rank</b>	<b>CDBG</b>	<b>City Fund</b>
Lewisville Housing Rehabilitation Program	1	128,416	-
First-Time Homebuyer Assistance Program	2	42,000	-
Manhole Rehabilitation	3	194,000	-
Habitat for Humanity- Land Acquisition	4	25,000	-
<b>CDBG – CATEGORY I TOTAL</b>		<b>389,416</b>	<b>-</b>
<b>CDBG ADMINISTRATION TOTAL</b>		<b>119,820</b>	<b>-</b>
<b>Public Services</b>			
PediPlace- Pediatric Healthcare	1	-	57,000
Health Services of North Texas – Primary Indigent Care	2	7,865	-
SPAN- Meals Program	3	24,000	-
Children’s Advocacy Center of Denton Co- Victims of Child Abuse	4	13,000	13,000
Court Appointed Special Advocates (CASA) Program	5	14,000	-
CCA- Family Assistance Services	6	10,000	-
Denton County Friends of the Family- Shelter	7	10,000	-
Denton County Friends of the Family- Outreach Services	8	-	8,000
Communities in Schools of N. TX- Dropout Prevention Program	9	-	31,500
Retired Senior Volunteer Program	10	-	10,500
Youth & Family Counseling- First Offender Program	11	-	25,000
New Hope Learning Center- School Age Day Care	12	-	5,000
Camp Summit- Camp Scholarships	13	-	5,000
Youth & Family Counseling- Community Psych. Care Program	14	-	15,000
Boys & Girls Clubs of N. Central TX- Afterschool Program	15	6,000	-
Relevant Life – Financial Emergency Assistance	16	-	-
Special Abilities of N. TX- Adult Day Care	17	5,000	-
Knight Light Charities	18	-	-
<b>CDBG AND CITY FUND - CATEGORY II TOTAL</b>		<b>89,865</b>	<b>170,000</b>
<b>GRAND TOTAL</b>		<b>599,101</b>	<b>170,000</b>
Available from Prior Years		-	
Available for 2016-2017		599,101	

**RECOMMENDATION**

It is City staff’s recommendation that the City Council approve the resolution, acknowledge receipt of the City Social Service Fund budget and authorize the City Manager to submit the plans as set forth in the caption above.

## **LEGAL NOTICE**

The **notice below** is to run in the **Dallas Morning News** paper on the following dates:

**FRIDAY, July 1, 2016 & July 29, 2016**

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PUBLIC NOTICE: The City of Lewisville is soliciting public comment on the Community Development Block Grant (CDBG) Annual Action Plan (AAP) to be submitted to the U.S. Department of Housing and Urban Development (HUD) for receipt of funds for 2016-2017. The document is available for viewing from 11:30 a.m., Friday, July 1, 2016 until 5:30 p.m. Monday, August 1, 2016 at 151 W. Church St., at the Building Inspections counter and at the reference desk of the City Library. It will also be posted to the Neighborhood Services page on the City's website Friday, July 8. Contact: Jamey Kirby at (972)219-3780 or [jkirby@cityoflewisville.com](mailto:jkirby@cityoflewisville.com) for information.

### **Public Hearing**

The 2012-2017 Consolidated Plan for Housing and Community Development (AAP) outlining the CDBG program activities that the City proposes to carry out in the coming year. The City is soliciting input from residents. Comments received during this period will be considered before final approval at a public hearing to be held before the City Council on Monday, August 1, 2016 at 7:00 p.m. at Old Town City Hall, 151 W. Church St. The CDBG Advisory Committee will also consider the AAP at its regular meeting on July 19, 2016 at 6:30 p.m. at Old Town City Hall.

### **2016 Action Plan Summary**

The City of Lewisville will receive \$599,101 in CDBG funding and will add an estimated \$170,000 in City Social Service Agency funding for a total Grants Budget of \$769,101. (Social Services: \$259,865, Housing and Community Development Projects: \$389,416, and Administration: \$119,820).

Social Services distribution: Boys & Girls Clubs of North Central Texas \$6,000, Children's Advocacy Center \$26,000, Christian Community Action \$10,000, Health Services of N. Texas \$7,865, PediPlace \$57,000, Communities in Schools \$31,500, CASA \$14,000, Friends of the Family \$18,000, RSVP \$10,500, SPAN Inc. \$24,000, Special Abilities of N. Texas \$5,000, Youth & Family Counseling \$40,000, New Hope Learning Center \$5,000, and Camp Summit \$5,000. Social services considered but not funded: Knight Light Charities and Relevant Life Church.

CDBG funds will also be spent on the following Housing and Community Development Projects: \$42,000 for the First-time Homebuyer Assistance Program; \$128,416 for the Housing Rehabilitation Program; \$194,000 for Sewer Manhole Rehabilitation in low-to-moderate-income areas and \$25,000 for Habitat for Humanity of Denton County for Land Acquisition in support of affordable housing.

### **CITIZEN PARTICIPATION PLAN AMENDMENT**

The Citizen Participation Plan is a part of the City's 2012 Consolidated Plan for Housing and Community Development. The Plan must be updated to include new requirements of HUD's Fair Housing Rule in relation to developing a Fair Housing Assessment. The amended plan will also be available at the locations and times listed above and will be considered by the CDBG Advisory Committee meeting and City Council public hearing noted above.

**MINUTES  
COMMUNITY DEVELOPMENT BLOCK GRANT  
ADVISORY COMMITTEE (CDBGAC)**

**Tuesday, June 7, 2016**

The Community Development Block Grant Advisory Committee convened at 6:30 p.m. in the Community Development Conference Room, Eric Page presiding.

**Committee Members**

**Present:**

Eric Page, Chair  
Tamela Bowie  
Robert Paul  
Latashia Sherrod  
Debbie Fu, Vice Chair  
Deniese Sheppard  
Sarah McLain

**Committee Members**

**Absent:**

**Staff Members**

**Present:**

Laura Mitchell, Grants Specialist  
Jamey Kirby, Grants Coordinator

**Guests:** N/A

---

**Item 3:** The committee finalized their scoring of Category I proposals from the May 17 meeting. After discussion of each proposal, Tamela Bowie made a motion to recommend the funding for the Category I proposals as listed in the chart below to City Council for approval. Debbie Fu seconded the motion. The motion was approved unanimously.

Category I Funding Recommendations

Project	Rank	Recommendations for Council Approval
Lewisville Housing Rehabilitation Program	1	\$128,415
First-Time Homebuyer Assistance Program	2	\$42,000
Engineering- Sewer Manhole Rehabilitation	3	\$194,000
Habitat for Humanity	4	\$25,000
<b>Total:</b>		\$389,415



**MINUTES**  
**COMMUNITY DEVELOPMENT BLOCK GRANT**  
**ADVISORY COMMITTEE (CDBGAC) LEWISVILLE**

Deep Roots. Broad Wings. Bright Future.

**Tuesday, May 3, 2016**

The Community Development Block Grant Advisory Committee convened at 6:30 p.m. in the Community Development Conference Room, Eric Page presiding.

**Committee Members**

**Present:**

Deniese Sheppard  
 Tamela Bowie  
 Sarah McLain  
 Robert Paul  
 Latashia Sherrod

**Committee Members**

**Absent:**

Eric Page, Chair  
 Debbie Fu, Vice Chair

**Staff Members**

**Present:**

Laura Mitchell, Grants Specialist

**Guests:** N/A

**Item 1:** Tamela Bowie called the meeting to order and announced the presence of a quorum at 6:33 p.m.

**Item 2:** Sarah McLain made a motion to approve the minutes of April 19, 2016. The motion was seconded by Robert Paul. The minutes were approved unanimously.

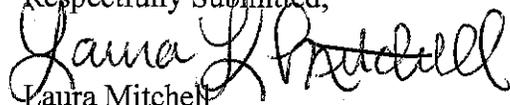
**Item 3:** The committee revisited funding recommendations for 2016-2017 CDBG & City Fund (Category II) agencies. After discussion, Sarah McLain made a motion, seconded by Robert Paul to recommend the funding amounts without changes as listed in the chart below to city council for approval. The motion was passed unanimously.

Agencies-Program	Score	Rank	6/16/15 Recomm. for Council Approval
PediPlace- Pediatric Healthcare	118.857	1	\$57,000
Health Services of N. TX- Primary Indigent Care	118.143	2	\$7,865
SPAN- Meals Pgm.	114.00	3	\$24,000
Children's Advocacy Ctr of Denton Co- Victims Srvcs	113.28	4	\$26,000
Court Appointed Special Advocates (CASA) Program	112.85	5	\$14,000
CCA- Family Assistance Services	111.57	6	\$10,000
Denton County Friends of the Family- Shelter	109.43	7	\$10,000
Denton County Friends of the Family- Outreach	108.14	8	\$8,000
Communities in Schools- Dropout Prevention Program	107.57	9	\$31,500
Retired Senior Volunteer Program (RSVP)	107.43	10	\$10,500
Youth & Family Counseling- FOARK Program	106.28	11	\$25,000
New Hope Learning Center	104.83	12	\$5,000
Camp Summit- Camperships	102.71	13	\$5,000
Youth & Family Counseling- Community Psych. Care Pgm.	102.71	14	\$15,000
Boys & Girls Clubs- Afterschool Program	100.57	15	\$6,000
Relevant Life	96.33	16	\$0

Special Abilities of North Texas	96.14	17	\$5,000
Knight Light Charities	77.71	18	\$0
<b>Total:</b>			\$259,865.00

**Item 4:** The committee read the half year report for the 2015-2016 CDBG & City Fund agencies. No action was taken.

**Item 5:** Tamela Bowie adjourned the meeting at 7:09 p.m.

Respectfully Submitted,  
  
Laura Mitchell  
Grants Specialist

  
Eric Page  
Committee Chair

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, PROVIDING FOR THE ADOPTION OF THE 2016 ANNUAL ACTION PLAN AND AMENDMENTS TO THE CITIZEN PARTICIPATION PLAN AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD).**

**WHEREAS**, an Annual Action Plan for Housing and Community Development must be adopted by the City of Lewisville in fulfillment of the requirements of the Housing and Community Development Act of 1974, as amended, the National Affordable Housing Act of 1990, as amended and the Stewart B. McKinney Act of 1987, as amended; and,

**WHEREAS**, the Annual Action Plan for Housing and Community Development has been made available for public review and comment for a 30 day period; and,

**WHEREAS**, the Lewisville Community Development Block Grant Advisory Committee held a series of public meetings to allow public comment regarding the needs and strategies set forth in the Annual Action Plan for Housing and Community Development; and,

**WHEREAS**, the Lewisville City Council has conducted a public hearing on this day to consider the Annual Action Plan for Housing and Community Development and any comments thereto, with notices of said hearing published in the City's official newspaper on July 1 and July 29, 2016; and,

**WHEREAS**, the new Fair Housing Rule has added certain requirements for consultation and public participation in developing Fair Housing Assessments and Consolidated Plans; and,

**WHEREAS**, the Fair Housing Assessment is an important step in complying with the City's certification to HUD that it will affirmatively further fair housing choice,

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

**SECTION 1.** The 2016 Annual Action Plan for Housing and Community Development is hereby adopted to serve as a planning document that identifies actions to be taken to meet Lewisville's needs for affordable and supportive housing, community development, homeless needs and public services.

**SECTION 2.** The Citizen Participation Plan, as amended, is hereby adopted to guide City staff in encouraging citizen participation in the planning process to set locally-determined fair housing priorities and goals.

**SECTION 3.** The City Manager of the City of Lewisville is authorized to submit the 2016 Annual Action Plan for Housing and Community Development and the Citizen Participation Plan as amended to the U.S. Department of Housing and Urban Development prior to August 15, 2016.

This Resolution is effective on and after its date of adoption.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, ON THIS THE 1<sup>st</sup> DAY OF AUGUST, 2016.**

**APPROVED:**

---

Rudy Durham, MAYOR

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

**Page 3**

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, CITY ATTORNEY

CDBG & CITY FUND - BUDGET FY 16-17

Funding Breakdown	CDBG		City Fund		CDBG	City Fund
	Available	Requested	Available	Requested	Difference	
Total 2016-2017 Funding	\$ 599,101					
Available Prior Year Funding	\$ -					
Category I (minimum)	\$ 389,416	\$ 585,000			\$ (195,584)	
Cat II (15% CDBG Public Srv cap)	\$ 89,865	\$ 348,511	\$ 170,000	\$ 254,500	\$ (258,646)	\$ (84,500)
20% Administration Cap	\$ 119,820	\$ 119,820			\$ -	\$ -

ADMINISTRATION							
Organization/Agency/Project		Amount Funded 2015		Total Requested 2016		2016 CDBG AC Recommendation	
		CDBG	City Fund	CDBG	City Fund	CDBG	City Fund
Administrative Services		\$ 123,359		\$ 119,820		\$ 119,820	

CDBG - CATEGORY I "BRICK AND MORTAR"							
Organization/Agency/Project	Rank	Amount Funded 2015		Total Requested 2016		2016 CDBG AC Recommendation	
		CDBG	City Fund	CDBG	City Fund	CDBG	City
First-time Homebuyer Assistance Program (FHAP)	2	\$ 48,000		\$ 52,000		\$ 42,000	
Habitat for Humanity - Land Acquisition	4	\$ -		\$ 75,000		\$ 25,000	
Lewisville Housing Rehab Program (LHRP)	1	\$ -		\$ 180,000		\$ 128,416	
Manhole Rehabilitation (funded \$165,000 in 2015 but then cancelled to move funds to Streets Projects)	3	\$ -		\$ 278,000		\$ 194,000	
<b>CDBG - CATEGORY I TOTAL</b>		\$ 48,000		\$ 585,000	\$ -	\$ 389,416	

Organization/Agency/Project	Score	Rank	Total Funded PY 2015	Total Requested PY 2016	CDBG AC Recommendation PY 16		Total CDBG AC Recommendation PY 16	\$ Variance PY15 vs PY16	% Variance PY15 vs PY16
					CDBG	City Fund			
<b>HEALTH SERVICES</b>									
PediPlace - Pediatric Healthcare	118.86	1	\$ 56,000	\$ 80,000	\$ -	\$ 57,000	\$ 57,000	\$ 1,000	2%
Health Services of N. TX - Primary Care	118.14	2	\$ -	\$ 5,000	\$ 7,865	\$ -	\$ 7,865	\$ 7,865	100%
<b>Health Services Subtotal</b>							\$ 64,865		
<b>SENIOR SERVICES</b>									
SPAN-Meals Pgm.	114.00	3	\$ 24,000	\$ 26,000	\$ 24,000	\$ -	\$ 24,000	\$ -	0%
Retired Senior Volunteer Program	107.43	10	\$ 11,000	\$ 11,500	\$ -	\$ 10,500	\$ 10,500	\$ (500)	-5%
<b>Senior Services Subtotal</b>							\$ 34,500		
<b>CRISIS AND FINANCIAL SERVICES</b>									
Knight Light Charities - Crisis Relief	77.71	18	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ -	0%
Christian Community Action - Family Assistance	111.57	6	\$ -	\$ 30,000	\$ 10,000	\$ -	\$ 10,000	\$ 10,000	100%
Relevant Life - Financial Emergency Response	96.33	16	\$ -	\$ 78,020	\$ -	\$ -	\$ -	\$ -	0%
<b>Crisis and Financial Services Subtotal</b>							\$ 10,000		
<b>EMPLOYMENT SERVICES</b>									
<b>Employment Services Subtotal</b>							\$ -		
<b>CHILDREN/YOUTH</b>									
Youth and Family- First Offender Pgm& Other Kids	106.29	11	\$ 25,000	\$ 25,000	\$ -	\$ 25,000	\$ 25,000	\$ -	0%
Communities in Schools of N. TX-Dropout Prev Pgm.	107.57	9	\$ 31,500	\$ 40,000	\$ -	\$ 31,500	\$ 31,500	\$ -	0%
New Hope Learning Center - School Age Day Care	104.83	12	\$ -	\$ 9,000	\$ -	\$ 5,000	\$ 5,000	\$ 5,000	100%
Boys & Girls Club - Afterschool Program	100.57	15	\$ 6,000	\$ 19,824	\$ 6,000	\$ -	\$ 6,000	\$ -	0%
<b>Children/Youth Services Subtotal</b>							\$ 67,500		
<b>VICTIMS SERVICES</b>									
Children's Advocacy Ctr of Denton Co-Victim Svcs	113.29	4	\$ 26,000	\$ 168,667	\$ 13,000	\$ 13,000	\$ 26,000	\$ -	0%
Court Appointed Special Advocates (CASA) Program	112.86	5	\$ 14,000	\$ 15,000	\$ 14,000	\$ -	\$ 14,000	\$ -	0%
Denton County Friends of the Family-Shelter	109.43	7	\$ 10,000	\$ 17,000	\$ 10,000	\$ -	\$ 10,000	\$ -	0%
Denton County Friends of the Family-Outreach	108.14	8	\$ 8,000	\$ 20,000	\$ -	\$ 8,000	\$ 8,000	\$ -	0%
<b>Victims Services Subtotal</b>							\$ 58,000		
<b>DISABLED SERVICES</b>									
Special Abilities (Day Stay)-Adult Day Care	96.14	17	\$ -	\$ 16,000	\$ 5,000	\$ -	\$ 5,000	\$ 5,000	100%
Camp Summit-Camp Scholarships	102.71	13	\$ 1,500	\$ 15,000	\$ -	\$ 5,000	\$ 5,000	\$ 3,500	233%
<b>Disabled Services Subtotal</b>							\$ 10,000		
<b>MENTAL HEALTH</b>									
Youth & Family Community Psych. Care Pgm.	102.71	14	\$ 15,000	\$ 17,000	\$ -	\$ 15,000	\$ 15,000	\$ -	0%
<b>Mental Health Services Subtotal</b>									
			\$ 228,000	\$ 603,011	\$ 89,865	\$ 170,000	\$ 259,865		



**LEWISVILLE**

Deep Roots. Broad Wings. Bright Future.

# 2016-2017 ANNUAL ACTION PLAN FOR HOUSING & COMMUNITY DEVELOPMENT

**Draft for City Council  
Public Hearing  
August 1, 2016**

# 2016 – 2017 ANNUAL ACTION PLAN

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## 2016 – 2017 ANNUAL ACTION PLAN

### INTRODUCTION AND EXECUTIVE SUMMARY

#### EXECUTIVE SUMMARY

As set forth in 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) requires jurisdictions to incorporate their planning and application requirements into one plan every three to five years called the Consolidated Plan for Housing and Community Development. A Consolidated Plan was prepared for federal plan years 2012-2017. The City's 2016-2017 Annual Action Plan (AAP) is the fifth AAP under the 2012 Consolidated Plan.

The City's Community Development Block Grant (CDBG) allocation for FY 2016 - 2017 will be \$599,101, a decrease from the 2015 - 2016 Plan Year allocation of \$616,796. The plan includes continued funding for the First-time Homebuyer Assistance Program, Street Rehabilitation/Infrastructure, Housing Rehabilitation and grants to sub-recipients for social service programs. It also funds two new housing and community development projects: Sewer Manhole Rehabilitation, Land Acquisition for a non-profit home builder, Habitat for Humanity of Denton County; two new Public Service projects: Primary Care from Health Services of North Texas, Family Financial Assistance from CCA; and a project that went unfunded last year: Adult Day Care and Independent Living from Special Abilities of North Texas.

#### **Summary of projects with objectives and outcomes:**

- First-time Homebuyer Assistance providing affordability of decent housing to 4 households - \$42,000
- Manhole Rehabilitation of neighborhood sewer lines providing sustainability of a suitable living environment in low-to-moderate income areas - \$194,000
- Lewisville Housing Rehabilitation Program providing sustainability of decent housing to three households - \$128,416

- Land acquisition for Habitat for Humanity to purchase one plot of land providing affordability of decent housing for one household – \$25,000
- Public Service Programs totaling \$89,865:
  - Programs providing affordability of a suitable living environment for 151 people from Health Services of North Texas, and SPAN.
  - Programs providing accessibility of a suitable living environment for 41 people from CASA, Children’s Advocacy Center, Denton County Friends of the Family, Special Abilities of N. Texas and Boys & Girls Clubs.
  - Programs providing sustainability of a suitable living environment for 90 people from CCA.

## **INTRODUCTION**

The Neighborhood Services Department, Grants Division of the City of Lewisville worked with community residents, groups and agencies to create the 2012 - 2017 Consolidated Plan for Housing and Community Development with special emphasis on conducting a Community Needs Assessment. The strategies, goals and objectives of the Consolidated Plan guide the allocation of the City’s CDBG entitlement funding so the funds can most effectively be utilized to benefit Lewisville’s low-to-moderate-income persons, clients, households or neighborhoods. Collaborative efforts with various groups have continued through the years since the first Consolidated Plan was approved in 1997.

The Community Development Block Grant (CDBG) entitlement funding is a formula-based program designed to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities for persons of low/moderate income.

The 2016 Annual Action Plan (AAP) describes the projects and activities that will be undertaken with these funds during the City’s 2015 - 2016 Fiscal Year.

(References to HUD's 2016 "Program Year" or "Grant Year" or the City's "2017 Fiscal Year," abbreviated "FY '16-17 or just "FY '17" all refer to a period running from October 1, 2016 to September 30, 2017.) The 2012 Consolidated Plan and this AAP also identify those programs funded by the U.S. Department of Housing and Urban Development (HUD) for which the City assisted with planning or where it would support applications from other entities.

Development of the Action Plan began in November 2015 with two public forums and public hearings before the CDBG Advisory Committee. The Committee is charged with recommending activities and a draft budget to the Lewisville City Council. Last year, the Committee had also reviewed draft results of the 2012 Community Needs Assessment and adjusted social service category priorities, which moved Senior Services and Crisis and Financial Relief Services to the 2<sup>nd</sup> and 3<sup>rd</sup> ranked priorities behind Health Services. These new priorities were approved by Council with the 2013 Action Plan and again included in the Request for Proposals for the 2016 Plan.

Requests for Proposals (RFP) were released in February 2016 for Public Services and April 2016 for Community Development and Housing CDBG projects. The CDBG Advisory Committee heard presentations and proceeded to analyze and rank proposals. On June 7<sup>th</sup> the CDBG Advisory Committee adopted a Draft Budget to recommend to City Council the activities and funding amounts listed in this Plan. Funding for Public Services remains on a one-year cycle. After a new Needs Assessment is adopted by City Council in 2017, the City may consider returning to two or three year renewable awards beginning the following year under the next Consolidated Plan.

As the planning process began with public hearings, it will also end with an opportunity for further public comment on this document before the Advisory Committee on July 18<sup>th</sup> and City Council on August 1<sup>st</sup>. After receiving any additional public comments, the City Manager will be authorized by Council to

make appropriate changes to the proposed activities and/or to respond to public comments before final submission to HUD by August 15, 2016. A Public Notice has been published setting a 30-day comment period from July 1, 2016 to August 1, 2016. Advertisements were placed in the Friday, July 1 and July 29, 2016 editions of the Dallas Morning News.

**Assessment of Past Performance:**

The City has had successes and difficulties in implementing CDBG funded activities. Successes include infrastructure improvements to streets and parks in low income neighborhoods, assessing social service needs, scrutinizing neighborhood conditions and establishing Targeted Reinvestment Neighborhoods (TRN), providing free homebuyer education classes through strong collaborations to hundreds of prospective homebuyers, collaborating with other agencies and the homeless coalition to secure funds and creating relationships with a network of social service providers. Significant deficiencies over the last five years include establishing capacity for an ongoing housing rehabilitation program (see Housing Activities section), spending funds in a timely manner and failure to identify and support infill housing opportunities to create new affordable housing. Working with only two full time staff members, the City's Neighborhood Services staff has facilitated an open, productive process for planning and networking, but is challenged to maintain a variety of projects at any given time.

**Public Participation:**

This Annual Plan represents the fifth year under the 2012 Consolidated Plan. This plan was developed using an effective citizen participation process in compliance with the regulations set forth in 24 CFR Part 91. The City's participation plan encourages and empowers citizens to participate in the development of viable urban programs. The City utilized the public input received

to help establish strategies and priority needs to guide the development of the Consolidated Plan.

The CDBG Advisory Committee is made up of seven citizens appointed by the City Council to provide citizen input. A final public hearing was advertised and held by the City Council on August 1, 2016 before formal adoption. The Consolidated Plan also had considerable public input through a Needs Assessment conducted January – July, 2012 including an agency workshop with directors or stakeholders of agencies, city departments and service organizations. See pages 38-39 for more on public comments and participation.

## **ANNUAL ACTION PLAN**

An action plan is prepared annually which describes the specific activities to be funded during the program year. The City of Lewisville's Annual Action Plan outlines the use of \$599,101 in Community Development Block Grant (CDBG) Entitlement funding allocated by HUD for the 2016 Program Year which identifies the method of distributing HUD funds, and addresses the City's overall housing and community development needs and strategies.

### **Substantial Changes and Amendments to Prior Year Projects:**

- Substantial Amendment to Citizen Participation: Also being considered at the Public Hearings will be an amendment to the 2012 Consolidated Plan for Housing and Community Development to revise the Citizen Participation Plan to reflect changes in the planning process established in the new Fair Housing Rule. The Rule requires additional consultation and public outreach in relation to developing an Assessment of Fair Housing.
- Amendment to 2012 Consolidated Plan Non-Housing Goals: Table 2C is amended to include additional Specific Objectives for Youth Services and Financial/Crisis Services as outlined in Table 2C in this Action Plan (see page 21).

## **Homeless and Other Special Needs:**

In 2000 the Cities of Denton and Lewisville facilitated forming the Denton County Homeless Coalition with various participating agencies. The Coalition steering committee meets on a monthly basis while the general membership meets every other month. In addition to working within the coalition, the City offers service providers the opportunity to apply for CDBG and City Fund grants. The City and Coalition members' activities are described under the following four areas:

### **Reaching out to homeless persons (especially unsheltered person) and assessing their individual needs**

- The City of Lewisville will continue to assist with the Denton County Homeless Coalition's (DCHC) homeless point in time count (PIT). DCHC reaches out to the homeless persons and assesses their needs in an annual survey.
- The City allocated \$8,000 from the City Social Service Agency Fund to Friends of the Family for face-to-face services for victims of domestic abuse, many of whom are homeless.
- The Lewisville Salvation Army's kitchen opened in 2010 and has continuously increased services since. It is now serving over 120 people five days a week plus bag lunches to take home for weekend.
- Giving Hope Inc. is one of the agencies participating in the ESG award administered by the City of Denton and uses funds for Street Outreach including one day per month in Lewisville. The City has begun hosting quarterly meetings to coordinate the Street Outreach program's efforts specifically in Lewisville. These meetings evolved into a temporary Lewisville Task Force on Homelessness that is to report findings back to the Homeless Coalition regarding needs specific to Lewisville.

### **Addressing the emergency shelter and transitional housing needs of homeless persons**

- The Coalition continues to look for ways to facilitate the development of increased shelter space for families.
- The City of Lewisville will fund the Friends of the Family shelter with \$10,000 from CDBG funds.
- City CDBG staff provided technical assistance to Journey to Dream which this year purchased property and received City zoning approvals to provide a shelter or group home setting for homeless youth.
- There is not a specific goal for Transitional Housing in Lewisville, although Lewisville clients assisted by Friends of the Family may feed into transitional housing offered in Denton by Denton Affordable Housing Corp.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again.**

- The City will continue to support the Denton County Homeless Coalition's Emergency Solution's Grant (ESG) applications to address needs for Emergency Shelter and Transitional Housing.
- Christian Community Action (CCA) continues to participate in the ESG program administering rapid re-housing funds in the Southern part of Denton County. The City make referrals to CCA as appropriate.

**Helping low income individuals and families avoid becoming homeless, especially extremely low income individuals who are:**

- **Being discharged from publicly funded institutions and systems of care, such as health-care facilities, mental health facilities, foster care or other youth facilities, corrections programs and institutions?**

- The City is participating in the Denton United Way's Behavioral Health Leadership Team including a Housing Workgroup that will develop goals for housing for populations at-risk for homelessness following services at institutions listed above.
- **Receiving assistance from public or private agencies that address housing, health, social services, employment, education or youth needs? (Note that this is referring to Homeless Prevention type of activities.)**
  - The DCHC continues to make Homeless Prevention a goal and the City will continue to support that goal and the Coalition's application for ESGP funds from the 'balance of state' allocation.
  - Christian Community Action (CCA) continues to participate in the ESG program administering prevention funds in the Southern part of Denton County. The City make referrals to CCA as appropriate.

#### **Housing Activities:**

- ❖ The City's First-time Homebuyer Assistance Program will continue through PY 2016 with \$42,000 programmed in this Action Plan. An estimated \$39,000 in funds will be remaining from the 2015 program year to be rolled into the upcoming year. Homebuyer closings slowed significantly in PY 15/16 with only 4 families receiving assistance so far in PY15.
- ❖ Housing Rehabilitation will continue using prior year balances in addition to the \$128,415
- ❖ The Neighborhood Services Department hired a Neighborhood Services Coordinator in Dec. 2014 to be a liaison and organizer for neighborhoods. The "NEST" (Neighborhood Enhancement Services Team) Team was formed to coordinate staff responses to specific code, housing and neighborhood issues and to develop city-wide neighborhood-focused policies to further the 2025 Plan Thriving Neighborhoods 'Big Move'.
- ❖ Minor home repairs - the City hired a Housing Rehab Technician in November 2015 to coordinate three activities: assist the Grants

Coordinator in running the Housing Rehab Program mentioned above; implement a Home Maintenance Assistance Program matching residents' needs with volunteers and donors – mostly for exterior maintenance (over 30 minor housing projects in 2016 ranging from yard work to fence replacement to siding to a kitchen rehab) and to implement a new Property Enhancement Program. The program will use City matching funds up to \$1,000 for all homeowners and up to \$5,000 for low-to-moderate income homeowners for exterior home repairs. The program was passed by City Council in June 2016 and will have at least \$160,000 budgeted through 2017.

**Activities Considered but not funded:**

Knight Light Charities and Relevant Life Church both applied for City Funds, in order to meet the needs of residents in crisis or provide financial relief, but were not recommended for funding this year. Special Abilities (SANT) did not receive funding in PY 15, as they did not apply. However, their application was received and they will be funded \$5,000 in PY16.

**Non Housing Community Development:**

Under the new 2012 Consolidated Plan, the City of Lewisville continues to focus on neighborhood-based planning and revitalization through funding neighborhood projects and public facilities improvements. With the completion of the Milton Street project, many of the street rehab needs in the specific Targeted Reinvestment Neighborhoods have been addressed. The 2013 and 2014 plans also included street projects that have not yet been completed. This Plan includes funds for rehabilitation of sewer line manholes in low-to-moderate income areas.

## Distribution of CDBG Funding: \$599,101

DISTRIBUTION OF FUNDING	AMOUNT	% OF CDBG FUNDING
<b>Category I "Bricks &amp; Mortar"</b>		
-Public Facilities	\$194,000	32.4%
-Housing	\$195,416	32.6%
<b>Category I Subtotal</b>	<b>\$389,416</b>	<b>65.0%</b>
Category II "Social Services"		
-Health Services	\$7,865	1.3%
-Children/Youth Services	\$6,000	1%
-Victims Services	\$37,000	6.2%
-Senior Services	\$24,000	4.0%
-Disabled Services	\$5,000	0.8%
-Mental Health Services	\$0	0%
-Crisis and Financial Services	\$10,000	1.70%
Category II Subtotal	<b>\$89,865</b>	<b>15%</b>
<b>Category III "Administration/Planning"</b>	<b>\$119,820</b>	<b>20%</b>
<b>TOTAL PY 2015 CDBG FUNDS</b>	<b>\$599,101</b>	<b>100%</b>

## CDBG & City Fund - Joint Budget FY 16-17

Agency/Project	Overall Rank	CDBG	City Fund
Lewisville Housing Rehabilitation Program	1	128,416	-
First-time Homebuyer Assistance Program	2	42,000	-
Manhole Rehabilitation	3	194,000	-
Habitat for Humanity- Land Acquisition	4	25,000	-
<b>CDBG – CATEGORY I TOTAL</b>		<b>389,416</b>	<b>-</b>
<b>CDBG ADMINISTRATION TOTAL</b>		<b>119,820</b>	
<b>Public Services</b>			
CCA-Family Assistance Services	6	10,000	-
Health Services of North Texas – Indigent Health Services	2	7,865	-
Pedi Place - Pediatric Healthcare	1	-	57,000
Communities in Schools of N. TX-Dropout Prevention Program	9	-	31,500
Relevant Life Church	16	-	-
Youth and Family Counseling- First Offender Program & Other Kids	11	-	25,000
Knight Light Charities	18	-	-
Retired Senior Volunteer Program	10	-	10,500
SPAN-Meals Program	3	24,000	-
Youth & Family Community Psych. Care Program	14	-	15,000
Children's Advocacy Center of Denton Co-Victims of Child Abuse	4	13,000	17,500
Court Appointed Special Advocates (CASA) Program	5	14,000	-
Denton County Friends of the Family-Outreach Face to Face	8	-	8,000
Denton County Friends of the Family-Shelter	7	10,000	-
Special Abilities of North Texas- Adult Day Care	17	5,000	
Camp Summit-Camp Scholarships	13	-	5,000
Boys & Girls Club	15	\$6,000	-
New Hope Learning Center	12	-	5,000
<b>CDBG AND CITY FUND - CATEGORY II TOTAL</b>		<b>89,865</b>	<b>170,000</b>
<b>GRAND TOTAL</b>		<b>599,101</b>	<b>170,000</b>

## FUNDING SOURCES

HUD Federal Entitlement Funds for FY 2016 - 2017 will be included in the City's proposed budget for FY 2016 - 2017 consisting of a total \$599,101 in Community Development Block Grant funding. The activities and programs described in the Annual Action Plan are consistent with the Strategic Plan, in the 2012 – 2017 Consolidated Plan.

### Entitlement Grant (includes reallocated funds)

CDBG	\$599,101
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$599,101

### Prior Year's Program Income NOT previously programmed or reported

CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0

Total Estimated Program Income \$0

Total Prior Year Re-programmed Funds \$0

Section 108 Loan Guarantee Fund \$0

**TOTAL FUNDING SOURCES \$599,101**

Submitted Proposed Project Totals \$599,101

Un-Submitted Proposed Project Totals  
(Project Contingency Funds) \$0

\*\* 170,000 from the City's General Fund are also budgeted for City Social Service Agency grants.

**APPLICATION FOR  
FEDERAL ASSISTANCE**

<b>2. Date Submitted</b> (mm/dd/yyyy) 08/08/2016	<b>Applicant Identifier</b> B-16-MC-480039
<b>3. Date Received by State</b> (mm/dd/yyyy)	<b>State Applicant Identifier</b>
<b>4. Date Received by Federal Agency</b> (mm/dd/yyyy)	<b>Federal Identifier</b> DUNS # 078364312

**1. Type of Submission**

*Application*                      *Pre-application*

Construction                       Construction

Non-Construction                       Non-Construction

**5. APPLICANT INFORMATION**

Legal Name: City of Lewisville	Organizational Unit: Neighborhood Services Department
Address (give city, county, state, and zip code): 151 W. Church St Lewisville TX 75057 Denton County	Name and telephone number of the person to be contacted on matters involving this application (give area code) Jamey Kirby 972-219-3780

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

7	5	-	6	0	0	0	5	8	3
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**7. TYPE OF APPLICANT:**  
(enter appropriate letter in box) C

A. State	I. State Controlled Institution of Higher Learning
B. County	J. Private University
C. Municipal	K. Indian Tribe
D. Township	L. Individual
E. Interstate	M. Profit Organization
F. Intermunicipal	N. Nonprofit
G. Special District	O. Public Housing Agency
H. Independent School Dist.	P. Other (Specify)

**8. TYPE OF APPLICATION:**

New                       Continuation                       Revision

If Revision, enter appropriate letter(s) in box(es):

--	--

A. Increase Award                      B. Decrease Award                      C. Increase Duration

D. Decrease Duration                      Other (specify):

\_\_\_\_\_

**9. NAME OF FEDERAL AGENCY:**  
U. S. Department of Housing and Urban Development

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** (xx-yyy)

1	4	.	2	1	8
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TITLE: Community Development Block Grant

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT**

Public Facilities/Infrastructure

Housing- Homeowner Rehab

Housing- Land Acquisition

Housing- Homebuyer Assistance

Public Services

Admin/Planning

**12. AREAS AFFECTED BY PROJECT** (cities, counties, states, etc.):

City of Lewisville and Local Target Areas

**13. PROPOSED PROJECT:**

Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)
10/01/2016	09/30/2017

**14. CONGRESSIONAL DISTRICTS OF:**

a. Applicant	b. Project
26	26

**15. ESTIMATED FUNDING:**

a. Federal:	\$ 599,101
b. Applicant:	\$ 0
c. State:	\$ 0
d. Local:	\$ 0
e. Other:	\$ 0
f. Program Income:	\$ 0
g. Total:	\$ 599,101

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE (mm/dd/yyyy)                      Program not covered

\_\_\_\_\_

b. NO.  PROGRAM IS NOT COVERED BY E.O. 12372

OR                       PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

Yes                      If "Yes," attach an explanation.                       No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

a. Typed Name of Authorized Representative Donna Barron	b. Title City Manager	c. Telephone number (Include Area Code) 972-219-3405
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

**Benefit to Low and Moderate Income Persons:**

Of the total PY 2016 CDBG allocation, less administrative costs, 15% of funds will benefit persons who have annual incomes of less than 80% of the area median income (AMI) and are clients of public service programs (Low/Mod Clientele - LMC); 7% will benefit new low/mod income homeowners (LMH); 27% will benefit residents in a low/mod income area (LMA) and 25% will benefit clients of non-profit facilities (LMC). A total of 100% of non-admin funds are programmed to benefit low/mod income persons. Of the \$170,000 in grants made from the City's general fund, at least \$109,500 also supports programs benefiting low-to-moderate income clients.

**Lead Agency:**

The City of Lewisville is the lead agency for implementation of activities under the Consolidated Plan for housing and community development and the Annual Action Plan. The Neighborhood Services Department has primary responsibility for program administration. The City will monitor sub-recipient agencies for compliance with federal, state and local requirements and to ensure performance.

**HOME Program Funding:**

The City did not apply in 2015 to the State for HOME funds for housing reconstruction to compliment the Lewisville Housing Rehabilitation Program, but will apply now that additional staff has been added. So far the City's priority is to spend allocated CDBG funds on substantial rehab projects, but as appropriate referrals are located, the HOME funds remain an option to perform demolition and reconstruction on homes where \$30,000 of repairs would still not come close to bringing the structure up to standards.

**Other Agency Funding and Leveraging:**

Non-profit agencies receiving CDBG funds also used other resources to assist in funding their programs. In the Request for Proposals and guidelines for activity

selection, the City of Lewisville requires applicants (sub-recipients) to show at least 25% matching funds for a proposed activity.

- ◆ The Area Agency on Aging and United Way are the major source of funding for Special Program for Aging Needs (SPAN).
- ◆ Children's Advocacy Center for Denton County also receives funds from the state Children's Advocacy Centers and the federal Victims of Crime Act.
- ◆ Medicaid and private pay funds assist with Special Abilities' activities.
- ◆ Funds from the Ryan White foundation, Department of Housing and Urban Development (HUD), and Denton County are the major sources of funding for Health Services of North Texas.
- ◆ Court Appointed Special Advocates (CASA) receives a grant from the federal Victim of Crime Act and Texas CASA Crime Victims Compensation grant.
- ◆ CCA's most significant source of funding is from the operation of their re-sale stores.

Additionally, the City of Lewisville itself funds activities carried out by local non-profit organizations on behalf of Lewisville residents. For FY 16 - 17, the City has committed \$170,000 of general fund money to social service spending. The allocation process for this money is combined with the CDBG application process under the responsibility of the CDBG Advisory Committee. A joint Request for Proposals was provided to area social service providers who could apply for CDBG funds as sub-recipients and/or for City Social Service Agency Funding (City Fund) out of the City's general fund. This year 8 social service agencies will receive CDBG public services funding. The remainder of the agencies are funded using City Funds. Refer to the CDBG/ City Social Service Agency Fund Budget. City employees once again have the opportunity to support many of the same agencies that are funded in this Action Plan through payroll deductions and fundraisers benefiting the United Way of Denton Campaign.

Other sources of funding expected to be received within the region are HUD Housing Choice Voucher Program, Section 202, Low Income Housing Tax Credit (LIHTC), Federal Home Loan Bank, FEMA, State funds, private lender financing, private foundation funds, non-profit organizations, for-profit developers, and local contributors.

Development and planning of programs eligible to receive federal funding will be approached with the concept of maximizing the extent of the federal dollar commitment with the least actual dollar commitment required to make the project feasible. Leveraging will also be accomplished through coordination of programs with non-profit and for-profit partners and volunteer work groups providing labor and assistance.

**Local Match Requirements:**

If the City acquires State Home funds, the City will consider funding projects that require local matching funds. Possible sources of local match include:

- City general and other local funds,
- Locally-funded infrastructure,
- Funds provided by local non-profit housing organizations,
- Administrative costs, and program delivery costs, provided by non-profit organizations as supportive programming,
- Private investment and donations, and
- Value of volunteer labor

**Limitation on Funding Sources:**

**Community Development Block Grant**

15% Cap on Public Service Activities	\$ 89,865
20% Cap on Planning and Program Management	\$ 119,820

There is no anticipated program income, surplus urban renewal settlements, or grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan, or income from float funded activities.

## **PROGRAM / PROJECT DESCRIPTIONS**

### **Performance Management:**

The 2016 - 2017 Annual Action Plan identified all activities with regards to federal requirement for Community Planning and Development (CPD) Formula Grant Programs called the Outcome Performance Measurement System. This system is to be used with the Lewisville Five Year Consolidated Plan and Annual Action Plans. This system allows HUD to collect information on the outcomes of activities funded with CPD formula grant assistance, and to aggregate that information at the national, state and local level.

The Performance Measurement System has three overarching objectives: (1) Creating Suitable Living Environments, (2) Providing Decent Affordable Housing, and (3) Creating Economic Opportunities. There are also three outcomes under each objective: (1) Availability/Accessibility, (2) Affordability, and (3) Sustainability. Thus, the three objectives, each having three possible outcomes, will produce nine possible “outcome/objective statement in HUD’s Integrated Disbursement and Information System (IDIS) by entering data in the form of output indicators. The chart below illustrates the Outcome framework making links between Objectives, Outcomes and the 9 Outcome Statements.

Based upon the intent when funding an objective, the City of Lewisville will determine under which of the three objectives to report the outcomes of their projects and activities. Once the objective is chosen, the City will choose which of the three outcome categories that best reflects what they are seeking to achieve (the results) in funding a particular activity. The Objectives, Outcomes and Outcome Statements for the City have been developed based upon the

adopted Five Year Consolidated Plan Fiscal Year 2012 – 2017 goals, objectives, strategies and outputs.

	<b>Outcome #1 Availability/Accessibility</b>	<b>Outcome #2 Affordability</b>	<b>Outcome #3 Sustainability</b>
<b>Objective #1</b> Suitable Living Environment	Enhance <u>Suitable Living Environment</u> Through Improved/New <u>Accessibility</u>	Enhance <u>Suitable Living Environment</u> Through Improved/New <u>Affordability</u>	Enhance <u>Suitable Living Environment</u> Through Improved/New <u>Sustainability</u>
<b>Objective #2</b> Decent Housing	Create <u>Decent Housing</u> with Improved/New <u>Availability</u>	Create <u>Decent Housing</u> with Improved/New <u>Affordability</u>	Create <u>Decent Housing</u> with Improved/New <u>Sustainability</u>
<b>Objective #3</b> Economic Opportunity	Provide <u>Economic Opportunity</u> Through Improved/New <u>Accessibility</u>	Provide <u>Economic Opportunity</u> Through Improved/New <u>Affordability</u>	Provide <u>Economic Opportunity</u> Through Improved/New <u>Sustainability</u>

### Summary of Annual Goals, Outcomes, Objectives, Projects and Activities:

Table 2C on the following page summarizes the Annual Action Plan Goals, Outcomes, Objectives, Projects and Activities.

**Table 2C**  
**Summary of Specific Housing/Community Development Objectives**

Goal #	Specific Objectives and Strategies	Performance Measure Outputs and Objectives	12-17 Expected Units	16-17 Expected Units	Performance Measures
	<b>Housing Objectives</b>				
1	1.1.1 Provide major housing rehabilitation for low-income homeowners.	Number of households with improved living conditions and number of substandard housing brought into conformance with ADA.	15	3	DH-1
1	1.1.2 Provide urgent and minor repairs/ADA housing rehabilitation for low-income homeowners. (volunteer and donor matching)	Number of households with improved living conditions and the number of housing units brought into conformance with ADA with CDBG or HOME.	16	No funding 8	DH-1
1	1.2.1 Provide down payment and closing cost assistance and principal reduction assistance.	The number of projects assisted with CDBG or HOME resulting in homeownership, including Section 8 HCVP.	50	4	DH-2
1	1.3.1 Investigate alternative housing programs (e.g. NSP, infill housing, acquisition and rehab, etc.) in an effort to enhance affordability.	The introduction of new affordable housing products that increase the affordable housing stock and affordability.	TBD	1 (Habitat)	DH-2
1	1.5 Improve conditions for renters by providing Tenant Based Rental Assistance and support Section 8, VASH, etc.	Increased affordability for low income and/or special needs renters.	15	No funding	DH-2
1	1.6 Strengthen existing nonprofits / evaluate the creation of a new CHDO Housing Providers.	Increased effectiveness and production on nonprofit and CHDO housing providers.	5	No funding	DH-2
<b>Goal#</b>	<b>Infrastructure</b>				
2	2.1 Provide funding for infrastructure improvements and public facilities.	Improve quality of life for residents by improving living conditions within CDBG eligible Target Areas; assist nonprofits with facility needs.	5 Projects	1 Project	SL-3
	<b>Public Services Objectives</b>				
2	2.2.1 Provide homebuyer education services to first time homebuyers.	The number of persons receiving services through these programs.	500	120	DH-1
2	2.2.2 Provide support for early childhood services (e.g. Launchability)	The number of persons receiving services through these programs.	20	No funding	SL-1
2	2.2.3 Provide support for child abuse services (e.g. CACDC & CASA)	The number of persons receiving services through these programs.	175	27	SL-1
2	2.2.4 Provide support for	The number of persons receiving	165	15	SL-1

	health services (e.g. HSNT)	services through these programs.			
2	2.2.5 Provide support for domestic violence services (e.g. DCFOF)	The number of persons receiving services through these programs.	25	7	SL-1
2	2.2.6 Provide support for elderly / disabled services (e.g. SPAN and SANT)	The number of persons receiving services through these programs.	715	138	SL-2
2	2.2.7 Provide support HIV/AIDS services (HSNT)	The number of persons receiving services through these programs.	20	0	SL-2
2	2.2 Provide support for Youth program services (Boys & Girls Club)	The number of persons receiving services through these programs.	10	5	SL- 1
2	2.2 Provide support for financial crisis services(CCA)	The number of persons receiving services through these programs.	90	90	
2	2.2.8 Collaboration to provide financial literacy programs to encourage use of EITC & tax preparation services.	The number of persons receiving services through these programs.	1,000	200 (CCA, Frost Bank)	EO-1
Homeless Service Objectives					
3	3.1.1 Strengthen the collaboration with homeless providers.	Improved coordination and understanding of homeless issues.	TBD	No funding	SL-3
3	3.1.2 Provide support for homeless count.	Improved understanding of homeless issues.	TBD	No funding	SL-3

	Availability/Accessibility	Affordability	Sustainability
Decent Housing	DH-1	DH-2	DH-3
Suitable Living Environment	SL-1	SL-2	SL-3
Economic Opportunity	EO-1	EO-2	EO-3

### Proposed Project Chart

<b>Agency and Project</b>	<b>Priority/Eligible Activity</b>	<b>Proposed Accomplishments</b>	<b>Outcomes</b>	<b>Consolidated Plan Goal</b>
Public Works Dept - Manhole Rehab	Public Facilities Infrastructure Improvements – Manhole (H)	1,950 Households 4,875 People 90 locations	Sustainability for creating a Suitable Living Environment	To Stabilize and Revitalize Declining Neighborhoods, and Promote a Livable Neighborhood Environment
First-time Homebuyer Assistance Program – Down-payment and Closing Costs	Housing (H)	4 Households	Affordability for providing Decent Affordable Housing	To Provide Safe, Decent and Affordable Housing
Lewisville Housing Rehab Program – owner-occupied housing rehabilitation	Housing (H)	3 Households	Sustainability for providing Decent Affordable Housing	To Provide Safe, Decent and Affordable Housing
Land Acquisition for Affordable Housing – Habitat for Humanity	Housing (H)	1 Household	Affordability for providing Decent Affordable Housing	To Provide Safe, Decent and Affordable Housing
Christian Community Action – Family Assistance/ Financial	Financial/ Crisis	90 People	Sustainability for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
Special Abilities of N. Texas – Independent Living/ Adult Care	Disabled Services (M)	2 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
CASA of Denton County Court Advocacy Program	Youth Services (H)	9 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
Children’s Advocacy Center of Denton County	Youth Services/Abused and Neglected Children (H)	18 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
SPAN Congregate & Delivered Meals	Senior Services (M)	136 People	Affordability for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
Health Services of N. Texas – Indigent Primary Health Care	Health Services (H)	15 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
Denton County Friends of the Family – Shelter	Battered & Abused Spouses (H)	7 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents
Boys & Girls Club of North Central Texas	Youth Services (H)	5 People	Accessibility for creating a Suitable Living Environment	To Improve the Quality of Life and Environment for Residents

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>
0001	Sewer Improvements: Manhole Rehabilitation	03D Sewer Improvements	CDBG \$ 194,000 ESG \$ 0 HOME \$ 0 HOPWA \$ 0
CD-PY16-01	City Public Works	570.201(c) 1,950 Households 4,875 People	TOTAL \$ 194,000 Total other Funding \$ 0

The City aims to provide high quality public facilities and infrastructure improvements to help improve the physical appearance of neighborhoods and to provide the facilities necessary to deliver public services.

Funds will be used to rehabilitate 90 manholes in CDBG-eligible residential neighborhoods.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a) (1) – Low/ Mod Area
Sub-recipient:	Local Government
Location(s)	CT & BG’s 021745.4, 021502.3, 021740.2, 021739.1, 021745.1, 021743.2, 021618.1
CT: 021603 BG: 1	County: 48121

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0002	Lewisville Housing Rehab Program	14A Housing Rehabilitation	CDBG	\$ 128,416
			ESG	\$ 0
			HOME	\$ 0
			HOPWA	\$ 0
CD-PY16-02	City Neighborhood Services Dept.	570.201(c) 3 Households	TOTAL	\$ 128,416
			Total other Funding	\$ 0

The City aims to provide high quality public facilities and infrastructure improvements to help improve the physical appearance of neighborhoods and to provide the facilities necessary to deliver public services.

Funds will be used to repair and rehabilitate housing for low-to-moderate income residents with priority to elderly and disabled homeowners with extremely low incomes.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a) (1) – Low/ Mod Area
Sub-recipient:	Local Government
Location(s)	CT & BG’s 021618.1, 0216.18.3, 021619.2
CT: 021618 BG: 1	County: 48121

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0003	First Time Homebuyer Program:	6 Direct Homeownership Assist	CDBG	\$ 42,000
CD-PY16-03	City Neighborhood Services Dept.	570.201 (n)  4 Households	ESG	\$ 0
			HOME	\$ 0
			HOPWA	\$ 0
			TOTAL	\$ 42,000
			Total other Funding	\$ 0

The City aims to increase the availability of affordable housing and reduce the costs prohibiting many families from obtaining the goal of home ownership.

Funds from the First Time Homebuyer Program are used to provide down-payment and closing cost assistance to low/moderate income families purchasing their first home in the City of Lewisville. Many families are able to meet monthly mortgage obligations, but unable to pay for the up-front costs associated with buying a home. By subsidizing the up-front costs of purchasing a home, the City is able to spread home ownership to more of its citizens and increase their quality of life.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a) (3) – Low/ Mod Housing
Sub-recipient:	Local Government
Location(s)	City-Wide (with preference for local Targeted Areas)

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0004	Habitat for Humanity Land Acquisition for Affordable Housing	14G Land Acquisition	CDBG	\$ 25,000
			ESG	\$ 0
			HOME	\$ 0
			HOPWA	\$ 0
CD-PY16-04	Public Facilities	570.201(c) 1 Household	TOTAL	\$ 25,000
			Total other Funding	\$ 0

The City aims to increase the availability of affordable housing and reduce the costs prohibiting many families from obtaining the goal of home ownership.

Funds will be used for land acquisition and clearance to purchase at least one vacant lot. The lot will be made ready for construction of residential housing. The City will work with Habitat for Humanity to identify appropriate location for zoning and neighborhood design compatibility. Habitat will build a home for a low-income family (below 50% AMI) using volunteer labor and sweat equity from the homebuyer. The home will be occupied with a no-interest mortgage by September 30, 2018.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a) (3) – Low/ Mod Housing
Sub-recipient:	Sub-recipient Private 570.500 (C)
Location(s)	City-Wide (with preference for local Targeted Areas)

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>
0005	CASA of Denton County	05N Abused/Neglected Children	CDBG \$ 14,000
PS-PY16-01	Public Services	570.201(e)	ESG \$ 0
		9 People	HOME \$ 0
			HOPWA \$ 0
			TOTAL \$ 14,000
			Total other Funding \$ 0

The City will collaborate with agencies that provide social services and encourage those qualified agencies to complete for CDBG funding by proposing projects that meet priority needs.

To provide a fact finding investigation, monitor court orders and make recommendations for services and final placement of abused children. Volunteer advocates and staff proved the District Judge with information necessary to make the best informed decision regarding the permanent placement of a child that has been removed from parental custody. Funds will be used to staff, manage and supervise 9 cases.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a)(2)(A) – Low/Mod Clientele – Presumed Benefit
Sub-recipient:	Sub-recipient Private 570.500 (c)
Location(s)	614 North Bell Avenue, Denton, TX 76209

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0006	Denton Co. Children’s Advocacy Center. Clinical Services	005N Abused/Neglected	CDBG	\$ 13,000
PS-PY16-02	Public Services	570. 201 (e)	ESG	\$ 0
		18 People	HOME	\$ 0
			HOPWA	\$ 0
			TOTAL	\$ 13,000
			Total other Funding	\$ 13,000 (City)

The City will collaborate with agencies that provide social services and encourage those qualified agencies to complete for CDBGF funding by proposing projects that meet priority needs.

DCCAC’s mission is to reduce the trauma of child abuse and the criminal justice system. The Center facilitates joint investigations in a child-friendly environment, initiates the healing process through counseling and trains professionals to effectively pursue justice. Funds will purchase 452 “victim services” units (148 with CDBG funds). This unit of service includes forensic interviews, case reviews, direct therapy (group and individual), extended assessments, parent consultations, crisis intervention, and testing.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17
Eligibility:	570.208(a) (2) (A) – Low/Mod Clientele – Presumed Benefit		
Sub-recipient:	Sub-recipient Private 570.500 (c)		
Location(s)	1854 Cain Drive, Lewisville, TX 75077		

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0007	Health Services of North Texas Indigent Primary Care	05M Health Services	CDBG	\$ 7,865
PS-PY16-03		570.201(e)	ESG	\$ 0
		15 People	HOME	\$ 0
			HOPWA	\$ 0
			TOTAL	\$ 7,865
		Total other Funding	\$ 0	

The City will collaborate with agencies that provide social services and encourage those qualified agencies to compete for CDBG funding by proposing projects that meet priority needs.

Health Services of North Texas operates a Federally Qualified health clinic in Denton Texas that provides primary health care to low-income uninsured and underinsured patients. A client could receive any or all of the following services during the medical visit: medical exams, blood draws, lab services, diagnostic testing, imaging and patient education.

Help the Homeless?	Yes	Start Date:	10/01/16
Help those with HIV or AIDS?	Yes	Completion Date:	09/30/17

Eligibility:	570.208(a)(2) – Low/Mod Clientele
Sub-recipient:	Sub-recipient Private 570.500 (c)
Location(s)	4210 Mesa Dr., Denton TX 7620

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0008	SPAN	05A Senior Services	CDBG	\$ 24,000
			ESG	\$ 0
PS-PY16-04	Public Services	570.201(e)	HOME	\$ 0
			HOPWA	\$ 0
		136 People	TOTAL	\$ 24,000
			Total other Funding	\$ 0

The City will collaborate with agencies that provide social services and encourage those qualified agencies to compete for CDBG funding by proposing projects that meet priority needs.

SPAN provides daily congregate and delivered meals to elderly and disabled clients throughout Denton County. CDBG funds will provide 2,400 congregate and 12,600 home delivered meals to Lewisville Seniors.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17
Eligibility:	570.208(a)(2) – Low/Mod Clientele		
Sub-recipient:	Sub-recipient Private 570.500 (c)		
Location(s)	1800 Malone Street, Denton TX 76201		

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>
0009	Christian Community Action Family Assistance Program	05Q Subsistence Payments	CDBG \$ 10,000 ESG \$ 0
PS-PY16-05	Public Services	570.201(e)  90 People	HOME \$ 0 HOPWA \$ 0 TOTAL \$ 10,000 Total other Funding \$ 0

City will collaborate with agencies that provide social services and encourage those qualified agencies to compete for CDBG funding by proposing projects that meet priority needs.

The Christian Community Action Family Assistance Center provides case management and financial/crisis services to clients. These services include rental assistance, case management counseling, and life skills training. Funds will be used to purchase 145 case management services.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570.208(a)(2) – Low/Mod Clientele
Sub-recipient:	Sub-recipient Private 570.500 (C)
Location(s)	200 S. Mill Street, Lewisville TX 75057

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0010	Denton County Friends of the Family	05G Battered & Abused Spouses	CDBG	\$ 10,000
	Violence & Sexual Assault Recovery		ESG	\$ 0
PS-PY16-06	Public Services	570. 201 (e)	HOME	\$ 0
			HOPWA	\$ 0
		7 People	TOTAL	\$ 10,000
			Total other Funding	\$ 0

The City will collaborate with agencies that provide social services and encourage those qualified agencies to complete for CDBG funding by proposing projects that meet priority needs.

Denton County Friends of the Family operates a family shelter for victims of relationship violence and sexual assault. They provide counseling and shelter for victims, CDBG funds will be used to purchase 200 shelter days for Lewisville victims of abuse. The agencies also receive City Funds for their outreach (face to face) services and programs.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17
Eligibility:	570 .208(a) (2)(A) – Low/Mod Clientele – Presumed Benefit		
Sub-recipient:	Sub-recipient Private 570.500 (c)		
Location(s)	1400 Crescent, Ste. 5, Denton, TX 76201		

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0011	Boys & Girls Club of North Central Texas	05 D Youth Services	CDBG	\$ 6,000
PS-PY16-07	Public Services	570. 201 (e)	ESG	\$ 0
			HOME	\$ 0
			HOPWA	\$ 0
		5 People	TOTAL	\$ 6,000
			Total other Funding	\$ 0

The City will collaborate with agencies that provide social services and encourage those qualified agencies to complete for CDBG funding by proposing projects that meet priority needs.

Boys & Girls Club of North Central Texas operates an afterschool youth development activities and full-day summer programs for at-risk youth ages 6-17 years old. CDBG funds will be used to purchase 4,760 hours of after-school club attendance at their new location that opened in 2015.

Help the Homeless?	No	Start Date:	10/01/16
Help those with HIV or AIDS?	No	Completion Date:	09/30/17

Eligibility:	570 .208(a) (2) – Low/Mod Clientele
Sub-recipient:	Sub-recipient Private 570.500 (c)
Location(s)	303 Alamo Avenue, Lake Dallas, TX 75065

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>	
0012	Special Abilities of N. Texas	05B Handicapped Services	CDBG	\$ 5,000
	Independent Living/ Adult Care		ESG	\$ 0
PS-PY16-08	Public Services	570. 201 (e)	HOME	\$ 0
			HOPWA	\$ 0
		2 People	TOTAL	\$ 5,000
			Total other Funding	\$ 0

The City will collaborate with agencies that provide social services and encourage those qualified agencies to complete for CDBG funding by proposing projects that meet priority needs.

Special Abilities of North Texas (SANT) provides vocational training, education and academics, community inclusion, independent living skills, health, fitness and nutrition education. SANT will provide 18 days of adult care for 2 people.

Help the Homeless? No Start Date: 10/01/16  
 Help those with HIV or AIDS? No Completion Date: 09/30/17

Eligibility: 570 .208(a) (2) – Low/Mod Clientele  
 Sub-recipient: Sub-recipient Private 570.500 (c)  
 Location(s): 303 Alamo Avenue, Lake Dallas, TX 75065

**U.S. Department of Housing & Urban Development  
CPD Consolidated Plan Listing of Proposed Projects**

<b>Project ID/ Local ID</b>	<b>Project Title/Priority/ Objective/Description</b>	<b>HUD Matrix Code/Title/ Citation/Accomplishments</b>	<b>Funding Sources</b>
0013	CDBG Administration	21A Gen. Program Admin	CDBG \$ 119,820
AD-PY15-01	Planning & Administration	570.206	ESG \$ 0
		0 N/A	HOME \$ 0
			HOPWA \$ 0
			TOTAL \$ 119,820
			Total other Funding \$ 0

Administer the CDBG Grant program; provide technical assistance to nonprofit agencies and program applicants; provide information and referral to clients; plan for CDBG projects, housing programs and neighborhood revitalization; monitor CDBG projects and sub-recipients.

Help the Homeless? No Start Date: 10/01/16  
 Help those with HIV or AIDS? No Completion Date: 09/30/17

Eligibility: Admin  
 Sub-recipient: Local Government  
 Location(s): Address: 151 W. Church Street, Lewisville TX 75057

## **CDBG ACTIVITIES (AGENCY/ORGANIZATION OFFICE LOCATION)**

1. Court Appointed Special Advocates (CASA)  
614 North Bell Avenue  
Denton TX 76209
  
2. Denton County Children's Advocacy Center  
1854 Cain Drive  
Lewisville TX 75077
  
3. Christian Community Action  
200 S. Mill St.  
Lewisville TX 75057
  
4. Service Program for Aging Needs (SPAN)  
1800 Malone Street  
Denton, TX 76201
  
5. Health Services of North Texas  
4210 Mesa Drive  
Denton, TX 76207
  
6. Denton County Friends of the Family  
4845 S I-35 E, Suite 200  
Corinth, TX 76210
  
7. Boys & Girls Club of North Central Texas  
303 Alamo Avenue  
Lake Dallas, TX 75065
  
8. Special Abilities of North Texas  
1511 FM 407/Justin Rd. Suite B  
Lewisville, TX 75077

## **PUBLIC PARTICIPATION**

### **Public Input and Hearings:**

The 2016-2017 Annual Action Plan was also based on the input received from the community under the direction of the City of Lewisville's Community Development Block Grant Advisory Committee and the Grants Division staff. Two hearings were held early in the process on November 17 at Lewisville City Hall and December 1, 2015 at the Chin Evangelical Baptist Church. This location was selected because it is within the new Lakeland Terrace Targeted Revitalization Neighborhood (TRN) and it is the first permanent church built by the Burmese Chin refugee community which has seen explosive growth in Lewisville in the past decade. Thirty individuals attended hearings including residents of target areas, agency contacts and representatives of the church community. Specific comments are listed below.

### **CDBG Advisory Committee Meetings:**

As recognized in the Citizen Participation Plan, the CDBG Advisory Committee represents the principle form of citizen input. As a citizen's advisory panel, the committee's purpose is to provide the City Council with input, oversight and recommendations. All committee meetings are open to the public and the committee participates actively in public hearings.

### **Summary of Public Comment:**

Finally, a comment and review period was held July 1 – August 1, 2016 prior to adoption of this plan, giving citizens the opportunity to view the consolidated plan and provide input. Public Notices to obtain views on housing and community development needs were published on July 1, 2016 in a legal notice. All Community Development Block Grant Advisory Committee meetings are open to the public including agency presentations where they considered proposals. Their July 19, 2016 meeting included a public hearing as well as review and consideration of this 2016 AAP. A public hearing held before the City Council is advertised for August 1, 2016. The chart that follows lists

public comments received at public hearings and other comments resulting from public review of the published plan.

Public Hearing Comments – November 17, 2015 – Old Town City Hall	
<u>Comment:</u>	<u>Response:</u>
There is a need for tutoring programs at Central and College St. Elementary schools	The City has funded a math tutoring program and Boys & Girls Clubs and recognizes additional needs.
Macedonia Baptist Church will open a multi-purpose building with a gym, two rooms and commercial kitchen that might house community activities.	The church may wish to sponsor a non-profit agency to manage programs or coordinate with existing community services.
There is a growing need for senior services.	The City funds meals and senior volunteer activities and recognizes an aging population.
There is a need for vocation programming.	Financial services, including employment, is high on the City's Needs priorities but there have been a lack of applications in that category.
There is a need for funding home modifications for elderly residents such as the Amy Young program.	The City has hired a new Housing Rehab Technician and may soon be able to apply for funds from the state's Amy Young program or FHLB's SNAP grant.
Public Hearing Comments – December 1, 2015 – Chin Evangelical Baptist Church (Lakeland Terrace Targeted Revitalization Neighborhood)	
<u>Comment:</u>	<u>Response:</u>
There is a need for storm/disaster facilities within the community and/or funding to assist homeowners in building storm shelters.	Safe rooms are an eligible HUD expense in CDBG affordable housing activities but funds are limited and other needs may have case-by-case priority.
Addressing homelessness in neighboring parks with a shelter in Lewisville, or village of Tiny Homes	Staff related that the closest shelter is in Denton. Currently the smallest minimum dwelling size is 1200 sq. ft. in Lewisville per zoning ordinance.
Investing in concrete vs. asphalt streets when considering potential street improvements	Staff noted comments supporting a higher quality street repair.
Need for speed bumps and traffic calming on Northshore and Pebblebrook Drives	Staff took notes to discuss if measures could be taken to reduce traffic, will discuss with traffic engineer
Need for area grocery store to return to vacant Kroger	While CDBG funds can be used to attract specific businesses funding is likely to come up short. Staff will advise the Economic Dev. Dept. of the comment.
Need for street lighting in Lakewood Terrace. There is only one on Pebblebrook.	Staff reviewed with the Public Services Dept. Streets meet minimum standards throughout the City.
Request for CDBG funds to beautify neighborhood landscaping, provide butterfly sanctuary and bird habitat, hike and bike trails through neighborhood	CDBG funds can be used for parks and trails; generally not for landscaping elsewhere except as secondary to larger projects.
Citizen mentioned renters should be required to attend course on home upkeep and maintenance, comment on Atlanta Program for Residents	Staff will research Atlanta's ordinance on providing incentives to renters that attend maintenance classes; City has a rental inspection program
Need to limit the number of vehicles allowed to park on street in front of a property, perhaps by ordinance.	Generally parking is allowed on all public streets as long as it does not block access.
Concerns with Highway Expansion and Sound Wall	All homeowners were directed to the 35Express website and TxDOT.

This section will be updated after August 1: The CDBG Advisory Committee held an advertised public hearing on July 19 and the City Council on August 1, 2016. Public comments received at the hearings are during the comment period include: Funded and non-funded applicants for sub-grants were also notified of the public hearings.

## **STRATEGIES FOR INVESTMENT AND OTHER ACTIONS**

### **General:**

The CDBG Advisory Committee reviews funding requests submitted each year that address the priority needs listed in the FY2012 - 2017 Consolidated Plan for Housing and Community Development. Each application is reviewed by means of a scoring instrument then prioritized by the committee. A proposed budget is developed and submitted to City Council for approval. An obstacle in meeting underserved needs is a lack of funding in the City. If the additional funding needed were available, additional staff would be necessary to properly administer and manage the expanded programs.

### **Affordable Housing:**

The relative priority of each category in the Consolidated Plan was assigned after collaboration with the CCA, Denton Affordable Housing Corp., the Denton Housing Authority, the Greater Lewisville Realtors Association and the Greater Lewisville Habitat for Humanity. The City is also using the First Time Homebuyer to meet this area of need and will assist Habitat for Humanity to purchase a vacant lot for a new home.

### **Non Housing Community Development:**

In the past the City of Lewisville had committed some grant funds for public facilities or infrastructure projects. With movement toward neighborhood-based planning and revitalization, the City raised the relative priority of public facilities improvements in the 2012-2017 Consolidated Plan. Three such projects are funded in this plan.

### **Barriers to Affordable Housing:**

City staff has identified zoning restrictions, socioeconomic impediments and cost of housing as barriers to affordable housing. The City will address some of the barriers through collaboration with Christian Community Action and the Greater Lewisville Habitat for Humanity, the two organizations in the City addressing housing issues. The First-Time Homebuyer Assistance Program will directly address the cost of housing barrier. Zoning restrictions and requirements of the City's general development ordinance increase the cost of housing construction but also ensure quality, livable communities. The City will continue to address this issue through case-by-case requests for variances for Habitat for Humanity, CCA Housing and CDBG funded housing programs.

### **Fair Housing:**

The City of Lewisville conducted a Fair Housing Analysis of Impediments in conjunction with the preparation of the 2012 - 2017 Consolidated Plan. The analysis provided a detailed look at the demographic data provided by the 2000 and 2010 U.S. Census and Home Mortgage Disclosure Act (HMDA) data from 2005 through 2009. The study identified various impediments to the fair housing and recommends remedial activities to address those impediments. The process of identifying impediments to fair housing includes data analysis efforts combined with community input through focus group sessions and key person interviews. Through these methods, important impediments or barriers to fair housing choice were identified. A summary of Impediments identified in the 2012 Analysis of Impediments to Fair Housing and remedial actions to be undertaken by the city to lessen their impacts include the following.

The recently completed Analysis of Impediments to Fair Housing Choice identified fair housing impediments related to **real estate market conditions as impediments**: a lack of affordability and insufficient income; **public policy related impediments**: a lack of public awareness of fair housing rights and local fair housing legislation; **banking, finance, insurance and other industry related impediments**: large numbers of foreclosures in the real estate market; predatory lending; and low number of loan

applications and lower origination rates among minority borrowers; **socio-economic impediments:** poverty and low-income among minority populations; and **neighborhood conditions related impediments:** Limited resources to assist lower income, elderly and indigent homeowners maintain their homes and stability in neighborhoods. Housing affordability, and the cost, qualifying and associated issues such as credit appeared to be the most pressing issues faced relative to acquiring housing of one's choice. The increase in home foreclosures can be linked to predatory lending as a significant aftereffect of those lending practices. Adjustable Rate Mortgages (ARMs), interest only loans, one hundred percent loan-to-value mortgages, and other mortgage instruments that enabled large numbers of families enter into homeownership have become burdens to many as the housing bubble proved to be unsustainable. As the Community Profile points out, a number of Lewisville homeowners have lost their homes to foreclosure, many as a direct result of these lending practices. However, with this unfortunate state of the economy come opportunities for others. Relative bargains have been available to families as these foreclosed units are put back on the market. Investor purchases are common, with these homes being marketed as rental units, but where a family has been able to save enough for a down-payment and has avoided sub-prime mortgage products, some have been able to take advantage of the bursting housing bubble to find their own opportunities.

Review of City practices revealed no significant policy barriers to affordable housing. These policies include land use controls, zoning ordinances, building codes, fees and charges, and tax policies. No excessive, exclusionary, discriminatory or duplicatory policies, rules or regulations were found that constitute barriers to affordability.

Several specific issues were identified through the Housing Market Analysis and other research conducted in preparation of this document. Some of these issues are addressed in this Strategic Plan. Of major concern is the presence in Lewisville of older and some poorly maintained housing stock. As the economy has worsened, homeowners have been less able to appropriately maintain their homes. The City

should continue its efforts to assist homeowners with major rehabilitation or reconstruction efforts.

The need for more homeownership opportunities for low- and moderate-income households should be addressed. The average price of a home in Lewisville's resale market is beyond the typical low- and moderate-income household's ability to make payments and still remain within HUD's definition of housing affordability. The City should continue to provide down-payment and closing cost assistance and principal reduction assistance to help these household reduce the mortgage principal and their resulting monthly housing costs.

Homebuyer education provides households with better prospects of being successful homeowners. Homebuyer programs help prepare buyers for their obligations and commitments as homeowners and help them understand what is required to properly maintain their home. The City should continue its well-established partnership with HUD approved housing counseling agencies and local professionals to assist buyers through educational programs.

**Lead-Based Paint Hazards:**

Visual assessments will be conducted for all units assisted under the First-Time Homebuyer Assistance Program and full inspections will be done for units in the housing rehabilitation program.

**Anti-Poverty Strategy:**

The Housing and Community Development - Goals, Objectives and Strategies (Five Year Plan) and each of the sub categories revolves around a plan to improve housing, quality of life and environment while providing economic opportunity to residents of the City. This is being achieved through collaborative efforts with local agencies/organizations offering programs and services addressing poverty issues. The City of Lewisville provides \$170,000 in general fund money to support nonprofit agencies. While income verifications are not required with general fund grants, of that amount at least \$109,500 is used for low/mod income clients. PediPlace, a general fund

award agency, provides health services to indigent and uninsured residents. Support in previous Annual Plans of Christian Community Action's Crisis Center and Food Pantry, greatly expanded that agency's anti-poverty efforts and in this Action Plan CCA is funded for \$10,000 to further its Family Assistance program. Program staff attends United Way's Bank On program meetings.

In PY 2006 the City began assisting with coordination of tax preparation services and awareness of the Earned Income Tax Credit (EITC) program. After cancelling its program the previous year, this year CCA moved its VITA program to provide tax preparation service under the United Way's VITA campaign. Staff will continue to play a role in providing information to non-profits, the public and City of Lewisville employees.

#### **Institutional Structure:**

The City works with a variety of non-profit agencies and community groups to develop and implement the projects and activities described in the Annual Action Plan. Technical assistance is offered to community and neighborhood groups interested in developing projects for future funding consideration. The Cities of Lewisville and Flower Mound host quarterly social service agency roundtables. Due to limited CDBG entitlement funding and lack of local service providers, some issues may not be addressed or may only be addressed on a limited basis.

#### **Coordination:**

To coordinate various assisted housing programs with other private providers, the City undertakes or will develop the following activities:

- Jointly facilitate the new Denton County Homeless Coalition (Continuum of Care committee) on Homelessness and Transitional Housing issues.
- Refer persons in need of rental assistance to the Denton Housing Authority.
- Provide referrals to the privately assisted housing projects in Lewisville.
- Provide technical assistance to developers, non-profits, coalitions and neighborhood groups interested in developing housing or activities related to the CDBG program.

- Utilize the Neighborhood Services Dept. to make efforts, as appropriate, to bring various groups together to achieve community goals, coordinate services or encourage joint projects.

**Public Housing:**

The City of Lewisville has no Public Housing; however it has completed an agreement with the Denton Housing Authority to safeguard the number of Section 8 vouchers available for Lewisville residents. Project based Section 8 conversion to vouchers (Basswood Manor) was successfully saved for Lewisville. Also, any future vouchers created through Pre-pays or Opt-outs within Lewisville will continue to be set aside for the use of Lewisville residents. A separate waiting list has been created. This was necessary due to a previous preference for Denton residents on DHA waiting lists. The City has monitored how well this agreement has worked and noted that the Lewisville waiting list has now been activated and open vouchers have begun to flow to residents that had been on the DHA waiting list for up to five years. The City and the Denton Housing Authority now have a working framework for consultation on Section 8 and other related housing issues.

**Monitoring:**

The City will monitor progress on its proposed activities throughout the plan year. Staff will make quarterly progress reports to the CDBG Advisory Committee. Sub-recipient monitoring will follow the monitoring plan in the City's Consolidated Plan. The City implemented a series of performance measurements to assist in sub-recipient monitoring that are now in place.

Monitoring of public service sub-recipients has begun based on a risk assessment completed by staff. Agencies receiving Housing and Community Development funds will also be monitored and also undergo compliance review and technical assistance from the City. Construction projects will have periodic progress inspections from program staff. These visits will be for general review and to document reimbursements while inspections for building methods and materials will be conducted by a project manager

whose experience must be documented and reviewed by program staff. Regular building code compliance inspections will be documented. After completion, an onsite visit will be conducted to review the project finances and record-keeping to be used to show clientele served or other documentation needed to meet a national objective for five years (or longer if added to sub-recipient contracts for larger projects at the discretion of the City). After an initial monitoring, grant recipients will submit annual reports to show continued compliance and the City will conduct desk monitoring through the contract term.

## **Targeting and Geographical Distribution**

### **Geographical Distribution:**

The City originally established a general target area of East Lewisville and Central/Old Town Lewisville that correspond to planning sub-areas from the Lewisville 2010 Study. It is made up of a large contiguous section of older single family housing stock and includes low/mod income and areas of high minority household concentration. CDBG projects may occur anywhere in the City, but must serve a low/moderate-income population. For the most part, however, the target area does not include some of the low/mod income block groups in the City where the housing is made up of apartments. Other projects as described below will be limited to the CDBG Target Area. It was expanded in 1998, south to Bellaire Blvd. and west to Old Orchard to address an emerging area of need based on age and demographics. It does not exactly correspond to CDBG-eligible census tracts, but is a locally designated target area.

In 2001 the City adopted a neighborhood based, revitalization strategy designating two **Targeted Reinvestment Neighborhoods** (TRNs) overlaid on the existing target area: the College Street TRN and McKenzie/Hembry TRN (see maps). The City's intent is to spend funds on several different CDBG activities within the TRN areas in an attempt to make visible improvements in a concentrated area. In the 2007 Consolidated Plan, the Charles/Edna TRN was designated after an exhaustive review of four potential areas. It overlaps with the Old Town design district. It has housing dating back as far as the

1920s but in general from the 1940s and 1950s. Most single family homes are small, less than 1200 square feet and there is one medium sized apartment complex on Main Street and one very small complex on Milton included in the TRN. The City hopes that concentrated neighborhood improvements will promote further private investment by owners and investors and ultimately result in higher property values and improved quality of life for low/moderate income residents.

In last year's Action Plan, the City designated Lakeland Terrace Addition Number 2 as the fourth TRN. This neighborhood lies on the west side of I-35 but shares many characteristics with housing in Old Town. Over the last decade, the City has improved the concrete streets, sidewalks curb and gutter using non-CDBG funds. With new census data showing this area is now considered low/moderate income. The Neighborhood Enhancement Team is using this neighborhood for a pilot project to included volunteer minor-repair projects, fence repair incentives and beautification.

**Activity Locations:** (also see the Listing of Proposed Projects sheets) The activities and programs described in the Annual Action Plan are aligned with the Strategic Plan, as outlined in the Consolidated Plan. Note, census tract and block group boundaries changed in 2010 and new census data is available for the first time in this Action Plan.

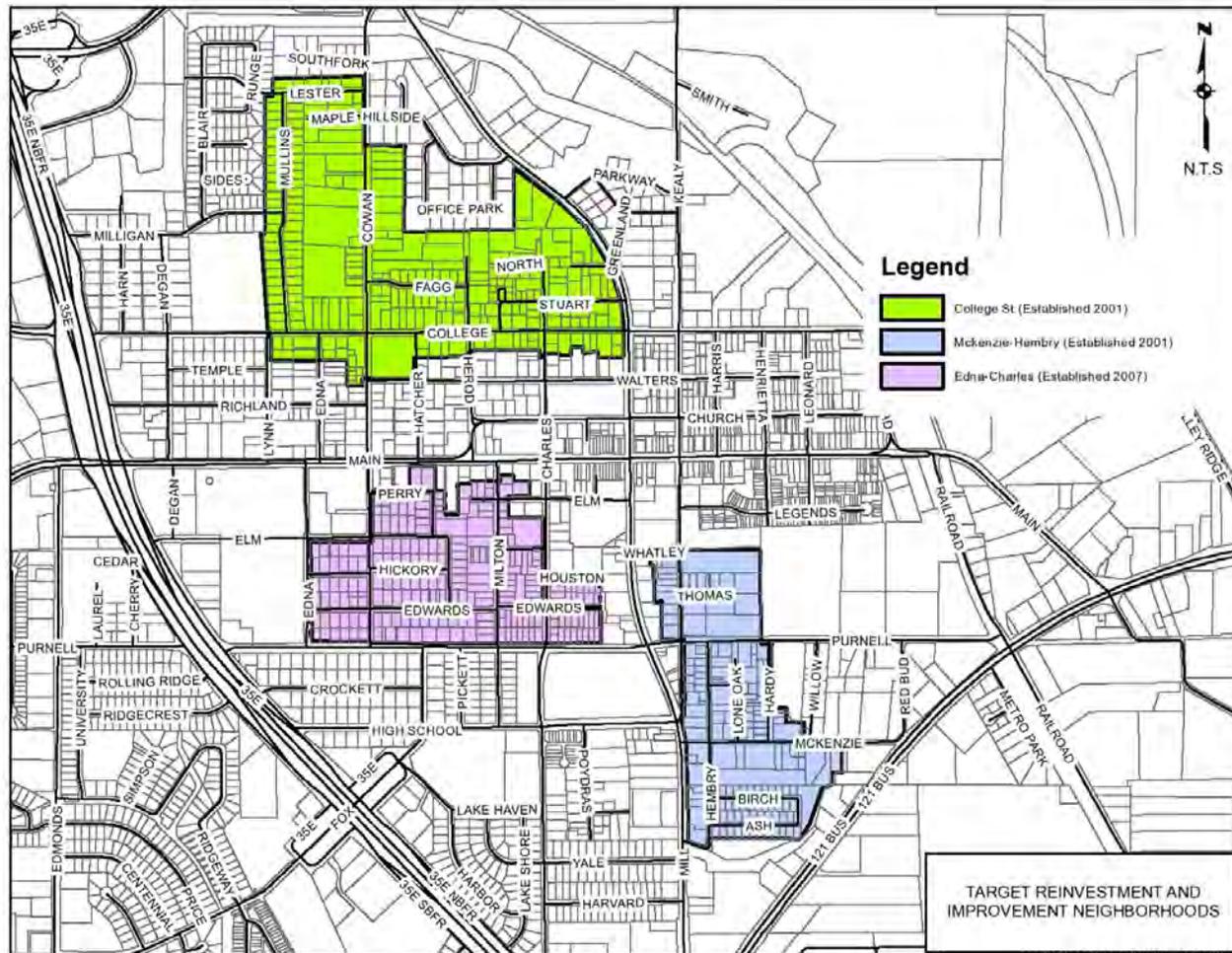
The First-time Homebuyer Assistance Program will not be restricted to the target areas. However, incentives have been written into program guidelines to provide an extra \$1,500 for buyers in TRN neighborhoods. The City hopes this will add value and encourage private investment in its neighborhood revitalization areas. Similarly, the Housing Rehab program will be performed city-wide with eligibility prioritized by special need for elderly and disabled and then by low- or extremely-low income status. Residence in a TRN neighborhood does provide a 'tie-breaker' for applicant selection if the other criteria are all equal.

The Manhole Rehabilitation project will take place throughout the City in neighborhoods

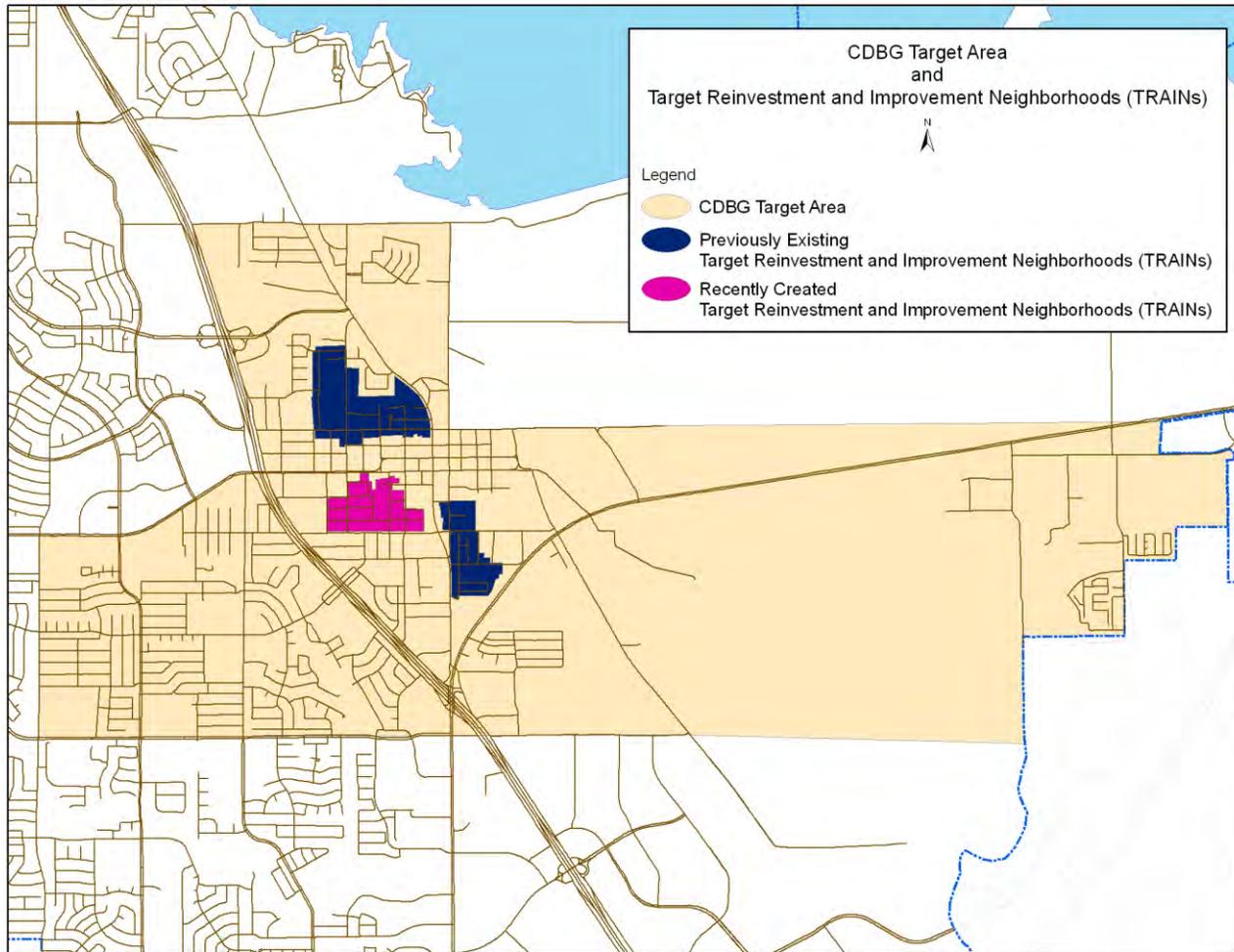
identified by census block group as low/moderate income. The Habitat for Humanity home will likely be built in Old Town Lewisville in a TRN neighborhood, but may depend more on willingness of potential sellers, price and finding a seller with clear marketable title.



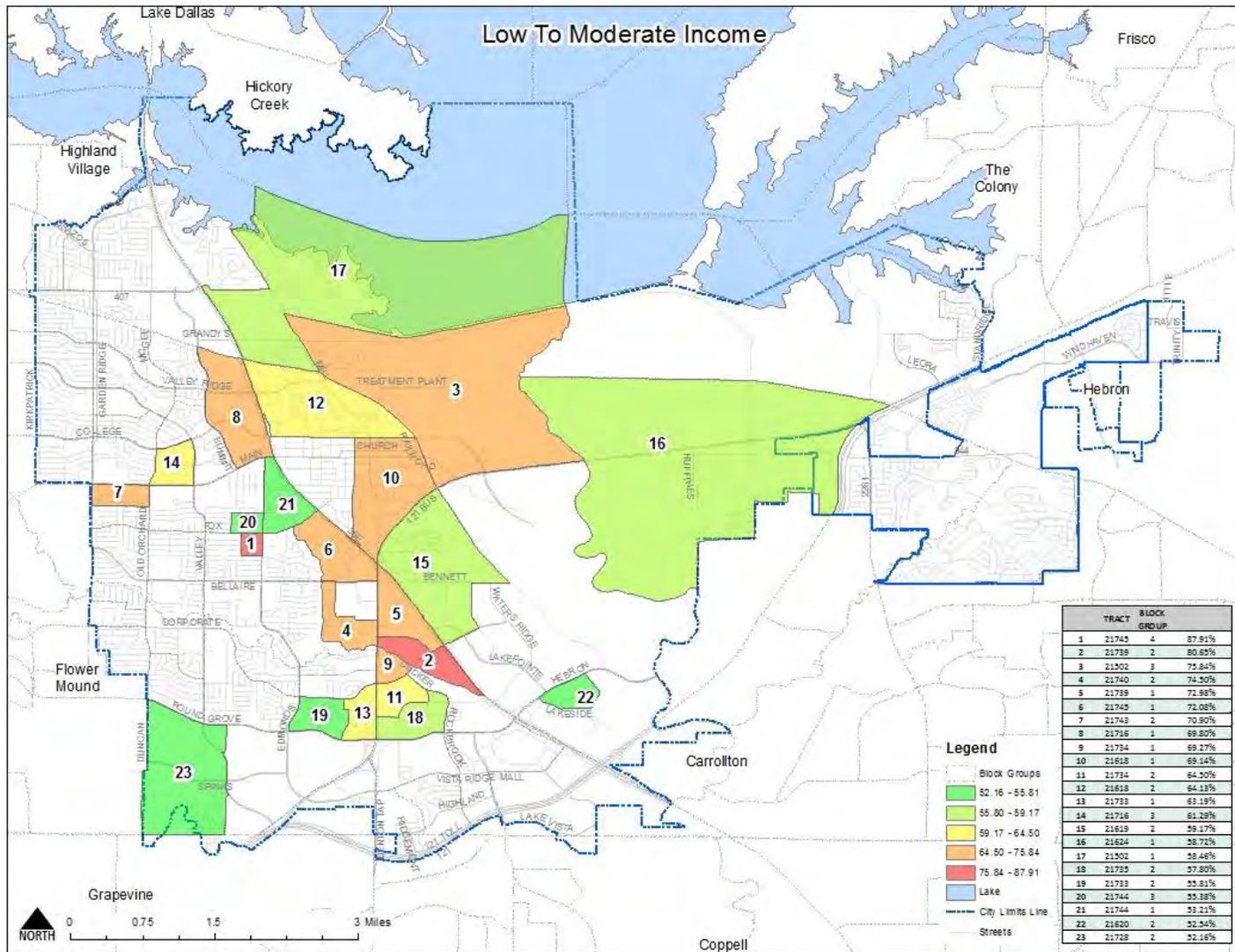
**New (2015) Lakeland Terrace TRN**



Other established TRNs



**General Target Area with Established TRNs**



Census Block Groups that meet Low/Mod Income Eligibility in Lewisville

## **CDBG Eligible Block Groups**

### **OTHER PROGRAM REQUIREMENTS**

#### **Efforts to Foster Decent Housing**

The City of Lewisville, through the implementation of the 2012 - 2017 Consolidated Plan and the 2016 – 2017 Annual Plan, will continue its efforts to foster decent housing for residents. Specifically, the City will:

- Continue to enforce building and housing codes that set forth the standards for all affordable housing programs administered and/or supported by the City
- Continue to provide educational opportunities and training for its staff administering affordable housing programs that provide housing meeting building and housing codes
- Continue to facilitate and fund the efforts of other entities and non-profit organizations providing affordable and standard housing
- Continue to enforce the Construction Specifications adopted by the City that specifies the quality of materials and acceptable workmanship standards to be utilized on all CDBG and HOME funded projects
- Continue to make available technical assistance and funding in support of other projects and activities that remove health and safety hazards
- Continue to make available technical assistance and funding in support of public facility and infrastructure improvements in low income neighborhoods in order to encourage the sustainability, redevelopment and new development of affordable

and decent housing opportunities and to improve the overall quality of life for low income residents

### **CDBG Program Specific Requirements**

Lewisville's CDBG entitlement funds are earmarked to continue to provide effective programming, monitoring, and management of activities meeting the CDBG national objectives: (1) benefiting low to moderate-income individuals; (2) eliminating slum and blight; and (3) addressing urgent needs.

The City utilized a Request for Proposal (RFP) process to solicit project for the upcoming fiscal year. Awards will be based on evaluation and ranking of individual project proposals. The City reserves the right to negotiate the final grant amounts and local match. Priority will be given to projects located in any designated target area. An applicant may be disqualified from receiving an award if prior expenditures, audits, or monitoring reports indicate an inability to utilize program assistance on a timely or effective basis.

Additional projects may be considered and determined based upon additional funding being acquired and fulfilling the objectives outlined in the Consolidated Strategy Plan. The goal for 2016 - 2017 is to improve the quality of life for low to moderate-income individuals and families by addressing specific problem areas, such as affordable housing, non-housing community development including infrastructure, public improvements, homelessness, and community services.

The proposed CDBG entitlement budget for 2016 - 2017 is \$599,101. Funds will be used for, but not limited to, public improvements, community services, housing services, housing restoration/rehabilitation, housing staff costs, public services, and administrative costs. There have been no funds returned to the line-of-credit from which

the planned use has not been included in a prior statement or plan. There was no income generated by a float-funded activity.

**Affirmative Fair Housing Marketing Plan** - The City of Lewisville, through a coordinated effort with other organizations, is committed to the goals of affirmative marketing and fair housing. The following steps will be taken:

Inform the public, potential tenants, and owners about federal fair housing laws and affirmative marketing policies;

Place news releases in the Neighbors Go section of the Denton Record Chronicle announcing any planned entitlement grant and fair housing public hearings and events;

Produce and utilize print and electronic media advertisements and public service announcements to spread public information on fair housing;

Conduct fair housing outreach and education activities for the public;

Conduct a study to determine Impediments to Fair Housing every 5 years and updates annually;

Support City Finance Department in its procurement policies directed toward encouraging MBEs and WBEs participation in the bid process; Utilized regional certified Disadvantaged Women and Minority Business Enterprises (W/M/DBEs), as required by federal funding sources and other local and regional entities; Report W/M/DBE participation to federal funding agencies for and through City Departments;

Strengthen ties with the City's economic development initiatives as well as other local and regional economic development entities.

## **Outreach Efforts for Procurement of Services**

All funded projects will comply with the City of Lewisville's Purchasing Policy for the procurement of services and materials.

### **CERTIFICATIONS**

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing** -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan** -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Drug Free Workplace** -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about -
  - (a) The dangers of drug abuse in the workplace;
  - (b) The grantee's policy of maintaining a drug-free workplace;
  - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
  - (a) Abide by the terms of the statement; and
  - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -

- (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6

**Anti-Lobbying** -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction** -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan** -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3** -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

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Signature/Authorized Official  
Donna Barron, City Manager

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Date

## Specific CDBG Certifications

The Entitlement Community certifies that:

**Citizen Participation** -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

**Community Development Plan** -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

**Following a Plan** -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

**Use of Funds** -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2016 (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall

principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

**Excessive Force** -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

**Compliance With Anti-discrimination laws** -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

**Lead-Based Paint** -- Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with the requirements of 24 CFR §570.608;

**Compliance with Laws** -- It will comply with applicable laws.

\_\_\_\_\_  
Donna Barron, City Manager

\_\_\_\_\_  
Date

## APPENDIX TO CERTIFICATIONS

### INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

#### A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon

award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
  
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
  
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

City of Lewisville

Denton County

151 W. Church Street

Lewisville TX 75057

Check  X  if there are workplaces on file that are not identified here.

The certification with regard to the drugfree workplace is required by 24CFR part 24, subpart F

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub-recipients or subcontractors in covered workplace.

# **CITIZEN PARTICIPATION PLAN**

Revised August 1, 2016

## Introduction

The City of Lewisville is an Entitlement Recipient of Community Development Block Grant Funds (CDBG) under Title I of the Housing and Community Development Act of 1974, as amended and HOME Investment Partnership Act, Title II of the National Affordable Housing Act of 1990. The City of Lewisville' citizen participation plan was prepared in accordance with section 104 (a) 3 of the Housing and Community Act of 1974 and has been amended as required for the Consolidated Plan for Housing and Community Development in accordance to CFR Part 91, section 105, including revisions resulting from a Final Rule at 24 CFR Part 5 regarding the City's obligations to Affirmatively Further Fair Housing (AFFH).

The Rule requires the development of a Fair Housing Assessment (AFH) prior to the completion of the City's Consolidated Plan. It includes analysis requiring consultation and community participation in the analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals.

In developing the AFH and the Consolidated Plan, the Citizen Participation Plan encourages participation by very low and low-income persons, particularly those living in slum and blighted areas and in areas where CDBG and HOME funds are proposed to be used. In addition, it encourages the participation of all its residents, including minorities and non-English speaking persons, as well as persons with mobility, visual or hearing impairments. It encourages the participation of residents receiving housing assistance or living in assisted housing developments, in the process of developing and implementing the AFH

and consolidated plan, along with other low income residents of targeted revitalization areas as designated by the City.

Regarding the AFH, this Plan further encourages the participation of local and regional institutions, Continuums of Care (Denton Homeless Coalition), businesses, developers, nonprofit organizations, philanthropic organizations and community-based and faith-based organizations, in the process of developing and implementing the AFH and consolidated plan.

#### Further requirements specific to the Assessment of Fair Housing

Pursuant to 24 CFR 91.100, the City shall consult with other public and private agencies that provide assisted housing, health services and social services, including those focusing on services to children, elderly persons, persons with disabilities and HIV/AIDS and their families and persons experiencing homelessness. The City shall also consult with community-based organizations that enforce fair housing laws. Consultations should include regional agencies, adjacent units of local government and local government agencies. This includes agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems that go beyond a single jurisdiction.

Public Housing Agencies (PHAs): the City shall consult with PHAs operating in Lewisville (Denton Housing Authority) to consider public housing needs and strategies, proposed actions for affirmatively furthering fair housing and to obtain PHA input on addressing fair housing issues in public housing and Housing Choice Voucher programs.

Affirmatively Further Fair Housing: the City shall consult with community based and regionally based organizations that represent protected class members or that enforce fair housing law including Fair Housing Assistance Program participants (FHAP), fair housing advocacy organizations, nonprofit organizations that receive funding under the Fair Housing Initiative Program

(FHIP), and other agencies that operate with the area and have relevant knowledge or data to inform the AFH.

Additional Requirements: the City shall make available to the public HUD-provided data and supplemental information to be incorporated in the AFH at the start of the public participation process. HUD-provided data may be made available, as possible, by cross-referencing to the data on HUD's website.

### Policies and Procedures for Citizen Participation

#### **1. Participation of residents in low and moderate income neighborhoods and assisted or public housing**

The City will encourage residents to participate in the development of the AFH, any revisions to the AFH, the consolidated plan, any amendments to the plan, and the performance report through the following methods:

The principle mechanisms for achieving resident involvement in the development, administration and evaluation of CDBG and HOME Activities will be through the Grants Division of the Neighborhood Services Department of the City of Lewisville and a CDBG Advisory Committee composed of citizens appointed by City Council. All aspects of resident's participation will be conducted in an open manner, with freedom of access for all interested person and at handicapped accessible locations. The CDBG Advisory Committee will assist in receiving public input from the community. All citizen advisory committee meetings, public forums and public hearings will be posted on the official bulletin board of the City.

The Citizen Participation Plan also encourages, in conjunction with public housing agency consultations, participation of residents of public and assisted housing developments, including any resident advisory boards, resident councils and resident management corporations, in the process of developing and implementing the AFH and the consolidated plan, along with other low-income

residents of targeted revitalization areas. The City shall make an effort to provide information to the public housing authority (PHA) about AFH, AFFH strategy, and consolidated plan activities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.

## **2. Function**

The Grants Division of the Neighborhood Services Department will perform the following functions:

- a. To solicit comments from persons within the community and persons residing in CDBG eligible census tracts relating to the needs of their neighborhoods and performance of the CDBG program.
- b. To provide information to persons within community and persons residing in CDBG eligible census tracts concerning public hearings, public forums or meetings, proposed AFH goals, CDBG and HOME funded activities, performance evaluations, etc.
- c. Conduct or assist with public hearings and neighborhood meetings to obtain resident views at all stages of the CDBG and HOME Program planning including development of AFH and consolidated plan goals and strategies. The Department and any appointed Advisory Committee will review all public comments, recommendations and proposals concerning the development of needs, proposed activities, program amendments and program performance and submit its recommendations to the City Council.

- d. Conduct CDBG Advisory Commission meetings as required.
- 
- I. It is the policy of the City of Lewisville to give residents timely notice of local meetings and reasonable and timely access to local meetings, information, performance reports, and records relating to the City's proposed and actual use of CDBG Grant, and HOME Investment Partnership funds. Meetings shall be held in accordance with section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

### **Procedures**

- A. Official notice of public meetings and public hearings will be posted at least 72 hours in advance with the City Secretary of the City of Lewisville, Lewisville City Hall, Lewisville, Texas.
- B. Meetings shall be held at City Hall or other facilities that meet accessibility and reasonable accommodation requirements.
- C. Notice of public hearings will be published in the Neighbors Go section of the *Dallas Morning News* or current paper of record prior to hearing dates.
- D. A statement of program objectives, proposed use of funds, and other information regarding the proposed AFH, Consolidated Plan, Annual Action Plan or amendments will be published in the *Dallas Morning News* or current paper of record prior to the public hearing.
- E. Information that may be reviewed includes, but is not limited to:

- i. Amount of grant funding and program income anticipated in the coming year.
  - ii. Range of activities that may be undertaken.
  - iii. Estimated amount of grant funding and program income proposed to be used for activities that will benefit low and moderate-income persons.
  - iv. Any proposed activities likely to result in displacement and the City of Lewisville' plan for minimizing displacement.
- II. It is the policy of the City of Lewisville to take reasonable steps to provide technical assistance to group representative of persons of low and moderate-income that request assistance in developing proposals.

## **Procedures**

Groups representing persons of low and moderate income who are interested in receiving technical assistance may write or call the City of Lewisville, Grants Division of the Neighborhood Services Department, 151 west Church Street, Lewisville, Texas 75057, Telephone Contact: (972) 219-3780.

- A. An assessment of the type and extent of technical assistance needed by the representative group will be made by City staff upon request and in a timely manner.
- B. The City will make a good faith effort to see that reasonable requests for technical assistance are responded to in a timely manner.

- III. It is the policy of the City of Lewisville to hold public hearings and public forums for the purpose of obtaining the views of residents and responding to proposals and questions.

### **Procedures**

- A. A minimum of one annual Public Input Forum or Public Hearing to obtain the views of residents on fair housing, community development and housing needs will be held by the CDBG Advisory Committee of the in a public facility accessible to the broader public. The location may be held at such locations in targeted revitalization areas as shall be posed in the notice of the meeting. It is anticipated that hosting a public hearing or forum at a community facility will enhance citizen participation. Such hearings or forums are to be held prior to releasing a Request for Proposals soliciting proposed projects for the upcoming Plan Year. In years that a new AFH is developed, the hearing shall be conducted near the beginning of the AFH planning process.
- B. A minimum of one advertised Public Hearing to obtain the views of residents on fair housing community development and housing needs will be held by the Lewisville City Council during the 30 day public comment period and advertised publication of the Assessment of Fair Housing, the Consolidated Plan and/or the Annual Action Plan for public comment. This public hearing will be held in the Lewisville City Hall, City Council Chambers. This site is equally accessible to all sections of the city and is the normal place for public hearings.
- C. Other public meetings may be held as necessary.

- D. Together, the public input forum and public hearing will address community development and housing needs, development of proposed activities, and review of program performance.
- E. Any additional public hearings will be held in the Lewisville City Hall, City Council Chambers.
- F. The Grants Division of the Neighborhood Services Dept. will notify interested parties at least seven (7) days prior to Public Hearings to, the Denton Housing Authority and assisted housing developments with a request that the notice be made available to their residents. Notice shall also be given to neighborhood and homeowner associations and identified neighborhood leaders (e.g. Neighbors Leading Neighbors volunteers) in locally designated Targeted Revitalization Neighborhoods and low and moderate income neighborhoods with single-family housing. Community Development departments and PHAs in neighboring cities and within Denton County shall also receive notices and draft documents inviting comment.
- G. Reasonable accommodation for the physically challenged will be provided at public hearing sites. At least 48 hours (two complete business days) advance notice is required.
- H. Comments received during the public comment period and at public hearings will be incorporated into the AFH, Consolidated Plan, Annual Action Plan or amendments.
- I. The City shall consider comments or views of residents, whether received in writing or orally at Public Hearings, in preparing the final AFH or the final consolidated plan. A summary of any comments or views, and a summary of any comments or views not accepted,

and the reasons why, shall be attached to the final AFH or the final consolidated plan.

- IV. It is the policy of the City of Lewisville to take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English speaking and limited English proficiency residents of the community. Residents should be able to understand and participate in discussions that take place at public hearings and public forums. Language assistance may be in the form of real-time translation and translated materials or allowing for individual appointments following a public hearing if such assistance was not possible at the hearing.

#### **Procedures**

- A. Anyone anticipating that the effectiveness of the public hearing will be significantly reduced because of English language limitations should contact the City of Lewisville, Grants Division as far in advance of the public hearing as possible.
  - B. At least 48 hours (two complete business days) advance notice is required.
- V. It is the policy of the City of Lewisville to provide residents with reasonable advance notice of and opportunity to comment on proposed goals, strategies or activities not previously included in the AFH, the Consolidated Plan or the Action Plan and any proposed deletion or other substantial change to the activities.

#### **Procedures**

- A. If the proposed AFH or Consolidated Plan is approved and it subsequently becomes necessary to substantially change the program content, a formal amendment process will be followed.
  - i. An additional public hearing will be held.
  - ii. Reasonable advance notice of the date, time, and place of the public hearing will be made available to the public.
  - iii. The nature of the proposed AFH revision(s) or Consolidated Plan change(s) will be described in sufficient detail to allow residents to determine if they are affected and desire to comment on the proposed change.
  
- B. “Substantial Change” to the Consolidate Plan or Annual Action Plan is defined by the City of Lewisville to be:
  - i. A proposed new activity which cannot reasonably be construed to have been included within the programmatic intent of the adopted application or in the commitment of funds to a specific project; or
  - ii. An activity that was identified in the adopted application, but which subsequently is proposed to be deleted; or
  - iii. An activity that is proposed to be altered in terms of its purpose, scope, location, or beneficiaries to such an extent that it can no longer reasonably be construed as the activity reviewed by the public and approved by the Lewisville City Council.

- C. The criteria to be used in determining if an activity is at risk of becoming substantially changed from its originally intended purpose will be based upon further Lewisville City Council actions to modify/amend the Consolidated Plan proposed activities.
  - D. City staff shall proactively monitor each funded project for compliance with its respective performance criteria and provide periodic progress reports to the City Council.
  - E. "Revision" to the AFH or AFFH goals and strategies are defined by the City of Lewisville to be:
    - i. A material change in circumstances in the City that affects the information on which the AFH was based, to the extent that the analysis of data, the fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances.
    - ii. Proposed changes in the priorities and goals of the AFH that would alter the assessment to such an extent that it can no longer reasonably be construed as the intent reviewed by the public in the original plan.
  - F. Any revisions to the AFH and its goals and strategies or any funded activity that is judged to be at risk of substantially changing from its originally intended purpose, scope, location, or beneficiaries will be reviewed in a public hearing forum prior to a decision by the City Council as to whether the performance objectives of the project shall be amended.
- VI. It is the policy of the City of Lewisville to take reasonable steps to address concerns expressed by residents and to respond to any formal complaints or grievances in a timely manner.

## Procedures

A. Residents are urged to bring any concerns they may have regarding the AFH, Consolidated Plan, Annual Action Plan, CAPER or HUD funded activities to the attention of the City of Lewisville, Grants Division by calling (972) 219-3780 or to [jkirby@cityoflewisville.com](mailto:jkirby@cityoflewisville.com). It is anticipated that most concerns can be quickly and successfully addressed through direct conversation.

B. Unresolved issues, complaints, or grievances may be formally submitted to the following address:

City of Lewisville Grants Division Neighborhood Services  
Department  
Lewisville City Hall, 151 West Church Street,  
Lewisville, Texas 75057  
Attention: CDBG Plan Comment

C. In order for the City to be able to respond effectively, any formal complaint or grievance must be in writing and follow the procedures shown below:

- i. It must be legible – typed correspondence is strongly urged.
- ii. It must be signed, dated, and indicate if the correspondent is representing his/her personal concerns or those of a larger group, in which case, the name and description of the group must be stated.
- iii. It must clearly identify the specific complaint or grievance and should state what corrective action is being sought.

- D. The City will provide timely written answers to written complaints and grievances. The time required to respond may vary depending upon the nature and complexity of the specific complaint. Where practicable, written answers will be provided within 15 working days of the receipt of the written complaint.
  
- VII. It is the policy of the City of Lewisville to encourage citizen participation, particularly by low and moderate-income persons who reside in the areas for which grant funding is proposed to be used.

## **Procedures**

- A. Reasonable notice will be given to the general public at appropriate times as the details of the proposed use of grant funding is identified.
  
- B. After specific proposals are received and evaluated and authorization is given by the City Council for the City Manager to negotiate the final funding decision, additional citizen participation procedures will be implemented. The specifics of these procedures may vary from project-to-project in order to respond to unique circumstances. The general process will be as follows:
  - i. Identify the geographic boundaries of the area most likely to be affected by the proposal and the principal organizations known to represent or otherwise be affiliated with the low and moderate-income residents.
  
  - ii. Proactively communicate the purpose of and means by which grant funding will to be used.

- iii. Provide reasonable opportunities for low and moderate-income residents to ask questions and receive answers regarding how they might be affected by the proposed use of grant funding.

### **3. Publications**

#### **1. Assessment of Fair Housing (AFH)**

A summary of the proposed AFH will be placed in the *Dallas Morning News* or current paper of record and will allow at least thirty (30) days for persons to comment. The summary will describe the contents and purpose of the AFH and its identified goals and strategies to affirmatively further fair housing choice. It will include a list of the locations where copies of the entire plan may be examined. The assessment will also be published on the Neighborhood Services Dept. webpage.

#### **1. Five-Year Consolidated Plan**

A summary of the proposed five-year consolidated plan will be placed in the *Dallas Morning News* or current paper of record and will allow at least thirty (30) days for persons to comment. The summary will describe the contents and purpose of the consolidated plan and include a list of the locations where copies of the entire plan may be examined. The plan will also be published on the Neighborhood Services Dept. webpage.

#### **2. One-Year Action Plan**

A notification will be placed in the *Dallas Morning News* or current paper of record to inform residents of the availability of the one-year action plan to

afford residents a reasonable opportunity to examine their contents. At least thirty (30) days will be allowed to receive resident comments. The plan will also be published on the Neighborhood Services Dept. webpage.

### **3. Substantial Amendments**

A notification will be placed in the *Dallas Morning News* or current paper of record to inform residents of the availability of any substantial amendments to the one-year action plan or the five-year consolidated plan, as these documents are developed, to afford residents a reasonable opportunity to examine their contents. At least thirty (30) days will be allowed to receive resident comments. The amendment will also be published on the Neighborhood Services Dept. webpage.

### **4. Revisions to the Assessment of Fair Housing**

A notification will be placed in the *Dallas Morning News* or current paper of record to inform residents of the availability of any revisions to the Assessment of Fair Housing or to goals and strategies identified to Affirmatively Further Fair Housing, as these documents are developed, to afford residents a reasonable opportunity to examine their contents. At least thirty (30) days will be allowed to receive resident comments. The revisions will also be published on the Neighborhood Services Dept. webpage.

### **4. Consolidated Annual Performance and Evaluation Report**

A notification will be placed in the *Dallas Morning News* or current paper of record to inform residents of the availability of the consolidated performance report to afford residents a reasonable opportunity to examine the contents. At least fifteen (15) days will be allowed to receive

resident comments. The report will also be published on the Neighborhood Services Dept. webpage.

## **II. Access to Public Information**

### **A. Public access to information and records regarding the AFH, CDBG and other Grant Programs.**

The City will provide for full and timely disclosure of its program records and information for the preceding five years consistent with applicable state and local laws regarding personal privacy and obligations of confidentiality.

Documents relevant to the program shall be made available at the City of Lewisville, Grants Division of the Neighborhood Services Department, 151 West Church Street, Lewisville, Texas 75057, during normal working hours for residents' review upon either written or oral request. Such documents include 1) all mailing and promotional material; 2) records of public hearings; 3) All key documents, including all prior applications, letters of approval, grant agreements, the citizens participation plan, performance reports, evaluation reports, Consolidated Plan, other reports required by HUD, and the proposed and approved application for the current year; 4) Copies of the regulations and issuance's governing the program; and, 5) Documents regarding other important program requirements, such as contracting procedures, environmental policies, fair housing and other equal opportunity requirements, and relocation provisions. A reasonable number of free copies of the AFH or consolidated plan must be provided to residents and groups that request a copy.

## **B. Availability of AFH, Consolidated Plan and Action Plan**

Copies of the plans will be available at the City of Lewisville Grants Division of the Neighborhood Services Department at 151 W. Church Street, 2<sup>nd</sup> Floor, and at the Lewisville Public Library Reference Desk.

## **III. Technical Assistance**

The City of Lewisville Grants Division of the Neighborhood Services Department will provide for and encourage the submission of views and proposals regarding the Community Development and HOME Program funded activities by residents, particularly low and moderate-income persons and residents of blighted neighborhoods. The City will provide technical assistance to groups representative of persons of very low and low income, or of protected classes per the Fair Housing Act as amended, or of assisted housing developments that request such assistance in developing proposals for funds under any of the programs covered by the consolidated plan. The level and type of assistance will be determined at the time of the request. The City will provide a timely written response to all written proposals submitted within thirty (30) days stating the reasons for the action taken by the City of the Proposals.

The Grants Division of the Neighborhood Services Department will provide technical assistance to any appointed citizen advisory board or committee to familiarize them with overall program aspects; particularly the process for determining community needs, program planning, resident input and program assessment.

## **IV. Anti-Displacement**

The City of Lewisville intends to minimize displacement of persons in the implementation of CDBG and HOME activities. If displacement becomes necessary in order to accomplish program objectives, persons displaced will be assisted according to the HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, including any amendments and 24 CFR part 92.353, displacement, relocation and acquisition regulations.

## **V. Complaints and Grievances**

Resident complaints or grievances may be submitted in writing and mailed to the Grants Division of the Neighborhood Services Department Office or may be hand delivered. A written response will be provided within fifteen (15) working days where practicable to all written complaints and grievances received by the Grants Division of the Neighborhood Services Department.

## **VI. Amendments**

The City of Lewisville will amend its consolidated plan whenever one of the following decisions is made:

1. To make a substantial change in its allocation of priorities or a substantial change in the method of distribution of funds;
2. To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan;
3. To substantially change the purpose, scope, location, or beneficiaries of an activity.

Public comments for amendments to the consolidated plan will follow the procedures outlined above in section I-B concerning public hearings.

A “Substantial Change” is defined by the City of Lewisville to be:

1. A proposed new activity which cannot reasonably be construed to have been included within the programmatic intent of the adopted application or in the commitment of funds to a specific project; or
2. An activity that was identified in the adopted application, but which subsequently is proposed to be deleted; or
3. An activity that is proposed to be altered in terms of its purpose, scope, location, or beneficiaries to such an extent that it can no longer reasonably be construed as the activity reviewed by the public and approved by the Lewisville City Council.

CDBG Annual Action Plan  
Citizen Participation Plan  
City Social Service Agency Fund  
8/1/16

Jamey Kirby, Grants Coordinator

# Annual Action Plan

- Annual application for CDBG funding
- Amount determined by formula \$599,101
- Priorities - 5-year Consolidated Plan/Community Needs Assessment
- Request for Proposals
- Advisory Committee Presentations, Scoring, Ranking, Recommendation
- Benefit to low-to-moderate income residents
  - Low-to-moderate income = households earning at or below 80% of the area median income (\$57,350 for a family of four)

# Citizen Participation Plan

- Local plan for outreach and input into using CDBG grant funds
  - Following HUD Regulations for Consolidated Planning process
- Last revised 2012 with “Consolidated Plan”
- With new Fair Housing Rule, HUD Regulations changed
- Amended Plan now includes development of Fair Housing Assessment as well as Consolidate Plan

# CDBG Admin & Category I Funding

Agency/ Program	2016 CDBG AC Recommendation
<b>Administration (20%)</b>	<b>\$119,820</b>
<b>Housing/Community Development Projects (&gt;65%)</b>	
Lewisville Housing Rehabilitation Program (LHRP)	\$128,416
First-Time Homebuyer Assistance Program (FHAP)	\$42,000
Manhole Rehabilitation	\$194,000
Habitat for Humanity- Land Acquisition	\$25,000
	<b>\$389,416</b>

# CDBG Category II Funding

<b>Agency/ Program</b>	<b>2016 CDBG AC Recommendation</b>
Health Services of NTX- Primary Indigent Care	\$7,865
SPAN- Meals Program	\$24,000
Children's Advocacy Ctr of Denton Co.- Victims Svcs.	\$13,000
Court Appointed Special Advocates (CASA)	\$14,000
CCA- Family Assistance Services	\$10,000
Denton County Friends of the Family- Shelter Days	\$10,000
Boys & Girls Club- Afterschool Program	\$6,000
Special Abilities (Day Stay)- Adult Day Care	\$5,000
<b>Total</b>	<b>\$89,865</b>

# City Fund

Agency/ Program	2016 CDBG AC Recommendation
PediPlace	\$57,000
Children's Advocacy Ctr of Denton Co.- Victims Svcs.	\$13,000
Denton County Friends of the Family- Outreach Svcs.	\$8,000
Communities in Schools of NTX- Dropout Prev. Pgm.	\$31,500
Retired Senior Volunteer Program (RSVP)	\$10,500
Youth & Family- First Offender Pgm. & Other Kids	\$25,000
New Hope Learning Center- School Age Day Care	\$5,000
Camp Summit	\$5,000
Youth & Family- Community Psych. Care Pgm.	\$15,000
<b>Total</b>	<b>\$170,000</b>

## MEMORANDUM

**TO:** Todd White, Purchasing Manager

**FROM:** Pamela Sarvis, P.E., Project Manager

**DATE:** July 15, 2016

**SUBJECT:** **Approval of a Bid Award for the FM544 16" Water Line Improvement Project to Wilson Contractor Services, LLC, Denton, Texas in the Amount of \$1,539,455.87; Which Includes \$73,307.42 for Contingencies; and Authorization for the City Manager to Execute the Contract.**

### BACKGROUND

Bids were received on July 7, 2016 for the construction of the FM544 16" Water Line improvement project consisting of water line installation on the north side of FM544 between Windhaven Parkway and Crider Road. Due to the ongoing TxDot expansion of FM544, the water main will be installed in easements north of the new TxDot FM 544 ROW. A Pipeline Crossing Contract was entered into between the City of Lewisville and Kansas City Southern Railway Company in December of 2014 in anticipation of the 16" water line installation to allow for construction and maintenance of the water line crossing KCS Railroad ROW. The project consists of installing 16" water line to connect to the existing 16" water line in Windhaven Parkway and provide a future connection point for a 16" water line loop to the 16" water line in Josey Lane currently under construction. The existing 12" water line fronting Killian Middle School will be abandoned in place and service lateral mains connected to the new 16" water line. The project includes repair of existing concrete and asphalt paving and turf replacement where disturbed.

### ANALYSIS

It is requested that this item be presented to the City Council on August 1, 2016 with a recommendation to award the construction contract to Wilson Contractor Services, LLC, with offices in Denton, Texas, in the amount of \$1,539,455.87 which includes a contingency in the amount of \$73,307.42. The engineer's estimate was \$2,059,000. Wilson Contractor Services, LLC, has completed other similar projects in Lewisville including a 30" water line in FM2281 (Old Denton Road) and on Valley Ridge Blvd. Funding is available in the Capital Projects Accounts.

The contract time is 240 calendar days and liquidated damages are \$500 per day. A location map is attached.

### RECOMMENDATION

It is City staff's recommendation that the City Council approve the contract as set forth in the caption above.

## MEMORANDUM

**TO:** Donna Barron, City Manager

**THROUGH:** Brenda Martin, Finance Director

**FROM:** Todd White, Purchasing Manager

**DATE:** July 21, 2016

**SUBJECT:** **Approval of a Bid Award for the FM544 16" Water Line Improvement Project to Wilson Contractor Services, LLC, Denton, Texas in the Amount of \$1,539,455.87; Which Includes \$73,307.42 for Contingencies; and Authorization for the City Manager to Execute the Contract.**

### BACKGROUND

A bid invitation was created and posted on Bidsync.com June 17, 2016. Specifications were created in accordance with Texas Local Government Code Chapter 252.021, *Competitive Requirements for Purchases*. Specifications under this chapter of the law state the award is to be made on the basis of lowest responsible bidder.

### ANALYSIS

Sealed bids were due July 7, 2016 and seven (7) were received. A public bid opening was held and prices were read aloud. A bid tabulation was created indicating Wilson Contractor Services, LLC as submitting the lowest bid and after an evaluation of their offer, they are being recommended for award on the basis of lowest responsible bidder.

It should be noted that there is an approximately 1% difference in price between the low bidder, Wilson Contractor Services, LLC and that of the next low bidder, Avanti Construction, LLC. Avanti Construction, LLC is located in Lewisville, Texas. Local Government Code, Chapter 271.9051, *Consideration of Location of Bidder's Principal Place of Business in Certain Municipalities*, does allow for a 5% local preference for construction contracts; however, the law states to be considered for preference, the value of the construction contract must to be less than \$100,000.

### RECOMMENDATION

It is City staff's recommendation that the City Council approve the contract as set forth in the caption above.

**CITY OF LEWISVILLE  
PURCHASING DIVISION  
BID TABULATION  
BID # 16-29-C  
FM544 16" WATERLINE IMPROVEMENTS**

**WILSON CONTRACTOR SERVICES, LLC  
DENTON, TEXAS** **\$1,539,455.87**

AVANTI CONSTRUCTION, LLC  
LEWISVILLE, TEXAS \$1,554,248.85

FOUR STAR EXCAVATING  
DALLAS, TEXAS \$1,732,609.20

DOWAGER UTILITY CONSTRUCTION, LTD  
DALLAS, TEXAS \$1,786,151.85

DICKERSON CONSTRUCTION COMPANY, INC.  
CELINA, TEXAS \$1,857,523.50

SYB CONSTRUCTION COMPANY, INC.  
IRVING, TEXAS \$2,085,809.25

JOHN BURNS CONSTRUCTION  
COMPANY OF TEXAS, INC.  
LEWISVILLE, TEXAS \$3,167,976.00



EXISTING 16" WATER

EXISTING 16" WATER

WINDHAVEN PKWY

JOSEY LANE

121 TOLLWAY

COOKIE LANE

WINDHAVEN PKWY

KANSAS CITY SOUTHERN RAILROAD

PROJECT LOCATION

CRIDER ROAD

16" WATER LINE UNDER CONSTRUCTION

FUTURE INDIAN CREEK LIFT STATION

F.M. 544

F.M. 544

WINDHAVEN PKWY

LADY OF THE LAKE

FUTURE 16" WATER LINE UNDER CONSTRUCTION

**LOCATION MAP FOR  
FM 544 16 - INCH WATER LINE  
WINDHAVEN TO INDIAN CREEK LIFT STATION  
PROJECT NO. U90907**

## STANDARD FORM OF AGREEMENT

STATE OF TEXAS  
COUNTY OF DENTON

**THIS CONTRACT**, made and entered into the 1st day of August A.D. 2016, by and between the City of Lewisville of the County of Denton and State of Texas, hereinafter “the City”, and Wilson Contractor Services of the City of Denton, County of Denton and State of Texas, hereinafter “the Contractor”.

In consideration of the mutual covenants, promises, and agreements herein contained, the City and the Contractor hereby agree that the Contractor will commence and complete the construction of certain improvements described as follows:

### **FM544 16” WATER LINE IMPROVEMENTS PROJECT NO. U90907**

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at the Contractor’s own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by the City and attached hereto, together with the Contractor’s written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The Contractor hereby agrees to commence work within ten (10) calendar days after the date of the written notice to commence work and to fully complete the same within 240 consecutive calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Specific Conditions.

The City agrees to pay the Contractor in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract in the year and day first above written.

**APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS:**

**By:** \_\_\_\_\_  
**DONNA BARRON, City Manager**

**ATTEST**

**APPROVED AS TO FORM:**

**By:** \_\_\_\_\_  
**JULIE HEINZE, City Secretary**

**By:** \_\_\_\_\_  
**LIZBETH PLASTER, City Attorney**

[Contractor]  
**WILSON CONTRACTOR SERVICES**

**By:** \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Full Name), (Title)

## **MEMORANDUM**

**TO:** Donna Barron, City Manager

**FROM:** Keith Marvin, P.E., Director, Public Services

**DATE:** July 20, 2016

**SUBJECT:** **Approval of the Capital Improvements Advisory Committee (CIAC) Semi-Annual Report for the Period of October 1, 2015 Through March 31, 2016.**

### **BACKGROUND**

The Capital Improvements Advisory Committee (CIAC) is responsible for reviewing the water and sewer impact fees assessed by the City of Lewisville for new development to verify compliance with Texas Local Government Code, Chapter 395. This is accomplished through Semi-Annual Reports submitted to the CIAC. The Planning and Zoning Commission members also serve as the CIAC members and the CIAC meetings are conducted immediately following the P&Z meeting.

### **ANALYSIS**

The CIAC met on July 19, 2016 immediately following the P&Z meeting. The Semi-Annual Report for October 1, 2015 through March 31, 2016 was presented to the committee for review and recommendation of forwarding to the City Council for approval. The CIAC recommended by a 6-0 vote that the report be forwarded to the City Council for approval.

### **RECOMMENDATION**

It is City staff's recommendation that the City Council approve the semi-annual report as set forth in the caption above.

**SEMI-ANNUAL REPORT**  
**to the**  
**CAPITAL IMPROVEMENTS ADVISORY COMMITTEE**  
**for**  
**THE CITY OF LEWISVILLE, TEXAS**  
**OCTOBER 1, 2015 - MARCH 31, 2016**

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**CIAC MEMBERS:**

- ◆ **WILLIAM MERIDITH**
- ◆ **JOHN LYNG**
- ◆ **MARYELLEN MIKSA**
- ◆ **ALVIN TURNER**
- ◆ **STEVE BYARS**
- ◆ **KRISTIN GREEN**
- ◆ **JAMES DAVIS**

# SEMI-ANNUAL REPORT OF THE CAPITAL IMPROVEMENTS ADVISORY COMMITTEE

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The October 1, 2015 through March 31, 2016 Semi-Annual Report to the Capital Improvements Advisory Committee (CIAC) for the City of Lewisville, Texas, has been prepared in accordance with the Texas Local Government Code, Chapter 395. This Report will evaluate the progress of the existing program.

## ◆ Purpose of the Report

As required in Subsection 395.058 (c) of the Texas Local Government Code, the Capital Improvements Advisory Committee is charged with the following functions:

- Advise and assist the City in adopting land use assumptions;
- Periodic review of the impact fee/capital improvement plans;
- Monitor and evaluate implementation of the Capital Improvement Plan;
- Prepare Semi-Annual Reports evaluating the progress of the Capital Improvements Plan and impact fees; and
- Advise the City of the need to update or revise the Land Use Assumption Plan, the Capital Improvements Plan, and the impact fees.

## ◆ Background

In 1986, the City of Lewisville adopted the Capital Recovery Fee Program. In 1987, the Texas Legislature adopted Senate Bill 336, which established the necessary legislation to expand the impact fee requirements for Texas cities.

In 1988, the Impact Fee Program was modified to comply with the recently adopted Senate Bill 336. The study and the revised program were approved by the City Council on January 22, 1990. Included in the legislation and the Texas Local Government Code, Section 395, is the provision to review the Capital Improvements Plan, Land Use Assumptions, and Impact Fee Schedules every fifth year.

The most recent review was conducted in 2011. A Water and Wastewater Impact Fee Review will be conducted in 2016.

In 1993, the City completed a review of the Land Use Assumption Plan, and developed a new Water and Sewer Master Plan. The most recent Land Use Assumption Plan and Water and Sewer Master Plan were completed in 2011.

◆ Water System Capital Improvements Plan

The following items are included in the calculation for the impact fee for the water system:

- Water Supply Projects
- Water Treatment Projects
- High Service Pump Stations
- Ground Storage Tanks
- Elevated Storage Tanks

Linework required for water distribution and transmission has not previously been included in the calculation of the impact fee, although the cost of the linework is an eligible item under Texas Local Government Code, Section 395.

## CAPITAL IMPROVEMENT PROJECTS FOR THE WATER SYSTEM

Approximate Date to be Placed in Service	Water Facility	Capacity of Improvement	Total Capacity After Improvement
2012	Midway Pump Station (completed 2013)	15.0 MGD	15.0 MGD
2012	Midway 3.0 MG GSR (completed 2013)	3.0 MG	3.0 MG
2012	Transmission Lines from Midway Pump Station to SH 121 (completed 2013)	7.5 MGD	15.0 MGD
2013	30" Transmission Lines from Feaster to College St.	15.0 MGD	25.0 MGD
2015	Southside 2.0 MG GSR (delayed TBD)	2.0 MG	4.0 MG
2015	Feaster/Northside 4.0 MG GSR (reduced to 2.0 MG, completed 2015)	2.0 MG	7.0 MG

### Wastewater System Capital Improvements Plan

The following items are included in the calculation of the impact fee for the wastewater system:

- Wastewater Treatment Facilities
- Lift Stations and Force Mains

The cost of the wastewater collection lines and interceptor mains was not included in the calculation of the impact fee, although the cost of the linework is an eligible item under Texas Local Government Code, Section 395.

## CAPITAL IMPROVEMENTS PROJECTS FOR THE WASTEWATER SYSTEM

Approximate Date to be Placed in Service	Facility	Capacity of Improvement (MGD)	Total Capacity After Improvement (MGD)
2012	Timber Creek Lift Station Expansion (completed 2015)	7.0	30.2
2013	Indian Creek Lift Station & Force Main (delayed)	2.5	2.5
2013	Crossroads Lift Station & Force Main	0.55	0.55
2015	Midway Branch Lift Station & Force Main	3.5	3.5
2015	Wastewater Treatment Plant Expansion (completed 2015)	3.0	12.0

Impact Fee Determination

The impact fees are based upon the living unit equivalents (LUE) subject to meter sizes. A 3/4" meter is equivalent to one LUE. As the meter size increases, the equivalent factor also increases. The current impact fee schedule for 2011 - 2016 is set below the maximum allowed, with a gradual increase each January to prevent excess collection. The eligible proposed expenditure for water and sewer capital improvements is \$34,263,886 and \$26,610,689, respectively.

Below is the fee schedule adopted during the previous review.

**SCHEDULE OF CAPITAL RECOVERY FEES PER LUE**

<b>YEAR</b>	<b>WATER</b>	<b>SEWER</b>
2011	2,830.86	1,780.64
2012	2,896	1,971
2013	2,961	2,161
2014	3,026	2,351
2015	3,091	2,541
2016	3,165	2,724

◆ Report of FY 2015-FY2016 Impact Fee Collection

- The following information is submitted in regards to the amount of water and sewer impact fees collected from October 1, 2015 - March 31, 2016.

1. The impact fees are adjusted on January 1st of each year. The 2015 water and sewer impact fees were \$3,091 and \$2,541. The 2016 water and sewer impact fees are now \$3,165 and \$2,724, respectively. The combined total of maximum allowable water and wastewater impact fees is \$5,889 per LUE.
2. The Capital Recovery Fees collected for water totaled \$990,665.50 plus accrued interest of \$3,913.13, at an average interest rate of 0.79%.
3. The Capital Recovery Fees collected for sewer totaled \$689,881.50 plus accrued interest of \$2,725.03, at an average interest rate of 0.79%.

New construction starts are distributed as follows:

• Single Family	145
• Commercial	13
• Multi-Family	4
• Condominiums / Townhomes	43

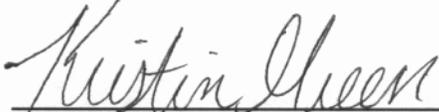
4 Multi-Family permits issued for a total of 4 buildings and 464 units.

◆ Conclusion

The City of Lewisville, has not reported any written complaints or perceived inequities or inadequacies in regards to the Capital Improvements Plan or the impact fee requirements.

The current Impact Fee Program is in compliance with Chapter 395 of the Texas Local Government Code.

Respectfully submitted,

  
\_\_\_\_\_  
Chairman

## MEMORANDUM

**TO:** Donna Barron, City Manager

**FROM:** Hilary Boen, Recreation Manager

**VIA:** Bob Monaghan, Director of Parks and Leisure Services

**DATE:** July 27, 2016

**SUBJECT:** **Approval of a Contract for Architectural Services With Barker Rinker Seacat Architecture for the Design of the Proposed Multi-Generational Center Located at the Southwest Corner of Valley Parkway and Corporate Drive and a Feasibility Study for a 20 Acre Nature Park Located at the Southeast Corner of Valley Parkway and Corporate Drive; in the Amount of \$3,561,055; and Authorization for the City Manager to Execute the Contract.**

### BACKGROUND

In 1996 and 1997 the Senior Activity Center and the Memorial Park Recreation Center, respectively, opened their doors to better accommodate the community's need for expanded recreational opportunities. During the past 20 years the City's population has grown by over 29%. With this increase, the demand for leisure opportunities has also grown to the point where the Senior programming has spilled over into the Memorial Park Recreation Center on a regular basis.

In 2011 HALFF and Associates completed the Lewisville Parks, Recreation and Open Space Vision Plan. Through this process Halff identified the current conditions of the recreational facilities, the needs of the community, and needs for the future. Currently, the Parks and Leisure Services department operates three recreation centers, two traditional centers and a senior center, with a total of 58,000 square feet. The current industry standard is providing one square foot of space per capita. With this standard, Lewisville is quite deficient in respect to the current facilities. Halff's recommendation for the City was: expand the current senior center into the current Memorial Park Recreation Center, creating a 32,000 square foot facility; renovate the Frederick P. Herring Recreation Center and expand the fitness area, increasing the square footage to 34,000; and building a new state of the art recreation/aquatic center with about 76,000 square feet.

In early 2013, the City of Lewisville went through an 18 month strategic planning process. The 2025 Vision Plan was the result of this process. Through the Vision 2025 process the residents of Lewisville expressed a need to increase the size of the Senior Activity Center and build a new recreation center. The response was so overwhelming that in the fall of 2015 the City put together a bond package for the residents to vote on. Two of the four bond items related specifically to recreational facilities: 1) renovating, combining, and expanding the Senior

Subject: Contract for Architectural Services with Barker Rinker Seacat Architecture  
July 19, 2016  
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Activity Center with the Memorial Park Recreation Center to create a larger multi-generational center and 2) adding an indoor aquatic facility on to the multi-generational center, then creating a 90,000 square foot facility. In November 2015 the bond proposal was put before the voters and passed.

Prior to the bond proposal, City Council, along with City staff, identified and visited several different recreation centers and senior centers in the DFW metroplex. One of the facilities that stood out was The Rec in Grapevine. City staff contacted the architectural firm who designed Grapevine's new center – Barker Rinker Seacat Architecture (BRS). Lewisville staff requested BRS come up with a conceptual design along the lines of Grapevine. This design would take the current Senior Activity Center and the current Memorial Park Recreation Center and combine them by wrapping additional space around the two buildings. It would also create an option for an additional aquatic portion of the building.

In early 2016, a committee of City staff was assembled in order to assess the architectural service needs for the new recreation center. BRS was contacted due to their involvement in the conceptual designs in the fall. After extensive examination, BRS exceeded the expectations of the committee. Once they were vetted, the committee moved forward in working towards an architectural contract with BRS. This contract has taken time to develop as the City is opting to use a Construction-Manager-At-Risk process. This process involves hiring the construction manager prior to the final design of the facility. The City employed outside counsel that has extensive experience with these types of contracts. Over the past few months City staff and outside counsel have worked through the standard AIA contracts in order to create the best possible contract that protects the City's interests.

## **ANALYSIS**

With a total project cost of just over \$38 million dollars, the proposed multi-generational center will be the largest capital improvement project to date for the City.

In the original recommendation made by Halff and Associates, the Senior Activity Center was to be expanded into the recreation center located next door and then the City would acquire additional land to build a new state of the art recreation and aquatic center. While looking at potential sites for a new recreation center, Grapevine's new center was mentioned. Grapevine expanded one facility into a new state of the art center that now houses both senior specific programming and more traditional recreation programs. Upon further investigation and consideration, this type of facility would better accomplish meeting the needs of the public. There are some additional benefits to this type of joint use facility: 1) when one group is not utilizing space, it can be programmed for other activities, 2) as the population changes, the facility can be adapted to other recreational use types, and 3) the City would not need to acquire additional land.

Once the bond passed, City staff and BRS more closely examined the Senior Activity Center and the Memorial Park Recreation Center in respect to space and future usability. In looking at the buildings from all angles, it is recommended to start with a fresh facility in lieu of repurposing the current facilities. A few of the benefits of constructing a building from scratch: 1) the floors of the current buildings are at two different elevations, thus joining the two could prove to be difficult and awkward in design and place extra costs into the design, 2) the current facilities have quite a few structural issues (such as foundation issues), starting fresh would avoid spending funds to fix facilities that are already broken 3) complying with the new energy codes would be easier and more cost effective to implement in a new facility, and 4) there would be fewer limitations on design when building a facility from scratch.

The multi-generational center idea, while new to this part of the country, has been around for twenty years. About twenty years ago BRS built the first center of this kind in Westminster, Colorado. To date BRS has been involved in designing over forty similar facilities, each time learning from the previous designs and improving future designs. BRS receives numerous awards each year for excellence in design, including, but not limited to: Aquatics International Dream Design, Utah Recreation and Parks Association Facility of the Year, and Arizona Parks and Recreation Association Outstanding Facility.

BRS understands and clearly articulates that a multi-generational center is not just a brick and mortar building, this facility is at the heart of building community. This echoes the City's programming. Currently many of the senior programs spill over into the Memorial Park Recreation Center. Several of these offerings include multi-generational programs, such as the Seniors teaching Seniors iPad training. Incorporating the senior programs in with the rest of the community programs will encourage more reciprocal learning opportunities.

Two other cost saving options the City will put in place are the Construction Manager at Risk (CMR) process and employing Peak Performance. The major benefit to using the CMR process is the value engineering. They will be responsible for helping the City make decisions that will provide the best value for the tax payer's dollars. In addition, the City will employ a company to assist in choosing the CMR. This will further validate the CMR that is selected for the project. Peak Performance will also provide a service that also checks the prices of construction materials. This will add an additional layer of protection to ensure the City gets the best value for the project.

Assuming the Contract is approved by City Council on August 1, the public meetings would take place in mid- to late-October. The Concept Design phase should be completed by mid-December. The next few phases: Schematic Design, Design Development, and Construction Documents will take just over a year. Construction is anticipated to begin mid-May 2018. Assuming everything remains on schedule, the potential open of the new facility would be late Fall 2019.

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**RECOMMENDATION**

It is City staff's recommendation that the City Council approve the contract for architectural services as set forth in the caption above.

## MEMORANDUM

**TO:** Donna Barron, City Manager

**THROUGH:** Brenda Martin, Finance Director

**FROM:** Todd White, Purchasing Manager

**DATE:** July 25, 2016

**SUBJECT:** **Approval of a Contract for Architectural Services With Barker Rinker Seacat Architecture for the Design of the Proposed MultiGenerational Center Located at the Southwest Corner of Valley Parkway and Corporate Drive and a Feasibility Study for a 20 Acre Nature Park Located at the Southeast Corner of Valley Parkway and Corporate Drive; in the Amount of \$3,561,055; and Authorization for the City Manager to Execute the Contract.**

### BACKGROUND

According to Policy Statement 3.0 Finance, Section V Purchasing, the City Manager is authorized by City Council to select the best alternative project delivery method as defined by state law. *Texas Government Code Chapter 2269* allows six types of delivery methods to be considered for construction of a facility: competitive bidding method; competitive sealed proposal method; construction manager-agent method; construction manager-at-risk method; design build method; and job order contracts method.

### ANALYSIS

1. **COMPETITIVE BIDDING** – bid invitation issued using detailed specifications; awarded to the lowest responsible bidder.
2. **COMPETITIVE SEALED PROPOSAL** – request for competitive sealed proposals issued stating specific categories with specific weights – awarded to proposer who scores the highest number of points. Price is considered in evaluation.
3. **CONSTRUCTION MANAGER-AGENT (CMA)** – CMA selected by City based on demonstrated competence and qualifications. CMA acts as project manager on behalf of City, and does not perform construction services. City selects general contractor using one the six delivery methods listed.
4. **CONSTRUCTION MANAGER AT RISK (CMR)** – CMR is selected either using a one-step or two-step process. With one-step process, City issues a request for proposals which considers both qualifications and cost of service. Proposers give a set price for their fees and for general conditions. Selection is just as it is with a competitive sealed proposal, in that price is considered, along with other evaluation categories. In a two-

step process, a request for qualifications is issued and cost is not requested. Based on the ranking of qualifications, a maximum of five (5) firms are selected to complete the next step which is providing a set fee for their services and for general conditions. Selection is made to the firm receiving the highest number of points. Once selected, the CMR advertises and receives quotes for the different phases of construction. Once the CMR has received all costs for construction, he provides a “not-to-exceed” cost for the project. The CMR is financially responsible for any cost over the amount awarded. Any savings realized on the project belongs to the City.

5. **DESIGN-BUILD** – one firm performs both design and construction of the project. The Design-Build firm consists of an architect or engineer and a builder. The City must hire an engineer or architect to act as its representative during the duration of the project. A request for qualifications is issued, along with a design criteria package, which consists of detailed information about the project. Based on the ranking of qualifications, a maximum of five (5) firms are selected for interviews and more information (except for price) can be requested as the City desires to further rank those selected. Once the top firm is selected, negotiations begin with that firm. This is the first time cost can be considered.
6. **JOB ORDER CONTRACTING** – used for maintenance, repair, alterations, renovations, remediation or minor construction of a facility when the work is of a recurring nature.

After evaluating all six delivery method options, the construction manager-at-risk is being recommended for this project. By using the two-part process allowed by law, the City will be able to rank the qualifications of construction firms prior to knowing the price they will charge. Only those firms deemed to be the most qualified will be invited to participate in the second step, which is to provide their cost for pre-construction services, general conditions and their fee to oversee the project.

#### **Benefits of using the CMR process**

It is recommended to award the CMR contract during the early stages of preparing the project’s specifications. One of the greatest benefits of the CMR method is the CMR’s ability to work directly with the architect and offer cost control suggestions throughout the design. Through this collaboration with the architect, the CMR is able to bring their building and cost estimating expertise into play during the development of the plans. They are able to provide value engineering during the different critical phases of design, by suggesting the various types of building methods which can lead to cost savings. In addition, another benefit is once the “not to exceed” total has been established for the construction of the project, the CMR is financially accountable for any cost overruns.

#### **RECOMMENDATION**

It is recommended to use the Construction Manager-at-Risk delivery method for the construction of the proposed MultiGenerational Center as mentioned in the caption above.



**AIA**<sup>®</sup>

# Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**B101-2007 v:4 (06-02-14) CM**

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Sixteen (2016)  
*(In words, indicate day, month and year.)*

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

The City of Lewisville, Texas  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

and the Architect:  
*(Name, legal status, address and other information)*

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

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

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:  
1950 South Valley Parkway  
Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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## TABLE OF ARTICLES

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

### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

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

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

See Exhibit A attached hereto and incorporated herein for all purposes.

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

.1 Commencement of construction date:

See Exhibit A.

.2 Substantial Completion date:

See Exhibit A.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation, which adjustments shall be submitted in writing by Architect and approved by Owner prior to becoming effective.

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## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which representative shall be acceptable to Owner.

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

§ 2.5 (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.) The following insurance shall be required of the Architect and shall be written by an insurance company having an A minus rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:
  - (a) State: Statutory
  - (b) Applicable Federal: Statutory
  - (c) Employer's Liability: \$500,000 per Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee
2. Architect's and Engineer's professional liability insurance coverage with minimum of \$500,000 per claim prior to the start of construction, and \$2,000,000 limit per claim following the start of construction, exclusive of any cost of defense. If the Professional Liability coverage is on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.
3. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):
  - (a) Bodily Injury: \$1,000,000 Each Occurrence  
\$2,000,000 Aggregate
  - (b) Property Damage: \$1,000,000 Each Occurrence  
\$2,000,000 Aggregate
  - (c) Products and Completed Operations to be maintained for two years after final payment:  
\$2,000,000 Aggregate
4. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
5. Valuable papers insurance coverage with minimum value of \$100,000.
6. Umbrella Excess Liability:
  - (a) Over Primary Insurance: \$1,000,000 Each Occurrence

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services and other specialty consultants required to address the needs of the Project, including interior design, landscape architectural services, roofing consultants, aquatics and specifications. Services not set forth in Article 3 are Additional Services.

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

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's written approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement and completion of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review of each phase (Schematic Design, Design Development, and Construction Documents phases), including completed contract documents, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause (which shall promptly be defined in detail, and submitted in writing to the Owner), be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

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

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

§ 3.1.6 The Architect shall be responsible, with the assistance of the Owner, for preparation and timely submittal of documents required for approval or recording by all governmental agencies having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by said governmental agencies at no additional charge to the Owner.

§ 3.1.7 The Architect agrees to make presentations at up to three (3) public meetings as a part of Basic Services. Presentations or attendance at other meetings in connection with the performance of Architect's services, including City Council meetings, meetings with City staff, and team meetings with Contractor, will also be deemed part of Architect's Basic Services. The Architect acknowledges and agrees that during the process of developing the Contract Documents, the Project may require numerous trips for site inspections and meeting with the Owner at the Project site, the Owner's offices, or the Architect's offices, and that some of such meetings may be requested by authorized representatives of either the Architect or of the Owner. The Architect acknowledges that the number of such meetings is not possible to anticipate and agrees that it has included professional time for as many such trips as may be required or directed by the Owner to complete such services. The Architect agrees that attending such meetings shall not constitute Additional Services of which additional compensation may be requested or claimed.

§ 3.1.8 The Architect shall assist the Owner in the preparation of qualifications evaluations and participate, if requested, in interviews for the selection of a Construction Manager at Risk to perform the Work.

§ 3.1.9 The Architect shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated

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wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. Through the Schematic Design Phase, the Architect shall review periodically the progress of the Work with the Owner's Designated Representative and the Construction Manager, if already engaged by Owner. The Schematic Design Documents shall include:

- (1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities, and the building location indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.
- (2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building, and the square footage allocated to instruction, administration, support, circulation, and ancillary. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- (3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.
- (4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations

of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

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

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

§ 3.2.5.3 The Architect shall provide the services of professional structural, mechanical, civil, electrical and plumbing engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by Architect to Owner, in advance, for Owner's review and approval, which approval shall not be unreasonably withheld; and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project.

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

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

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

*(Paragraph deleted)*

§ 3.3.1. The Architect and Architect's Consultants shall provide Design Development Documents based on the Schematic Design Documents approved by Owner and updated budget for the Cost of the Work. Through the Design Development Phase, the Architect and Architect's Consultants shall review the progress of design development with the Owner's Representative, and if requested by Owner, with the Construction Manager at 30%, 60%, 75%, and 90% completion. Four (4) printed sets of the proposed plans (review sets) and a digital set (CD in Tagged Image File Format and DGN Format) shall be furnished, at Architect's expense, for Owner's review and approval at each review.

The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections, and elevations, typical construction details, and equipment layouts, including mechanical, electrical, plumbing, technology, communication, security, energy management, and all other systems which are included in the Architect's and Architect's Consultants' Scope of Work. The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS/PROWAG, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements, and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as the proposed delivery method, proposed alternate bids, allowances and other significant

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information, to include the Architectural and Engineering technical specifications sections.

The Construction Manager shall obtain a detailed cost estimate to determine the final estimated Cost of Work for the Architect's review. The Construction Manager may be directed to update estimate of cost.

Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

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

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

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the approved Design Development Documents, the Architect and Architect's Consultants shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements of the construction of the Project, including, but not necessarily limited to the Work required for the architectural, structural, mechanical, electrical, plumbing, civil and sitework (unless provided by Owner), service-connected equipment, and the necessary general condition of the Agreement. The Architect shall provide the services of professional structural, mechanical, civil (unless provided by Owner), electrical, and other engineers, as well as landscape architects, qualified by training and experience in their respective fields, to address the requirements of the Project; shall submit a list of the names of the consultants to be employed by the Architect to the Owner in advance, for Owner's review and approval, which approval shall not be unreasonably withheld; and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques, or particular material recommended by the Architect or Architect's Consultants for the Project.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Architect shall endeavor to see that the contract documents include all code compliance, including but not necessarily limited to fire, building, health, ADA/TAS/PROWAG, Indoor Air Quality, and others of municipal, state or federal jurisdiction.

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

§ 3.4.4 The Architect shall work with the Construction Manager to update the estimate for the Cost of the Work.

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

#### § 3.5 CONSTRUCTION PROCUREMENT PHASE SERVICES

§ 3.5.1 GENERAL Following the Owner's approval of the Construction Documents, the Architect shall assist the Construction Manager in (1) obtaining either competitive bids or proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding subcontracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed contract forms, revised General Conditions, Specifications and Drawings. The contract forms and revised General Conditions shall be furnished to Architect by Owner or Owner's legal representative.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in obtaining bids for the Project by

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- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Architect shall obtain a minimum of three quotes for reproduction and shall use the lowest qualified bid obtained;
- .2 assisting the Construction Manager in distributing the Bidding Documents to prospective bidders;
- .3 assisting the Construction Manager in organizing and conducting a pre-bid conference for prospective bidders held in adequate time to allow issuance of an addendum at least seven calendar days in advance of bid date to respond to issues raised at the pre-bid conference;
- .4 assisting the Construction Manager in preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda and shall forward copies of each addendum to the Owner and Construction Manager simultaneously; and
- .5 participation, if requested by Owner, in the organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect and Architect's Consultants shall review requests for substitutions during the bidding phase and shall copy the Owner and Construction Manager in substitutions accepted for use in lieu of the specified product. Notification of acceptance of substitutions shall be included in Addenda.

### § 3.5.3 COMPETITIVE SEALED PROPOSALS

§ 3.5.3.1 Paragraph Intentionally Deleted.

#### § 3.5.3.2

*(Paragraphs deleted)*

Paragraph Intentionally Deleted.

§ 3.5.3.3 Paragraph Intentionally Deleted.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended by the Owner.

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

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction Management Services and terminates on the date final payment is made to the Construction Manager for the fully completed Work. However, the Architect shall be entitled to a Change in Services in accordance with Section 4.3.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work. For purposes of performance of Contract Administration, the Architect's Designated Representative, identified in 2.3, shall continue through the duration of Contract Administration Services, and may not be changed without written consent by the Owner.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site not less than once every two (2) weeks while Work is in progress, and as often as necessary and appropriate to the stage of construction (with particular emphasis on foundation and structural work) to observe the site and Work; to require and schedule timely visits as appropriate by Architect's Consultants to observe the work of their specialty before it becomes concealed; to familiarize the Architect and Architect's Consultants with the progress and quality of the completed Work; and to determine for the Owner's benefit and protection if the Work is proceeding in such a manner that when completed it will be in accordance with

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the intent of the Contract Documents and construction schedule. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or procedures, or for safety precautions and programs in connection with the Work for the Project, since these are solely the Construction Manager's rights and responsibilities under the Contract Documents, but shall use reasonable care to guard the Owner against defects and deficiencies in the completed Work and the Construction Manager's failure to carry out the Work in accordance with the Contract Documents and the construction schedule. On the basis of on-site observations, the Architect shall keep the Owner informed of the progress and quality of the completed Work, and shall give prompt notice to the Owner in writing of any or all deviations from the Contract Documents in the Work or defects and deficiencies observed in the Work.

§ 3.6.2.1.1 The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager (s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed so to do. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Construction Manager, and shall not be liable for results of interpretations or decisions rendered without negligence. The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents. The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.6 The Architect shall participate in monthly meetings held throughout the entire Construction Phase of the Project and shall recommend to the Owner such remedial actions as may be necessary to ensure required progress and completion in accordance with the construction schedule and within contract time.

§3.6.2.7 The Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing before the municipality in which the Project is located to address issues relating to site planning, architectural elevations, or other regulatory requirements as part of this Basic Services.

§3.6.2.8 The Architect shall prepare or provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Construction Manager(s) to the Architect including, but not limited to, the location of water, sewer, telephone, electric, gas and any other utility lines. The Architect shall request the Construction Manager certify these

drawings as accurate.

§ 3.6.2.9 The Architect shall provide services in connection with evaluating substitutions proposed during the bidding phase by the Construction Manager and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 3.6.2.10 The Architect shall have the Contractor provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

### § 3.6.4 SUBMITTALS

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

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

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

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The

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Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

**§ 3.6.5 CHANGES IN THE WORK**

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

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

**§ 3.6.6 PROJECT COMPLETION**

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

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

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

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

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

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. Upon the Owner's written request, the Architect shall provide the listed Additional Services, if any, designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. The Architect agrees that the design fees provided in the Agreement are fixed and shall not vary unless the Owner requests a substantial change in the scope of the Work to be designed by the Architect and performed by the Contractor.

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

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		

§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building Information Modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Value Analysis (B204™–2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		
§ 4.1.22 Commissioning (B211™–2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™–2012)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™–2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)		

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

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

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

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

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- .5 intentionally deleted;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 intentionally deleted;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 intentionally deleted;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after the date of Substantial Completion of the Work as established by the Certificate of Substantial Completion.

§ 4.3.3 The Architect shall provide  
(Paragraphs deleted)

all services necessary to complete and completely discharge its responsibilities under this Agreement.

(Paragraph deleted)

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

§ 5.4 Paragraph Intentionally Deleted.

(Paragraph deleted)

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§ 5.5 Paragraph Intentionally Deleted.

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

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

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

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation..

§ 5.10 The Owner and Construction Manager shall include Architect in their communications where significant changes in scope or time are discussed or except (1) as may otherwise be provided in the Contract Documents, or (2) when such communication has been attempted and could not be reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between Owner and Construction Manager relating to significant changes in scope or time has occurred without inclusion of the Architect, the Owner and Construction Manager shall promptly and jointly document the nature and result of the communication and shall provide a copy of said documentation to the Architect. Communications by and with the Architect's consultants shall be through the Architect.

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

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the actual total Cost of the Work or, to the extent the Project is not completed, the latest estimate prepared by the Architect and approved in writing by the Owner, and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, those portions of the Project which are designed or specified by other consultants engaged directly by Owner, or other costs that are the responsibility of the Owner.

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation, provided the same are identified and disclosed to Owner; to propose what

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materials, equipment, component systems and types of construction are to be included in the Contract Documents to keep the Project within the current approved budget; to propose reasonable adjustments in the program and scope of the Project to keep the Project within the current approved budget; and to propose for inclusion in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Owner shall have the right to review all proposals, complete with adequate professional advice from the Architect, and to approve before the Architect proceeds. Alternate bids shall not affect delivery of the project, unless the Owner so directs. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

**§ 6.4** Paragraph Intentionally Deleted.

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

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the guaranteed maximum price or other negotiated price, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time with no adjustment in the Architect's compensation;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

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

**ARTICLE 7 COPYRIGHTS AND LICENSES**

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

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

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

Init.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

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

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

### § 8.2 MEDIATION

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. The request may be made concurrently with the filing of a suit for legal or equitable relief.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Init.

[ ] Other (*Specify*)

§ 8.3 ARBITRATION – Deleted in its entirety.

(*Paragraphs deleted*)

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due it under the Agreement prior to suspension and any expenses incurred and due under terms of the Agreement in the interruption and resumption of the Architect's services, upon submitting and receiving an approved proposal to resume services to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted at the mutual consent of the parties to the Agreement.

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

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

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

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

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

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include only out-of-pocket expenses directly attributable to termination for which the Architect is not otherwise compensated.

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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

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

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

Init.

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

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

§ 10.6 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. Accordingly, the Architect shall furnish to the Owner without additional charge, one of each item produced by the Architect. The Architect shall be given reasonable access to the completed Project to make such representations, but only at such times and dates as stipulated by the Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information, nor shall it include any descriptive information unless such descriptive information is prior approved in writing by the Owner's Designated Representative. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 The Architect shall maintain the confidentiality of all information obtained from Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, materially interfere with the completion of Architect's services hereunder or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of such information.

§ 10.9 The Architect shall be responsible, with the assistance of the Owner, for preparation and timely submittal of documents required for approval or recording by all governmental agencies having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by said governmental agencies at no additional charge to the Owner.

## ARTICLE 11 COMPENSATION

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

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

The basis of compensation shall be a stipulated sum of Three Million Four Hundred Sixty-Six Thousand Eight Hundred Eighty Dollars (\$3,466,880.00).

### § 11.2

*(Paragraphs deleted)*

Paragraph Intentionally Deleted.

§ 11.3 Prior to the commencement of any Additional Services during the course of the Project, including those under Section 4.3, the Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

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

Potential Additional Services NOT included in this agreement:

Multiple Consultants

Init.

LEED Certification Assistance	\$134,112
Architecture – Barker Rinker Seacat Architecture	
Additional CA Visits (40)	\$ 40,000
Civil – Halff Associates	
Three (3) Easements by Separate Instrument	\$ 4,950
Detention Pond Design	\$ 22,000
Cost Estimating – Peak Program Value	
CMAR Procurement Process	\$ 24,701
CMAR Estimate and GMP Validation	\$ 18,200
Surveying – Halff Associates	
Valley Vista Park Topo Survey	\$ 16,500
Valley Vista Park Boundary Survey	\$ 6,600
Valley Vista Park Tree Survey	\$ 8,250
 Total Potential Additional Services	 \$275,312

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Section 11.3, shall be the amount invoiced to the Architect with no mark up.

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

Schematic Design Phase	fifteen percent (	15	%)
Design Development Phase	Twenty-five percent (	25	%)
Construction Documents Phase	twenty-one percent (	21	%)
Bidding or Negotiation Phase	two percent (	2	%)
Construction Phase	twenty-seven percent (	27	%)
Conceptual Design/Building Evaluation	Ten Percent	10	%)
<hr/> Total Basic Compensation	<hr/> one hundred percent (	<hr/> 100	<hr/> %)

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

n/a

<b>Employee or Category</b>	<b>Rate</b>
-----------------------------	-------------

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

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

- .1 transportation in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect’s Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner’s Designated Representative, and which

reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's Designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;

- .2 intentionally deleted;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;
- .5 intentionally deleted;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested in writing by the Owner;
- .8 intentionally deleted;
- .9 intentionally deleted;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's, prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

Reimbursable Expenses are estimated not to exceed Ninety-four Thousand, One Hundred Seventy-five Dollars (\$94,175.00).

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without any additional mark-up.

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

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

**§ 11.10 PAYMENTS TO THE ARCHITECT**

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

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

1.50% monthly

**§ 11.10.3** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect. Owner may withhold amounts from Architect's compensation to offset sums requested by or paid to contractors for the cost of changes in the Work caused by Architect's errors, omissions or negligence.

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

**§ 12.1** The Texas Board of Architectural Examiners, 555 N. Lamar Blvd., Building H-117, Austin, Texas 78751 Phone: 512/458-1363 has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS."

**§ 12.2** It shall be the duty of the Architect throughout the term of this Agreement as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions, and decisions made between and/or among the Owner, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performances, and/or sequence of the Work and to provide promptly a copy of all such records to the Owner.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .3 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  
- .4 Other documents:

Init.

*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

1. A201-2007 v4 (04-18-16) City, General Conditions of the Contract for Construction, attached hereto and incorporated herein for all purposes.
2. Exhibits attached hereto and incorporated herein for all purposes:
  - Exhibit A, Initial Information.
  - Exhibit B, Consultant Services Scope Descriptions for Basic Services.
  - Exhibit C, Reimbursable Expense Budget.
  - Exhibit D, Project Schedule.

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

**OWNER**  
**CITY OF LEWISVILLE, TEXAS**

**ARCHITECT**  
**BARKER RINKER SEACAT ARCHITECTURE**

**BY:**

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

\_\_\_\_\_  
*(Printed name and title)*

**BY:**

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

\_\_\_\_\_  
*(Printed name and title)*

Init.

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
---------------------	---------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------



Init.

# **Additions and Deletions Report for** **AIA® Document B101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:55:19 on 07/15/2016.

## **PAGE 1**

### **B101-2007 v:4 (06-02-14) CM**

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Sixteen (2016)

...

*(Name, legal status, address and other information)*

The City of Lewisville, Texas  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

...

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

...

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:  
1950 South Valley Parkway  
Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

## **PAGE 2**

See Exhibit A attached hereto and incorporated herein for all purposes.

...

See Exhibit A.

See Exhibit A.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's ~~compensation~~, compensation, which adjustments shall be submitted in writing by Architect and approved by Owner prior to becoming effective.

PAGE 3

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the ~~Project~~. Project, which representative shall be acceptable to Owner.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost: ~~(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)~~ (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.) The following insurance shall be required of the Architect and shall be written by an insurance company having an A minus rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:

(a) State:	Statutory
(b) Applicable Federal:	Statutory
(c) Employer's Liability:	\$500,000 per Accident
	<u>\$500,000 Disease, Policy Limit</u>
	<u>\$500,000 Disease, Each Employee</u>
  
2. Architect's and Engineer's professional liability insurance coverage with minimum of \$500,000 per claim prior to the start of construction, and \$2,000,000 limit per claim following the start of construction, exclusive of any cost of defense. If the Professional Liability coverage is on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.
  
- ~~4~~ 3. General Liability Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):

(a) Bodily Injury:	\$1,000,000 Each Occurrence
	<u>\$2,000,000 Aggregate</u>
(b) Property Damage:	\$1,000,000 Each Occurrence
	<u>2 Automobile Liability \$2,000,000 Aggregate</u>
(c) Products and Completed Operations to be maintained for two years after final payment:	<u>\$2,000,000 Aggregate</u>
  
4. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
  
- ~~3~~ Workers' Compensation
  
5. Valuable papers insurance coverage with minimum value of \$100,000.
  
6. Umbrella Excess Liability:

<del>4</del> Professional Liability (a) Over Primary Insurance:	\$1,000,000	Each
	Occurrence	

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the

policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment.

**PAGE 4**

**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this civil, structural, mechanical, and electrical engineering services and other specialty consultants required to address the needs of the Project, including interior design, landscape architectural services, roofing consultants, aquatics and specifications. Services not set forth in Article 3 are Additional Services.

...

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

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's written approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement and completion of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, review of each phase (Schematic Design, Design Development, and Construction Documents phases), including completed contract documents, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, cause (which shall promptly be defined in detail, and submitted in writing to the Owner), be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, necessary as the Project proceeds until the commencement of construction.

...

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. be responsible, with the assistance of the Owner, for preparation and timely submittal of documents required for approval or recording by all governmental agencies having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by said governmental agencies at no additional charge to the Owner.

**§ 3.1.7** The Architect agrees to make presentations at up to three (3) public meetings as a part of Basic Services. Presentations or attendance at other meetings in connection with the performance of Architect's services, including City Council meetings, meetings with City staff, and team meetings with Contractor, will also be deemed part of Architect's Basic Services. The Architect acknowledges and agrees that during the process of developing the Contract Documents, the Project may require numerous trips for site inspections and meeting with the Owner at the Project site, the Owner's offices, or the Architect's offices, and that some of such meetings may be requested by authorized representatives of either the Architect or of the Owner. The Architect acknowledges that the number of such meetings is not possible to anticipate and agrees that it has included professional time for as many such trips as may be required or directed by the Owner to complete such services. The Architect agrees that attending such meetings shall not constitute Additional Services of which additional compensation may be requested or claimed.

**§ 3.1.8** The Architect shall assist the Owner in the preparation of qualifications evaluations and participate, if requested, in interviews for the selection of a Construction Manager at Risk to perform the Work.

**§ 3.1.9** The Architect shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include,

as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

## PAGE 5

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Through the Schematic Design Phase, the Architect shall review periodically the progress of the Work with the Owner's Designated Representative and the Construction Manager, if already engaged by Owner. The Schematic Design Documents shall include:

(1) A conceptual Site Plan, scaled accurately, to depict all features of the site, including but not necessarily limited to drives, parking, streets, alleys, easements, finish floor elevation and site contours, location of existing utilities, and the building location indicating proposed sidewalks and other site appurtenances. The site plan shall bear a schedule indicating the acreage of the site, the area of the site proposed for concrete or asphalt paving, the total area of the building, and area of proposed covered walks and overhangs.

(2) Floor Plan or plans, drawn to scale, indicating the dimensions and net areas of each individual space, labeled as to use, and indicating door swings, window or glassed areas, wall thickness, conceptual casework/millwork and other design features, which require Owner approval. Spaces too small at the plan scale to be adequately examined shall be enlarged and illustrated as necessary. Floor plan sheet shall bear a schedule indicating the gross area of the building, and the square footage allocated to instruction, administration, support, circulation, and ancillary. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

(3) Exterior Elevations, drawn to scale, proposing the design concept and indicating proposed materials and design features.

(4) A preliminary code search, indicating the anticipated code requirements governing building, fire, life safety, accessibility, and health, and a statement as to the Architect's and Architect's Consultants' approach to accommodate these requirements shall be included. At the Owner's direction, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. The Architect shall obtain approval of Schematic Design Documents from Owner before proceeding to Design Development Phase.

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

§ 3.2.5.3 The Architect shall provide the services of professional structural, mechanical, civil, electrical and plumbing engineers, qualified by training and experience in their respective fields, as needed, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by Architect to Owner, in advance, for Owner's review and approval, which approval shall not be unreasonably withheld; and shall require

such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project.

...

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

**§ 3.3.1.** The Architect and Architect's Consultants shall provide Design Development Documents based on the Schematic Design Documents approved by Owner and updated budget for the Cost of the Work. Through the Design Development Phase, the Architect and Architect's Consultants shall review the progress of design development with the Owner's Representative, and if requested by Owner, with the Construction Manager at 30%, 60%, 75%, and 90% completion. Four (4) printed sets of the proposed plans (review sets) and a digital set (CD in Tagged Image File Format and DGN Format) shall be furnished, at Architect's expense, for Owner's review and approval at each review.

The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections, and elevations, typical construction details, and equipment layouts, including mechanical, electrical, plumbing, technology, communication, security, energy management, and all other systems which are included in the Architect's and Architect's Consultants' Scope of Work. The extent of presentation shall be such that all aspects of the design and features, locations of equipment, switching, lighting, door numbers/types, room numbers/finishes, ceiling types/finishes and any other issue which may be incorporated into the Construction Documents shall have been presented to and approved by the Owner.

A complete code review, addressing building, fire, safety, ADA/TAS/PROWAG, health, and any or all other code/ordinance requirements shall be included, indicating the Architect's and Architect's Consultants' interpretations as to the code requirements, and the features incorporated into the design that satisfy the requirements.

Site plans shall depict the final locations of all site appurtenances, utility connections and routing, drives, walks, yard irrigation, and other features to illustrate to the Owner that essentially all decisions have been made and that decisions of significance will not be required during Construction Document Phase.

Specifications shall be in outline form, and shall describe the materials and methods intended for use within the project, as well as the proposed delivery method, proposed alternate bids, allowances and other significant information, to include the Architectural and Engineering technical specifications sections.

The Construction Manager shall obtain a detailed cost estimate to determine the final estimated Cost of Work for the Architect's review. The Construction Manager may be directed to update estimate of cost.

Owner shall approve Design Development Documents prior to Architect proceeding with Construction Documents.

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**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the

~~further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. approved Design Development Documents, the Architect and Architect's Consultants shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements of the construction of the Project, including, but not necessarily limited to the Work required for the architectural, structural, mechanical, electrical, plumbing, civil and sitework (unless provided by Owner), service-connected equipment, and the necessary general condition of the Agreement. The Architect shall provide the services of professional structural, mechanical, civil (unless provided by Owner), electrical, and other engineers, as well as landscape architects, qualified by training and experience in their respective fields, to address the requirements of the Project; shall submit a list of the names of the consultants to be employed by the Architect to the Owner in advance, for Owner's review and approval, which approval shall not be unreasonably withheld; and shall require such professional engineers to place their seal, name and signature on the Drawings and Specifications prepared by them. Said Construction Documents shall comply with all laws, statutes, ordinances, codes, rules and regulations. Approval by the Owner shall not constitute approval of the means, techniques, or particular material recommended by the Architect or Architect's Consultants for the Project.~~

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Architect shall endeavor to see that the contract documents include all code compliance, including but not necessarily limited to fire, building, health, ADA/TAS/PROWAG, Indoor Air Quality, and others of municipal, state or federal jurisdiction.

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

§ 3.4.4 The Architect shall work with the Construction Manager to update the estimate for the Cost of the Work.

...

## § 3.5 ~~BIDDING OR NEGOTIATION PHASE SERVICES~~ CONSTRUCTION PROCUREMENT PHASE SERVICES

### § 3.5.1 GENERAL

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

...

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed ~~Contract Documents, contract forms, revised General Conditions, Specifications and Drawings.~~ The contract forms and revised General Conditions shall be furnished to Architect by Owner or Owner's legal representative.

§ 3.5.2.2 The Architect shall assist the Owner ~~in bidding and~~ Construction Manager in obtaining bids for the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders; bidders. The Architect shall obtain a minimum of three quotes for reproduction and shall use the lowest qualified bid obtained;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of

- ~~deposits, if any, received from and returned~~ assisting the Construction Manager in distributing the Bidding Documents to prospective bidders;
- .3 ~~assisting the Construction Manager in organizing and conducting a pre-bid conference for prospective bidders;~~ bidders held in adequate time to allow issuance of an addendum at least seven calendar days in advance of bid date to respond to issues raised at the pre-bid conference;
- .4 ~~assisting the Construction Manager in preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;~~ of addenda and shall forward copies of each addendum to the Owner and Construction Manager simultaneously; and
- .5 ~~participation, if requested by Owner, in the organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

§ 3.5.2.3 The Architect shall ~~consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~ and Architect's Consultants shall review requests for substitutions during the bidding phase and shall copy the Owner and Construction Manager in substitutions accepted for use in lieu of the specified product. Notification of acceptance of substitutions shall be included in Addenda.

**§ 3.5.3 NEGOTIATED PROPOSALS/COMPETITIVE SEALED PROPOSALS**

§ 3.5.3.1 ~~Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~ Paragraph Intentionally Deleted.

- § 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by
- .1 ~~procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
  - .2 ~~organizing and participating in selection interviews with prospective contractors; and~~
  - .3 ~~participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~ Paragraph Intentionally Deleted.

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

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

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

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the ~~Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~ initial Contract for Construction Management Services and terminates on the date final payment is made to the Construction Manager for the fully completed Work. However, the Architect shall be entitled to a Change in Services in accordance with Section 4.3.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work. For purposes of performance of Contract Administration, the

Architect's Designated Representative, identified in 2.3, shall continue through the duration of Contract Administration Services, and may not be changed without written consent by the Owner.

...

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar not less than once every two (2) weeks while Work is in progress, and as often as necessary and appropriate to the stage of construction (with particular emphasis on foundation and structural work) to observe the site and Work; to require and schedule timely visits as appropriate by Architect's Consultants to observe the work of their specialty before it becomes concealed; to familiarize the Architect and Architect's Consultants with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, completed Work; and to determine for the Owner's benefit and protection if the Work is proceeding in such a manner that when completed it will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, intent of the Contract Documents and construction schedule. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or procedures, or for safety precautions and programs in connection with the Work for the Project, since these are solely the Construction Manager's rights and responsibilities under the Contract Documents, but shall use reasonable care to guard the Owner against defects and deficiencies in the completed Work and the Construction Manager's failure to carry out the Work in accordance with the Contract Documents and the construction schedule. On the basis of on-site observations, the Architect shall keep the Owner reasonably informed about informed of the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) completed Work, and shall give prompt notice to the Owner in writing of any or all deviations from the Contract Documents in the Work or defects and deficiencies observed in the Work.

**§ 3.6.2.1.1** The Architect shall provide services made necessary by major defects or deficiencies in the Work of the Construction Manager (s) or its agents, employees or subcontractors which through reasonable care the Architect should have discovered and promptly reported to the Owner but failed so to do. In addition, the Architect shall follow the usual and customary standards of the profession in performing all services under this Agreement. Any defective design drawings or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights.

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

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

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, the Construction Manager, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if without negligence. The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and ~~Contractor~~ Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and ~~Contractor~~ Construction Manager as provided in the Contract Documents. The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents.

§ 3.6.2.6 The Architect shall participate in monthly meetings held throughout the entire Construction Phase of the Project and shall recommend to the Owner such remedial actions as may be necessary to ensure required progress and completion in accordance with the construction schedule and within contract time.

§3.6.2.7 The Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing before the municipality in which the Project is located to address issues relating to site planning, architectural elevations, or other regulatory requirements as part of this Basic Services.

§3.6.2.8 The Architect shall prepare or provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Construction Manager(s) to the Architect including, but not limited to, the location of water, sewer, telephone, electric, gas and any other utility lines. The Architect shall request the Construction Manager certify these drawings as accurate.

§ 3.6.2.9 The Architect shall provide services in connection with evaluating substitutions proposed during the bidding phase by the Construction Manager and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 3.6.2.10 The Architect shall have the Contractor provide a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints.

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

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

...

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the ~~Contractor's~~ Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and

the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

...

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

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

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

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

...

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Upon the Owner's written request, the Architect shall provide the listed Additional Services only if specifically Services, if any, designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. The Architect agrees that the design fees provided in the Agreement are fixed and shall not vary unless the Owner requests a substantial change in the scope of the Work to be designed by the Architect and performed by the Contractor.

...

Additional Services	Responsibility (Architect, Owner, or Not or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)

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

...

- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official ~~interpretations;~~ interpretations after the date of Owner's acceptance of the Construction Drawings;

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- .5 ~~Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~ intentionally deleted;

...

- .7 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~ intentionally deleted;

...

- .9 ~~Evaluation of the qualifications of bidders or persons providing proposals;~~ intentionally deleted;
- .10 ~~Consultation concerning replacement of Work resulting from fire or other cause during construction;~~ or
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect;~~ construction.

...

- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker;~~ submitted by the Owner's consultants, the Contractor or others in connection with the Work except where such extensive number of claims could have been rectified by more descriptive original Contract Documents or addenda thereto;

...

- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after ~~(1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier;~~ as established by the Certificate of Substantial Completion.

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

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

~~4~~ ( ) inspections for any portion of the Work to determine final completion all services necessary to complete and completely discharge its responsibilities under this Agreement.

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

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

...

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

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

§ 5.5 Paragraph Intentionally Deleted.

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§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of ~~Service.~~ Service, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

§ 5.10 ~~Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Owner and Construction Manager shall include Architect in their communications where significant changes in scope or time are discussed or except (1) as may otherwise be provided in the Contract Documents, or (2) when such communication has been attempted and could not be reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between Owner and Construction Manager relating to significant changes in scope or time has occurred without inclusion of the Architect, the Owner and Construction Manager shall promptly and jointly document the nature and result of the communication and shall provide a copy of said documentation to the Architect. Communications by and with the Architect's consultants shall be through the Architect.~~

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement.

The Owner shall provide the Architect a copy of the executed agreement between the Owner and ~~Contractor,~~  
Construction Manager, including the General Conditions of the Contract for Construction.

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

...

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the ~~total cost to the Owner to construct all elements of the Project designed or specified by the Architect actual total Cost of the Work or, to the extent the Project is not completed, the latest estimate prepared by the Architect and approved in writing by the Owner,~~ and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the ~~Work Work, those portions of the Project which are designed or specified by other consultants engaged directly by Owner,~~ or other costs that are the responsibility of the Owner.

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price ~~escalation; to determine escalation,~~ provided the same are identified and disclosed to Owner; to propose what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make Documents to keep the Project within the current approved budget; to propose reasonable adjustments in the program and scope of the Project; and to include the Project to keep the Project within the current approved budget; and to propose for inclusion in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Owner shall have the right to review all proposals, complete with adequate professional advice from the Architect, and to approve before the Architect proceeds. Alternate bids shall not affect delivery of the project, unless the Owner so directs. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

...

- .2 authorize rebidding or renegotiating of the Project within a reasonable ~~time;~~ time with no adjustment in the Architect's compensation;

...

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

...

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

#### PAGE 16

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

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

...

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation, conducted in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code.~~ The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings, suit for legal or equitable relief.

...

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute-resolution shall be the following:

...

[  ] Litigation in a court of competent jurisdiction

PAGE 17

~~§ 8.3 ARBITRATION – Deleted in its entirety.~~

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

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

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

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

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

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

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

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

§ 9.1 If the Owner wrongfully fails to make payments to the Architect in accordance with this Agreement, Agreement and such failure continues for a period of 30 days after written demand from Architect to Owner, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due it under the Agreement prior to suspension and any expenses incurred and due under terms of the Agreement in the interruption and resumption of the Architect's ~~services~~ services, upon submitting and receiving an approved proposal to resume

services to the Owner. The Architect's fees for the remaining services and the time schedules shall be equitably ~~adjusted.~~adjusted at the mutual consent of the parties to the Agreement.

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

...

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

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is ~~located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~located.

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

#### PAGE 18

§ 10.6 ~~Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.~~The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If the Architect discovers that such substances as described herein have been used or do exist in the Project, the Architect shall promptly notify the Owner in writing. When asbestos containing materials, polychlorinated biphenyl (PCB) or other toxic or hazardous substances are suspected or found in the course of the Project, the Owner shall immediately provide the services of an appropriately qualified expert or consultant to determine the proper course of action.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. Accordingly, the Architect shall furnish to the Owner without additional charge, one of each item produced by the Architect. The Architect shall be given reasonable access to the completed Project to make such ~~representations.~~representations, but only at such times and dates as stipulated by the Owner's Designated Representative. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of ~~the specific information considered by the Owner to be confidential or proprietary.~~information, nor shall it include any descriptive information unless such descriptive information is prior approved in writing by the Owner's Designated Representative. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 ~~If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.~~The Architect shall maintain the confidentiality of all information obtained from Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, materially interfere with the completion of Architect's services hereunder or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of such information.

**§ 10.9** The Architect shall be responsible, with the assistance of the Owner, for preparation and timely submittal of documents required for approval or recording by all governmental agencies having jurisdiction over the Project. The Architect shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by said governmental agencies at no additional charge to the Owner.

...

The basis of compensation shall be a stipulated sum of Three Million Four Hundred Sixty-Six Thousand Eight Hundred Eighty Dollars (\$3,466,880.00).

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Paragraph Intentionally Deleted.

**§ 11.3** For Additional Services that may arise Prior to the commencement of any Additional Services during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Architect shall submit to the Owner a written proposal containing the scope and estimated costs related thereto for approval by the Owner.

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

Potential Additional Services NOT included in this agreement:

Multiple Consultants

LEED Certification Assistance	\$134,112
<u>Architecture – Barker Rinker Seacat Architecture</u>	
Additional CA Visits (40)	\$ 40,000
<u>Civil – Half Associates</u>	
Three (3) Easements by Separate Instrument	\$ 4,950
Detention Pond Design	\$ 22,000
<u>Cost Estimating – Peak Program Value</u>	
CMAR Procurement Process	\$ 24,701
CMAR Estimate and GMP Validation	\$ 18,200
<u>Surveying – Half Associates</u>	
Valley Vista Park Topo Survey	\$ 16,500
Valley Vista Park Boundary Survey	\$ 6,600
Valley Vista Park Tree Survey	\$ 8,250
Total Potential Additional Services	<u>\$275,312</u>

**§ 11.4** Compensation for Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus \_\_\_\_\_ percent (\_\_\_\_%), or as otherwise stated below: with no mark up.

**PAGE 19**

Schematic Design Phase	<u>fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty-five</u>	percent (	<u>25</u>	%)
Construction Documents Phase	<u>twenty-one</u>	percent (	<u>21</u>	%)
Bidding or Negotiation Phase	<u>two</u>	percent (	<u>2</u>	%)
Construction Phase	<u>twenty-seven</u>	percent (	<u>27</u>	%)
Conceptual Design/Building Evaluation	<u>Ten</u>	Percent	<u>10</u>	%)

...

n/a

...

- .1 Transportation and authorized out-of-town travel and subsistence; transportation in connection with the Project, when such transportation is not a function of routine performance of duties of the Architect or Architect's Consultants in connection with the Project, and when such transportation extends beyond 50 miles from the project site; authorized out-of-town travel and substance, which shall be prior approved by the Owner's Designated Representative, and which reimbursements shall be governed by the same travel policies provided for Owner's employees according to current adopted Owner's policy. Prior to the event, the Architect shall request, and the Owner's Designated Representative shall provide the provisions and restrictions applicable to out-of-town travel reimbursements. Electronic communication reimbursable expense shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;intentionally deleted;

PAGE 20

- .4 Printing, reproductions, plots, standard form documents;reproductions, specifically limited to progress prints prepared for presentation to Owner at each phase of progress, and final construction documents prepared for distribution at bidding phase, provided that the Architect has duly obtained at least three quotations from commercial printing firms and has chosen the best value for the Owner. Plots shall be limited to plotting of final documents, provided that the Architect has duly obtained at least three quotations from commercial firms offering plotting services, and has chosen the best value for the Owner. Standard form documents are reimbursable if bulk-purchase discounts and other privileges afforded the Architect are extended to the Owner. If licensed electronic document forms are provided in lieu of hard-copy standard forms and are furnished by the Architect, the Architect may charge as reimbursable up to fifty percent (50%) of the purchase price of the corresponding hard-copy documents, subject to restrictions and limitations of copyright provisions governing both documents. Postage and delivery of Instruments of Service are reimbursable provided the Architect duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Owner, which may require comparison of delivery costs offered by three or more sources or methods of delivery, which at minimum shall include US Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Architect. Handling is not reimbursable;
  - .5 Postage, handling and delivery;intentionally deleted;
  - .6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner;
  - .7 Renderings, models, mock-ups, professional photography, and presentation materials requested in writing by the Owner;
  - .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;intentionally deleted;
  - .9 All taxes levied on professional services and on reimbursable expenses;intentionally deleted;
- ...
- .11 Other similar Project-related expenditures-expenditures, which are duly presented in advance and approved by the Owner's Designated Representative in writing. Telephone service charges, including office or cellular phones, WATTS or Metro line services or similar charges are not reimbursable. Toll road subscriptions or toll plaza receipts are not reimbursable. Meals or any other related expenses are not reimbursable unless incurred outside a 50-mile radius of the Project, and then only reimbursable subject to compliance with Owner Policy. Faxed transmissions not requiring long distance toll charges are not reimbursable.

The Architect shall be solely responsible for the auditing of all Reimbursable Expenses, including the Architect's, prior to submitting to Owner for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Owner for errors in submittals for reimbursement may be deducted from the Architect's subsequent payment for services.

Reimbursable Expenses are estimated not to exceed Ninety-four Thousand, One Hundred Seventy-five Dollars (\$94,175.00).

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants ~~plus~~ percent (—%) of the expenses incurred ~~without any additional mark-up.~~

...

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the ~~Owner shall pay a licensing fee as compensation~~ Owner's payment to Architect in accordance with Section 9.6 shall constitute payment for a licensing fee for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### PAGE 21

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

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

...

~~%—1.50% monthly~~

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

...

§ 12.1 The Texas Board of Architectural Examiners, 555 N. Lamar Blvd., Building H-117, Austin, Texas 78751 Phone: 512/458-1363 has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS."

§ 12.2 It shall be the duty of the Architect throughout the term of this Agreement as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions, and decisions made between and/or among the Owner, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performances, and/or sequence of the Work and to provide promptly a copy of all such records to the Owner.

...

- 3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

\_\_\_\_\_  
4 Other documents:

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- \_\_\_\_\_.
1. A201-2007 v4 (04-18-16) City, General Conditions of the Contract for Construction, attached hereto and incorporated herein for all purposes.
  2. Exhibits attached hereto and incorporated herein for all purposes:
    - Exhibit A, Initial Information.
    - Exhibit B, Consultant Services Scope Descriptions for Basic Services.
    - Exhibit C, Reimbursable Expense Budget.
    - Exhibit D, Project Schedule.

...

CITY OF LEWISVILLE, TEXAS

BARKER RINKER SEACAT ARCHITECTURE

BY:

BY:

...

<u>Additional Services</u>	<u>Responsibility</u> <i>(Architect, Owner or Not Provided)</i>	<u>Location of Service Description</u> <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
----------------------------	----------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Robert H. Roeder, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 08:55:19 on 07/15/2016 under Order No. 0095950857\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# Document B101™ – 2007 Exhibit A

## Initial Information

**B101 Exhibit A-2007 v:2.0 (6-12-09) CM**

**for the following PROJECT:**

*(Name and location or address)*

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:  
1950 South Valley Parkway  
Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

**THE OWNER:**

*(Name, legal status and address)*

The City of Lewisville, Texas  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

**THE ARCHITECT:**

*(Name, legal status and address)*

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

This Agreement is based on the following information.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**ARTICLE A.1 PROJECT INFORMATION**

**§ A.1.1 The Owner's program for the Project:**

*(Identify documentation or state the manner in which the program will be developed.)*

New construction of a Multigenerational Recreation Center at Memorial Park. The site currently has approximately 150 regular parking spaces and 15 accessible spaces. We anticipate adding an additional 200-220 spaces based on the new center size and needs of the playground located on the site. Total parking space count will be approximately 385 spaces.

A site masterplan will be developed in association with the design of the future Valley

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

Vista Nature Park located just east of Memorial Park. The combined experience of the parks (Valley Vista Nature Park + Memorial Park) will be based on the theme of "Nature Play". The Memorial Park site design will be developed for construction along with the new Multigenerational Recreation Center. The Valley Vista Park is anticipated to be developed in a future phase.

**§ A.1.2** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

Memorial Park is approximately 25.25 acres, but the Work is expected to involve a smaller portion of this area.

Valley Vista Nature Park is approximately 24 acres.

**§ A.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total, and if known, a line item break down.)*

The Owner's overall budget for the Cost of the Work is Thirty-Two Million, Eight Hundred Thousand Dollars (\$32,800,000.00).

**§ A.1.4** The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

Date for Commencement of Construction: TBD – late 2017/early 2018.

Substantial Completion Date: TBD - late 2019/early 2020.

**§ A.1.5** The Owner intends the following procurement or delivery method for the Project:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

Construction Management

**§ A.1.6** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

**ARTICLE A.2 PROJECT TEAM**

**§ A.2.1** The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address and other information.)*

Donna Barron, City Manager  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

**§ A.2.2** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

*(List name, address and other information.)*

PALS, Engineering, Building Inspection

**§ A.2.3** The Owner will retain the following consultants and contractors:

*(List discipline and, if known, identify them by name and address.)*

Init.

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address and other information.)

Craig Bouck, CEO, Principal  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.  
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

AG+E Structural Engenvity  
15280 Addison Road, Suite 310  
Addison, TX 75001

.2 Mechanical/Plumbing Engineer

Henderson Engineers, Inc.  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

.3 Civil Engineer

Half Associates, Inc.  
4000 Fossil Creek Blvd  
Fort Worth, TX 76137-2720

.4 Electrical Engineer

Henderson Engineers, Inc.  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

.5 Acoustical Engineer

BAi  
4245 North Central Expressway, Suite 600  
Dallas, TX 75205

.6 Lighting Design

Impact Illumination (division of Henderson Engineers, Inc.)  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

.7 Aquatic Design

Water Technology, Inc.  
100 Park Avenue  
P.O. Box 614  
Beaver Dam, WI 53916

.8 Sustainability Consulting

Group 14  
1325 E. 16th Avenue  
Denver, CO 80218

.9 Landscape Design

Studio Outside  
824 Exposition Ave, Ste 5  
Dallas, TX 75226

.10 Low Voltage

Datacom Design Group  
10300 North Central Expressway  
Dallas, TX 75231

.11 Kitchen

JMK Food Service Consulting & Design, LLC  
3431 Lakeview Pkwy, Ste 205  
Rowlett, TX 75088

.12 Specifications

iBIM Solutions  
9434 Hibiscus Drive  
Highlands Ranch, CO 80126

.13 Cost Estimating

Peak Program Value  
4450 Araphoe, Suite 100  
Boulder, CO 80303

.14 Surveying

Half Associates, Inc.  
4000 Fossil Creek Blvd  
Fort Worth, TX 76137-2720

.15 Geotechnical Engineering

Fugro Consultants, Inc.  
2880 Virgo Lane  
Dallas, TX 75229

.16 Accessibility Consulting

Access By Design  
12720 Hillcrest Road, Suite 580  
Dallas, TX 75230

.17 Interior Design  
Signage  
Furniture

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

§ A.2.5.2 Consultants retained under Additional Services:

§ A.2.6 Other Initial Information on which the Agreement is based:  
(Provide other Initial Information.)

If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.

Init.

# **Additions and Deletions Report for** **AIA® Document B101™ – 2007 Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:26:44 on 07/12/2016.

**PAGE 1**

## **B101 Exhibit A-2007 v:2.0 (6-12-09) CM**

...

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:  
1950 South Valley Parkway  
Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

...

The City of Lewisville, Texas  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

...

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

...

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A site masterplan will be developed in association with the design of the future Valley Vista Nature Park located just east of Memorial Park. The combined experience of the parks (Valley Vista Nature Park + Memorial Park) will be

based on the theme of "Nature Play". The Memorial Park site design will be developed for construction along with the new Multigenerational Recreation Center. The Valley Vista Park is anticipated to be developed in a future phase.

**PAGE 2**

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Valley Vista Nature Park is approximately 24 acres.

...

The Owner's overall budget for the Cost of the Work is Thirty-Two Million, Eight Hundred Thousand Dollars (\$32,800,000.00).

...

Date for Commencement of Construction: TBD – late 2017/early 2018.  
Substantial Completion Date: TBD - late 2019/early 2020.

...

Construction Management

...

Donna Barron, City Manager  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

...

PALS, Engineering, Building Inspection

**PAGE 3**

Craig Bouck, CEO, Principal  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

...

AG+E Structural Engenvity  
15280 Addison Road, Suite 310  
Addison, TX 75001

...

**.2 Mechanical-Mechanical/Plumbing Engineer**

Henderson Engineers, Inc.  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

...

**.3 Civil Engineer**

Halff Associates, Inc.  
4000 Fossil Creek Blvd  
Fort Worth, TX 76137-2720

.4 Electrical Engineer

Henderson Engineers, Inc.  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

.5 Acoustical Engineer

BAi  
4245 North Central Expressway, Suite 600  
Dallas, TX 75205

.6 Lighting Design

Impact Illumination (division of Henderson Engineers, Inc.)  
15851 North Dallas Parkway, Suite 240  
Addison, TX 75001

.7 Aquatic Design

Water Technology, Inc.  
100 Park Avenue  
P.O. Box 614  
Beaver Dam, WI 53916

.8 Sustainability Consulting

Group 14  
1325 E. 16th Avenue  
Denver, CO 80218

.9 Landscape Design

Studio Outside  
824 Exposition Ave, Ste 5  
Dallas, TX 75226

.10 Low Voltage

Datacom Design Group  
10300 North Central Expressway  
Dallas, TX 75231

.11 Kitchen

JMK Food Service Consulting & Design, LLC  
3431 Lakeview Pkwy, Ste 205  
Rowlett, TX 75088

.12 Specifications

iBIM Solutions  
9434 Hibiscus Drive  
Highlands Ranch, CO 80126

.13 Cost Estimating

Peak Program Value  
4450 Araphoe, Suite 100  
Boulder, CO 80303

.14 Surveying

Halff Associates, Inc.  
4000 Fossil Creek Blvd  
Fort Worth, TX 76137-2720

.15 Geotechnical Engineering

Fugro Consultants, Inc.  
2880 Virgo Lane  
Dallas, TX 75229

.16 Accessibility Consulting

Access By Design  
12720 Hillcrest Road, Suite 580  
Dallas, TX 75230

.17 Interior Design

Signage  
Furniture

Barker Rinker Seacat Architecture

3457 Ringsby Court, Unit 200  
Denver, CO 80216

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If required and with the Owner's prior written approval, other consultants deemed necessary and not included in the Basic Services will be proposed and provided by the Architect and submitted as a Reimbursable Expense.



**BARKER  
RINKER  
SEAGAT**  
ARCHITECTURE

## **Exhibit B – Consultant Services Scope for Basic Services**

July 12, 2016

### **Civil Engineering Scope**

1. Provide surveys to describe the physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All in the information on the surveys shall be referenced to a Project benchmark. Provide survey fees for both Memorial Park site and Valley Vista Nature Park.
2. All work 5'-0" outside the building perimeter (work within this perimeter is by other disciplines) to a point within 75'-0" outside of the property line (for utility connections).
3. Structure placement/location-horizontal and vertical control.
4. Confirmation of location, size and adequacy of utilities serving site.
5. Design water, fire loop and hydrants, sanitary sewer, storm water system, gas main to meter and electrical transformer.
6. Design site drainage and storm water system including piping, retention structures, and soil erosion control.
7. Design and documentation of civil work associated with a monument sign structures, trash enclosures, or other accessory site structures.
8. Coordination of re-routed utilities on site including gas, electrical, telephone, CATV and fiber optics.
9. Coordination with utilities and districts for project approvals.
10. Produce final grading plans based on conceptual grading plan provided by Landscape Consultant.
11. Location of all retaining walls and surface improvements including parking, sidewalks, fire lanes and other improvements. Design of high retaining walls above 3'-0" by Structural Design Consultant and design of low retaining walls below 3'-0" by Landscape Architect.
12. Location of foundation drain to daylight (perforated pipe surrounding foundation that drains to daylight or storm conveyance) 5'-0" past exterior of building footprint.
13. Design of paving systems, curb and gutter. Initial parking lot concept layout by Landscape.
14. Design of additional paved parking and associated internal site driveways needed for expansion of on-site surface parking.
15. Prepare paving, grading and striping plans for deceleration lanes in accordance with City of Lewisville and AASHTO standards. One deceleration lane is planned along Corporate Drive and one is planned for S. Valley Parkway.
16. Design of all standard directional roadway and parking signage, striping and curb painting associated with vehicle and pedestrian movement in site drives, drop off areas and parking.
17. Preparation of a phasing plan for Final Plan Review Application with consultation from CMAR.
18. Provide all city required documentation for any early planning department submittal including review and revisions/responses based on city comments.
19. The project will not be submitted for LEED certification.
20. Creation of specifications for the Civil Consultant's scope of work, including documentation of any over-excavation requirements.
21. Project specification and drawings shall allow for product alternates equals within project documents for milestone CMAR pricing.

**DENVER**  
3457 RINGSBY COURT  
UNIT 200  
DENVER, CO 80216  
303.455.1366

**DALLAS**  
129 S. MAIN ST.  
UNIT 230  
GRAPEVINE, TX 76051  
817.527.6880

BRSEARCH.COM

22. Assume value engineering will occur during the DD and CD phases and include in base services.
23. Assume project documents will be issued as a single bid package. However, provide a separate fee for preparing a separate (2nd) bid package. In a scenario of two bid packages, the first bid package will include civil and structural drawings including the site utilities, grading, excavation, foundations and structural steel; the second bid package will include the remaining disciplines and scope.
24. Work to include As-Constructed drawings based on drawings marked up by the CMAR.
25. Review of project substitution requests prior to bid only during the bidding/negotiation phase.
26. Include attendance at client workshops in Lewisville; (1-CON, 1-SD, 2-DD, 2-CD), attend remaining client meetings as invited via video conference call. Provide your reimbursable travel costs broken out in your fee proposal for these design trips on attached Consultant Fee Proposal Spreadsheet.
27. Provide CA services during construction including submittal and RFI review, issuance of revision drawings, general review of contractor pay applications, etc.
28. Provide as a separate fee design and documentation for Detention Design.
  - This task includes the design of one (1) detention facility allowing for run-off to exit the site.
  - This task includes preparing detention calculations and data tables.
  - This task includes submittal to the City of Lewisville for review and approval.
  - This task does not include analyzing any downstream systems.
  - This task does not include any structural design.

Exclusions to this contract:

1. Design of areas beyond noted site boundaries on 25.25-acre site plan. (Except SD level design of Valley Vista Nature Park)
2. Detention Design. This is an additional service
3. 2<sup>nd</sup> Bid Package. This is an additional service
4. LEED Design and Documentation
5. Design of sub-surface drainage system for groundwater.
6. Multiple design alternates requested by the Client to be included in the CMAR milestone pricing documents shall be an additional service after DD pricing and approval.
7. Traffic signal at South Valley Parkway.
8. Resetting of survey monuments disturbed or destroyed by others

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## Landscape Architecture Scope

### Task One: Concept Design & Discovery (Memorial Park Site)

1. Meet with the architect's team to walk the site and comprehend specific opportunities and constraints associated with integration of the new facility into the park fabric. The impact and residual repair of removal of the existing structure will also be considered. Views, safety, neighborhood interface, and other immediate adjacent natural and constructed phenomena will be evaluated. This will include a detailed discussion regarding program goals, and a presumed "download" of the program ideas with both the design team and city staff (in a workshop format facilitated by BRS).
2. A component of this discovery session will be a discussion with parks maintenance staff, and include a tour of one or two precedent sites in the metroplex that would be relevant to the challenges in design or maintenance of this new facility. These conversations will enable the landscape architect to comprehend the BRS approach to similar program elements, and understand a vernacular of materials (hardscape and landscape) that the city staff prefers to consider or avoid. A component of this meeting will also address schedule, key submittal dates, and overall project kick off coordination.
3. Landscape Architect will prepare a concept design for the building complex site area. This will consist of an enhanced "bubble diagram" depicting program opportunities, circulation, and preliminary geometries for landscape and hardscape. The deliverable will also include a joint "Experiential Diagram" that merges the existing and proposed "rooms" of the site to better communicate how the site is comprehended by visitors. The Concept Design will focus on the Multi-Generational Center and immediate context only and not include the entirety of the Memorial Park property.
4. Deliverables: confirmed program, budget, and schedule. Bubble diagram program exhibit.
5. Meetings: One joint site visit with BRS and City staff. One city workshop in Lewisville. Visit up to two comparable projects in the Metroplex. One design team workshop with BRS.

### Task Two: Concept Design & Discovery (Valley Vista Park)

1. As a basis for the planning effort, Landscape Architect will prepare a planning-level assessment of the existing natural and cultural systems that comprise the Valley Vista site. We will review base maps and documentation pulled from the project team, the city, and public domain sources (i.e. not an exhaustive species inventory or on-the-ground site survey). Review of these maps is intended to provide a broad comprehension of the natural and cultural systems that this site is embedded within so that the planning and design activities described below can be undertaken. Likely elements to be evaluated include:
  - Base Maps – recent and historic aerials that may depict the site's evolution over time
  - Planning Initiatives – past, present, or future development initiatives (on site and nearby context)
  - Environmental Patterns – soils, topography/slope, hydrology, plant/habitat systems.
  - Cultural Patterns –trails, infrastructure, use patterns, previous land uses on the site, etc.

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2. Working with these “layers,” we will create a “sensitivity composite” map that compares the various site influences into a summary map. This will depict areas that have a greater or lesser sensitivity to program development and site disturbance – creating a summary of natural and cultural systems to consider when advancing the planning process. These maps, and the composite, also serve as a basis for creation of storyline to be celebrated in the environmental education or “nature play” concept that is proposed for the site.
3. Working with these assessment maps as a foundation, Landscape Architect will prepare a bubble diagram program plan / concept design plan for the park that depicts the potential array of activities and preservation areas that might be considered for the site. Supporting imagery will be collected.
4. Important Scope Note: To best serve the long term vision for the joint property of Valley Vista Park and Memorial Park as a combined whole, this scope will look at the broad acreage of both sites during this task only. This will ensure an integrated approach that might be considered for future phase redevelopment to tie the two sites into a holistic destination in the city.
5. Deliverables: Assessment map layers and sensitivity composite summary map. Concept site plan with representative program imagery.
6. Meetings: presumed to be joint sessions as included in Task One.

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#### Task Three: Schematic Design (Memorial Park Site)

1. Working with the established program priorities and concept plan, Landscape Architect will prepare a schematic design for the site that responds to the new building design. This task will define forms, materials, and relationships that respond to the building program, site survey, existing trees, and budget. The package, at a minimum, will include the following elements for the project:
  - Site Plan to include all program elements – hardscape and landscape planting concept
  - Key hardscape elevations for primary site elements, walls, parking layout, etc.
  - Grading concept
  - Lighting Concept
  - Furniture Selections
2. Landscape Architect will present the schematic design to the architect and the city. We will make one round of revisions to the schematic design in order to arrive at a final approved site plan and confirmed construction scope for use in the discussions outlined in the following task.
3. Deliverables: Schematic design set (includes site plan and key hardscape elevations).
4. Meetings: One (1) meeting in Lewisville

#### Task Four: Schematic Design (Valley Vista Park)

1. Working with the established program priorities and concept plan for Valley Vista, Landscape Architect will prepare a schematic design for the site that further develops the nature-play concept. This task will define circulation, destinations, play elements, and relationships of program elements. The package, at a minimum, will include
2. the following elements for the project:

- Site Plan to include all program elements – hardscape and landscape planting / habitat preservation concept
  - Up to three priority site sections that illustrate the design intent and relationship among elements.
3. Landscape Architect will present the schematic design to the architect and the city. We will make one round of revisions to the schematic design in order to arrive at a final approved site plan to be further developed in future phases.
  4. As an optional service, Landscape Architect will prepare marketing-level perspective sketches for use by the city in fundraising or grants. Final cost for these services depends on the final complexity and number of views requested.
  5. Deliverables: Schematic design set (includes site plan and key hardscape elevations, including up to three detail area enlargements).
  6. Meetings: presumed to be joint sessions as included in Task Three.

#### Task Five: Engagement Assistance (optional service)

1. In an effort to attain support and commentary from various city departments, elected officials, and the community, Landscape Architect will support the BRS team to present the design at a series of meetings at a time and sequence over the course of the design process to be determined by the architect.
2. Deliverables: presumes content generated in previous phases would be supplied to BRS for inclusion in presentation
3. Meetings: upon request

NOTE: All subsequent tasks cover scope associated with the Memorial Park Multigenerational Center and immediate site area only.

#### Task Six: Design Development

1. Upon written approval of the schematic design package for Memorial Park, Landscape Architect will develop the plan with further detail as required to address the type of construction issues necessary to execute the construction documents. These refinements within the design development package will work to coordinate various site elements and utilities with the architect, civil engineer, and rest of the design team. We will work with the CMAR to confirm key construction methods and cost effective solutions. Colors and material finishes will also be identified. This effort will produce a refined set of drawings that depict:
  - a. Hardscape plan (depicting geometries and materials, key dimensions)
  - b. Hardscape details for 60% of elements (elevations and some sections with key dimensions and materials)
  - c. Landscape planting (locations & plant types, primary species will be defined)
  - d. Lighting Plan coordination with lighting consultant
  - e. Irrigation main line routing and zone identification (drip vs. spray heads - no details or head layouts)

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- f. Review of civil-engineer provided grading and utility plans
2. Deliverables: Landscape Architect will develop a design development set and distribute a hard copy set and PDF to the architect for their review and distribution to the city for further evaluation.
3. Meetings: One design drawing review with city staff.

#### Task Seven: Construction Documents

1. Landscape Architect will build on the approved design development drawings with final detail as required to address the type of construction issues necessary to execute the bid and construction documents.
2. Comments will be incorporated from direction given by the architect in order to distill a final package and project manual. Document sets will be distributed for comments at intervals appropriate for city / architect review and comment as listed below.
3. Landscape Architect will prepare construction documents and specifications that shall include the following information:
  - Layout Plans (key dimensions only as necessary – presumes primary layout will be achieved via contractor GPS using provided CAD files)
  - Hardscape Details, including plans, sections, elevations, with full dimensioning
  - Planting Plans, Details, & Species List
  - Irrigation Plans & Details
  - Lighting Plan coordination with lighting consultant
  - Specifications
  - Preparation of appropriate additive or deductive alternatives
4. Deliverables: Landscape Architect will provide the following sets for review throughout the construction drawing phase:
  - PDF at 75% progress, including opinion of probable cost.
  - PDF at 90% progress, including draft specifications.
  - PDF of final set complete with professional stamps, one (1) final set of specifications and cost projection.
  - One (1) electronic file drawing in 2D AutoCAD format.
5. Meetings: Up to 5 Conference calls as necessary and one (1) meeting with the city.

#### Task Eight: Bidding Assistance

1. Landscape Architect will assist the architect in their implementation of the bidding process as follows:
  - Preparation of bid items list for requested unit costs from the CMAR and/or subcontractors (if necessary).
  - Answer questions and interpret drawings and specifications during the bidding period (via conference calls as necessary)
  - Prepare any required addendum exhibits for distribution by others.
  - Review bid tabular summary or final CMAR bid (prepared by others), if required

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- Discuss budget value engineering solutions if necessary. This scope assumes a CMAR delivery, however, and any value-engineering at final bidding is assumed to be minimal. Extensive design reworking after final CD's may require a contract addendum.
- 2. This scope assumes that the architect or the city will prepare all contractor contracts and bid packages.
- 3. Landscape Architect will provide PDF files to the architect's contracted reprographics provider to print and deliver the drawings to the city for inclusion in bid packages and distribution to contractors. The City will also print and provide all bid and construction sets of drawings and specifications to the selected contractor.
- 4. Product: assistance with the bidding process as necessary.
- 5. Meetings: up to two conference calls as needed.

#### Task Nine: Construction Observation Assistance

1. Landscape Architect will maintain involvement with the project through its construction phase and make visits to the site to observe the construction and its visible conformance to the design of the plan. This assumes that the Architect will manage the day-to-day operations of the project and be the primary liaison (project manager) regarding interface and direction to the Contractor/CMAR.
2. Landscape Architect has included the following scope during this task:
  - Conduct visits to the construction site as it progresses to determine conformance of the work to the design as portrayed in the construction documents, and assist the owner in observing the progress, process, and quality of the installation of site hardscape elements. Site visits will be documented in field memos provided to the Architect. These memos will generally describe the Landscape Architect response to issues identified by the Architect or the City, and other issues which we feel merit consideration by the Architect or the City. We anticipate 8 total site visits / construction meetings during the construction process at key junctures in the site construction process.
  - Clarify questions regarding the construction as the Architect or Contractor presents such questions (RFI's), provide consultation and advise to the Architect and City, and prepare supplementary sketches (ASI or RFI Responses) where such sketches are needed to resolve conflicts between field conditions and the requirements of the drawings, or as required as a result of design errors or omissions made by the Landscape Architect at no cost to the Architect. Note: This does not include design changes that might be required due to unforeseen construction complications that are not accounted for in provided surveys and are not discovered until construction is under way.
  - Review of Contractor material submittals and shop drawings as submitted by the Contractor, for conformance with the project Design. An evaluation of the submittal will be provided.
  - Tagging and inspection of plant materials (at the nursery or on site as appropriate) to assure conformance with the plans and specifications. Tree tagging trips will be billed on an hourly basis for out-of-town travel in addition to the lump sum fee provided herein.
  - Approve the staking of tree locations, plant material layout, and quality of material installation.

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- Approve the placement of irrigation head locations, materials layout, and quality of the irrigation system installed.
  - Review and Preparation of change orders upon request for the Architect's approval and the City's distribution and execution.
  - Review of substitutions and contractor schedules upon request.
  - Coordinate final site walk-through with the Architect and the City (at the conclusion of construction) and provide a punch list to the Contractor to complete the project.
  - Perform a post completion landscape inspection within one year after final acceptance and issue a punch list prior to release of maintenance agreement if requested.
3. Product: Drawing clarifications and response to RFI's as necessary for elements within the base construction scope.
  4. Meetings: Up to eight (8) scheduled Architect / City / CMAR construction meetings. Note: additional site meetings beyond these base trips will be charged per standard hourly rates as described in the fee

Task Ten: As-Built drawing coordination

1. This scope assumes that the CMAR contract will include a scope line-item requiring the contractor to provide a site survey of "as-built" conditions at the completion of the job, creating record drawings in CAD format for the city's records. This CAD file will document plan view of structures and hardscape alignment, landscape bed forms, and tree locations only, not individual shrubs, irrigation, or construction detail cross sections, etc. Landscape Architect is not responsible for any on-the-ground measurements provided by the contractor's surveyor. Landscape Architect cannot guarantee the contractor's work or the contractor's survey accuracy. The survey work is the responsibility of the contractor, and we will facilitate documents that reflect their provided information.
2. Landscape Architect will translate the contractor-provided survey CAD linework into the working design AutoCAD "base" file for the project, and cloud any hardscape and tree adjustments that were made during the construction process (not any irrigation or planting adjustments). These documents will disclaim Landscape Architect's responsibility for the accuracy of the contractor's survey, but will generally depict their work in the context of the rest of the design "layout sheets" prepared for construction. We will provide a CAD file for the city to use at their own discretion and a PDF set of unstamped exhibit sheets.
3. Product: clouded as-built set of drawings, per contractor's survey.
4. Meetings: one meeting on site to discuss field changes with the contractor

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## Aquatic Design Scope

Aquatics Designer services involve the detailed design of the aquatic components as developed in the conceptual design / master planning phase. Aquatics Designer will also provide specialty design and engineering for the associated mechanical and water treatment systems.

### Description

The project involves the design of a multi-purpose Community Recreation Center pool. The preliminary program and concept suggests the following program that will be verified and updated during the programming and concept design phase:

The indoor family oriented 7,512 SF Leisure Pool in the 16,000 SF natatorium will provide amenities for fun as well as fitness. Leisure Pool water depths vary from beach-like zero-depth entries to 4'-6" in the three-lane x 25-yard instruction area. Play features are provided for a variety of ages including geysers, interactive spray features, lazy river and play structure with tot slide. The lazy river also doubles as a resistance channel for exercise, therapy and rehabilitation. A dual enclosed body slide complex will take riders from a platform 21 feet above the pool deck, outdoors and through several turns on the slide and into a dual deceleration lane inside the natatorium. Artificial rockwork, water basketball, underwater benches, current and action channels and waterfalls complete the wow factor. The Leisure Pool will open onto a secure outdoor sun deck with spray ground, sand volleyball court and have views into the park.

### Budget

The project budget is approximately \$3,600,000 USD.

### Schedule

The project schedule has been established but will be verified during the concept development phase.

### Digital Data

Aquatics Designer will produce digital designs for incorporation into the Client's drawings/models. Aquatics Designer anticipates producing three dimensional design models and shared digital material will consist only of model geometry. Inclusion of additional data in digital models, such as for projects utilizing Building Information Modeling (BIM), may be requested as an Additional Service. Aquatics Designer will utilize Newforma Project Center as the preferred method of transmitting digital materials.

### Requirements

The following information, materials, and approvals are required for Aquatics Designer to effectively and efficiently perform the services described in this proposal. The Client shall provide Aquatics Designer, at no cost, with the following:

- Project site surveys
- Project site record drawings, if applicable
- Project site geotechnical analysis/reports
- Project site water analysis and testing
- Preferred title block, sheet sizes, or other drawing format details
- Background drawings/models, including site and building(s), for incorporation of Aquatics Designer designs
- Written approval of Aquatics Designer produced Deliverables at the completion of each Phase of work
- Construction contract bid documents and addenda

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- Construction contract bid responses and results

#### Conceptual Design

Aquatics Designer will consult with the Client to develop an aquatic program consisting of prioritized aquatic goals and objectives, and intended activities and uses of the aquatic spaces and features. Aquatics Designer will perform the following tasks:

- Conduct Aquatic Programming Presentation
- Discuss and Confirm Aquatic Goals and Objectives
- Discuss and Confirm Aquatic Activities and Uses
- Develop Aquatic Program and Capacities
- Define Pool Zones and Depths
- Identify Preliminary Water Rides, Activities, and Features
- Develop Aquatic Mechanical Program
- Develop Rough Order of Magnitude (ROM) Aquatic Construction Budget Estimate
- Develop Aquatic Concept Plan

#### Schematic Design

Aquatics Designer will consult with the Client to confirm project goals and requirements, and develop the spatial relationships of the aquatic components of the project. For the Schematic Design (SD) phase, Aquatics Designer will perform the following tasks:

- Confirm Aquatic Program, Capacities and Layout
- Confirm Aquatic Mechanical Program
- Define Pool Zones, Depths, and Turnover Rates
- Develop Activities, and Features
- Develop Pool Wall Profile Options
- Select Preliminary Mechanical Equipment
- Develop Preliminary Mechanical Equipment Layout
- Develop Aquatic Drawings
  - SD Level Plans, Sections, and Details
- Develop Preliminary Utility Requirements
- Develop Outline Specifications
- Develop Rough Order of Magnitude (ROM) Aquatic Construction Budget Estimate

#### Design Development

Based on the Client approved SD Deliverables, Aquatics Designer will develop detailed designs of the aquatic areas and systems. For the Design Development (DD) phase, Aquatics Designer will perform the following tasks:

- Finalize Pool Wall Profile(s)
  - Shapes and Depths
- Finalize Activities and Features
- Define Pool Specialty Equipment
- Define Pool Mechanical Equipment
- Finalize Pool Mechanical Equipment Layout
- Develop Custom Drawing Details
- Develop Detailed Aquatic Drawings
  - Pool Plans, Sections, and Details
  - Pool Deck Plans, Sections, and Details
  - Pool Structural Design
  - Preliminary Pool Piping Plans, and Piping Details

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- Pool Mechanical Plans, Schedules, and Details
- Preliminary Pool Mechanical Schematics
- Develop Detailed Aquatic Electrical Drawings
  - Preliminary Pool Low Voltage Electrical Schematics and Control Details
- Develop Draft Specifications
- Develop Utility Requirements
- Conduct Inter-Disciplinary Review and Coordinate with other Consultants of the Client
- Verify Aquatic Design for Code Compliance
- Develop Preliminary Aquatic Construction Budget Estimate

Aquatics Designer will base design upon standard soils conditions with an assumed bearing capacity of 2,500 pounds per square foot.

If soil conditions differ, or include expansive, environmental, high groundwater, organics or other deleterious conditions, additional structural services and fees may be required.

#### Construction Document

Based on the Client approved DD Deliverables, Aquatics Designer will finalize the detailed designs of the aquatic areas and systems. Final CD Deliverables will contain information suitable for contractors to provide construction pricing or bidding. Final CD Drawings provided by Aquatics Designer will contain the Professional Seal of an Architect or Engineer licensed in the State/Province of the project site, and will be suitable for review by permitting agencies with jurisdiction over the project. For the Construction Document (CD) phase, Aquatics Designer will perform the following tasks:

- Finalize Pool Equipment Schedule
- Finalize Pool Mechanical Equipment Schedule
- Assemble Final Pool and Pool Mechanical Details
- Generate Final Pipe Schedules and Piping Plans
- Finalize Detailed Aquatic Drawings
  - Pool Plans, Sections, and Details
  - Pool Deck Plans, Sections, and Details
  - Pool Structural Design
  - Pool Piping Plans, and Piping Details
  - Pool Mechanical Plans, Schedules, and Details
  - Pool Mechanical Schematics
  - Pool Electrical Low Voltage Schematics and Control Details
- Develop Final Specifications
- Finalize Utility Requirements
- Finalize Coordination with other Consultants of the Client
- Perform Internal Quality Assurance Procedure
- Update Aquatic Construction Budget Estimate
- Address Questions and Comments from Permitting Agencies

#### Bidding and Negotiation

Aquatics Designer will assist the Client during bid document preparation and negotiation of the Contract Documents. For the Bidding and Negotiation (BN) phase, Aquatics Designer will perform the following tasks:

- Respond to aquatic related Request For Information (RFI)
- Provide information and clarifications for Client's Addenda
- Assist in the interview of the Pool Contractors, if requested by Client

#### Construction Administration

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Aquatics Designer will assist the Client during construction of the project. Aquatics Designer will periodically visit the project site and will endeavor to observe the construction for conformance to the CD Deliverables.

For the Construction Administration (CA) phase, Aquatics Designer will perform the following tasks:

- Review and Approve requested Submittals, including Shop Drawings and other information
- Review Pool Contractor Change Order requests
- Correspond with Permitting Agencies regarding aquatic questions
- Review and Approve Pool Contractor prepared Aquatic Operation and Maintenance Manual (O&M Manual)
- Conduct Site Observations
- Provide Field Reports on Site Observations
- Review Pool Contractor Prepared Punch List

#### Deliverables

##### Program and Concept Development

- Aquatic Program
- Aquatic Mechanical Program
- ROM Aquatic Construction Budget Estimate
- Aquatic Concept Plan
- Local water testing and analysis by others

##### Schematic Design

- SD Drawing Set
- Outline Specifications
- Preliminary Utility Requirements
- ROM Aquatic Construction Budget Estimate

##### Design Development

- DD Drawing Set
- Draft Specifications
- Final Utility Load Requirements
- Preliminary Aquatic Construction Budget Estimate

##### Construction Documents

- CD Progress/Coordination Drawing Sets
- CD Final Drawing Set
- Final Specifications – Division 13 11 Swimming Pools

##### Bidding and Negotiation

- RFI Response(s)
- Addenda Drawings and Documentation, as required.

##### Construction Administration

- Review and Approval of Submittals
- Review and Approval of Change Orders
- Review and Approval of Aquatic O&M Manual
- Field Reports
- Review of Punch List

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## Architectural Interior Design Scope

The following outlines the level of design that is required and expected for the Lewisville Multigenerational Recreation Center:

1. Schematic Design
  - a. Participate in Concept and Defining Design Guidelines generation.
  - b. Review finish materials spaces for SD report.
  - c. Draft a design narrative outlining key interior architectural features within the building.
    - i. Outline interior finishes and special design elements within each space of the building
  - d. One Interior design concept workshop with client
    - i. Discuss client goals and community expectations: What should the feel like?
    - ii. Test fit of design ideas through photos
    - iii. Discuss Defining Design Guidelines
2. Design Development
  - a. Review and confirm Defining Design Guidelines for project
  - b. Develop interior design concepts for
    - i. Interior architectural elements
    - ii. Character and identity features such as fireplace and railings
    - iii. Floor & wall patterning
    - iv. Identify wayfinding graphic opportunities
    - v. Large format decorative graphics
    - vi. Opportunities for art: public art and/or community art
    - vii. Built-in furniture and millwork
  - c. Create 2-3 interior color and materials palettes for client review
  - d. Develop the selected palette of finish materials including:
    - i. Floor materials and patterning
    - ii. Wall materials and special treatments
    - iii. Concepts for ceiling materials and features
    - iv. Concepts for decorative light fixtures
    - v. Concepts for custom millwork
  - e. Create digital 3D rendered concept sketches of key public areas of the building:
    - i. Lobby & Lounge Spaces, Control Welcome Desk, Circulation Areas, Public Restrooms
    - ii. Community Multi-purpose Room and Events Rooms
    - iii. Child Watch and Indoor Play
    - iv. Two Game Rooms for Teens and Adults
    - v. Classrooms
    - vi. Gymnasiums
    - vii. Pool
    - viii. Locker Rooms: Men, Women and Family Cabanas
    - ix. Fitness Areas: Cardio & Strength, Group Exercise, Dance, Jog/walk
    - x. Party Rooms
    - xi. Administration Offices
      1. Conference room

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2. Private Offices
3. Work stations
4. Shared spaces: copy/work room, break room, file room, storage
- f. Provide 100% DD drawings and pdf files showing the above outlined design concepts
  - i. DD finish plans with materials noted
  - ii. DD elevations with interior architecture and specialty finishes noted
  - iii. DD plan and finish materials list
  - iv. Design narrative outline of interior spaces with specified interior finishes (where not shown in drawings)
  - v. General cabinetry and specialty millwork concepts and layout
  - vi. Enlarged Restroom Plans & enlarged locker plans
  - vii. Provide outline of required materials to be included in specification including product information for any proprietary products
  - viii. Furniture layout plans
  - ix. Storage room layouts for furniture storage
- g. Client Presentations
  - i. Order materials for client presentations
  - ii. Prepare design concept and color palettes
  - iii. Prepare colored design drawings to communicate the project interior design showing representative color, patterns and materials
  - iv. Prepare working material boards, by room or by building area, for client review
  - v. Assume 2 workshops in DD (one trip with 2 people)

3. Construction Documents

- a. Interior design documentation
- b. Prepare interior finish plans, material list and notes
- c. Prepare interior elevations for rooms with architectural features
- d. Document wall and ceiling treatments
- e. Document floor patterning for all materials
  - i. Enlarged floor and wall tile patterns with hatch delineating colors and patterning
  - ii. Enlarged floor plans for any complex floor patterning delineating colors and shapes
- f. Revise furniture plans for spatial and electrical layout
- g. Coordinate specialty millwork finishes and detailing of:
  1. Lockers, Sinks, Vanities, Aerobic & Equip. Storage, Ball Storage
  2. Cubbies, storage cabinets, TV storage cabinets, display cases, mailboxes
  3. Base & upper cabinets, base & upper cabinets w/sink,
  4. Built-in seating and detail
  5. Customer contact desks and desk canopy elements and detail
  6. Architectural trim: wainscot, chair rails, picture rails
- h. Interior materials specifications
- i. Document locations for window coverings
- j. Document corner guard locations
- k. Document specialty finishes for:
  - i. Operable Partitions
  - ii. Acoustical panels
  - iii. Coiling grills or gates
- l. Storage Room Design

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- i. Multi-Purpose Room Storage
      - ii. Aerobics, Basketball & Volleyball Storage
    - m. Client Presentations:
      - i. Prepare updated and revised materials for client presentations
      - ii. Review design concepts not previously reviewed in DD at CD workshops
      - iii. Prepare finish boards as required
      - iv. Prepare finish notebooks as required
      - v. Assume 1-2 workshop to finalize design review all items
  - 4. Construction Administration
    - a. Interior Design
      - i. Review of any or all-alternate products submitted as approved equals during the bid process
      - ii. Review of major finish material submittals:
        - 1. Floor materials and floor coverings: carpet, linoleum, tile, rubber flooring, running track colors, base
        - 2. Paint and other wall treatments
        - 3. Plastic Laminate, solid surface, stone
        - 4. Millwork stain colors
        - 5. Surface materials for operable partitions
        - 6. Window coverings
      - iii. Make all required color selections
      - iv. Answer questions by Contractor or client regarding finishes and their application
      - v. Assume 1 site visit in CA

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## Furniture Planning and Specification Scope

1. Pre-Design
  - a. Discuss furniture Inventory.
  - b. Determine if it is owner or consultant provided.
2. Schematic Design
  - a. Prepare preliminary budget for furniture.
  - b. Collect information on existing furniture standards to be included or matched as part of this project.
  - c. Determine information on preferences for furniture types, manufacturers or dealers.
  - d. Collect information on existing contracts with furniture dealers or manufacturers that will need to be considered or maintained for this project.
  - e. Identify Owner's standard furniture procurement process.
  - f. Discuss furniture procurement process with client group:
    - i. Bid process.
    - ii. Existing vendor contracts or preferences.
    - iii. Vendor or government purchasing contracts.
  - g. Furniture Inventory.
  - h. Client reviews and workshops:
    - i. Assume 1 live meeting
    - ii. Assume 1- Video Conference Meetings.
3. Design Development
  - a. Develop preliminary furniture plans.
  - b. Develop furniture budgets.
  - c. Provide 2-3 furniture options for client review of each furniture type: (list of furniture types is not inclusive)
    - i. Furniture for public spaces: lounge chairs, benches, occasional tables, display units.
    - ii. Classroom furniture.
    - iii. Multi-purpose furniture.
    - iv. Meeting and conference room furniture.
    - v. Desks, workstations and office furniture.
    - vi. Furniture in children's areas.
    - vii. Recycling containers & planters.
    - viii. Specialty furniture: pool, decks, patios.
  - d. Review cut sheets of furniture styles for design direction and aesthetic.
  - e. Evaluate furniture for functional, durability and budget.
  - f. Create palette of fabric selections that work with the overall interior design.
  - g. Client Reviews and Workshops:
    - i. Assume 1 live meeting (combined with interiors trips).
    - ii. Assume 1- Video Conference Meetings.
4. Contract Documents
  - a. Prepare documents for RFP or bid process.
  - b. Create photo documentation of furniture used by area with finish materials, images and notes.

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- c. Create a furniture schedule documenting furniture with product information; finishes, quantity, location in building.
  - d. Make outstanding finish and fabric selections.
  - e. Revise and key furniture location plans to furniture schedule.
  - f. Coordinate delivery of any furniture samples with vendor and client.
  - g. Prepare necessary fabric and finish samples for client.
  - h. Client Reviews and Workshops:
    - i. Assume 1 live meeting (combined with Interiors trips)
    - ii. Assume 1- Video Conference Meetings.
5. Construction Administration
- a. Review final vendor pricing documents with client and vendor.
  - b. Review schedule for furniture order, anticipated delivery and installation date.
  - c. Review any submittals of fabrics, wood or other finish samples.
  - d. Answer vendor and client questions during order processing.
  - e. Review furniture vendor-produced drawings.
  - f. Coordination of furniture installation as required. (Punch furniture additional service if not provided by vendor).
  - g. Assume 1 CA site visit.

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## Signage and Environmental Graphics Design Scope

1. Schematic Design/Design Development
  - a. Identify objects, elements or images that characterize the essence of the community, facility or place to be used to develop a graphic identifier for the project.
  - b. Generate design concept(s) for character and identity imagery or identifier which could be integrated into building features such as wayfinding graphics and interior signage.
  - c. Generate design concepts for interior signs using the character and identity imagery or identity:
    - i. ADA and code required signs.
    - ii. Room identification signs.
    - iii. Area identification.
    - iv. Wayfinding and directional signs.
    - v. Rule and regulatory signs.
    - vi. Large format graphics and images.
  - d. Identify decision-making locations on the floor plans where visitors and users of the center may require information:
    - i. Directional information: *Where do I go?*
    - ii. Identify information: *I have arrived*
    - iii. Regulatory information or informational graphics: *What do I do?*
  - e. Draft plan of wayfinding and interior sign locations.
  - f. Draft schedule of wayfinding and interior sign messages.
  - g. Client Reviews and Workshops:
    - i. Assume 1 live meeting.
    - ii. Assume 1- 2 Video Conference Meetings.
2. Contract Documents
  - a. Finalize design decisions with client.
  - b. Prepare wayfinding and interior sign design-intent drawings.
  - c. Develop and refine design concept for interior signage package including:
    - i. Materials.
    - ii. Size, shape.
    - iii. Color.
    - iv. Mounting and hardware.
  - d. Prepare final plans showing wayfinding and interior sign locations.
  - e. Prepare final schedule showing wayfinding and sign messages.
  - f. Create a preliminary signage budget estimate.
  - g. Coordinate sign mock-up or sample.
  - h. Create interior sign specifications.
  - i. Client Reviews and Workshops:
    - i. Assume 1 live meeting (combined with Interiors trip)
    - ii. Assume 1- 2 Video Conference Meetings.
3. Construction Administration
  - a. Answer contractor questions regarding graphics and their application.
  - b. Review shop drawings, submittals and samples.
  - c. Coordination of installation as required.
  - d. Assume 1 on-site visits (combined with Interiors trips).
  - e. Punch List.

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## Detailed Cost Estimating Scope

Cost Estimator will provide the following services as the base of this proposal:

1. **Construction Cost Estimates**  
Prepare four (5) detailed construction cost estimates, one at each of the following design phases:
  - Concept Design
  - 50% Schematic Design
  - Value Engineering & Alternate Pricing at Above Two Estimates Included
  - 100% Schematic Design (assumes five (5) alternates)
  - 50% Design Development (assumes three (3) alternates)
  
2. **Provide an Owner's Budget, and Update at Each Estimating Phase**  
Provide a separate Owner's Budget, incorporating construction cost for the project, and update at each of the estimating phases above. This Owner's Budget will include the following categories of costs outside the CMAR's contract amount:
  - Professional Fees (Design, Engineering, PM, IT/AV, and Materials Testing)
  - Permits and Water Tap Fees;
  - Furnishings, Fixtures and Equipment;
  - Owner's Contingency at Preconstruction and Construction; and
  - Construction Cost Escalation.
  
3. **Cash Flow Prediction**  
Load the budget into the schedule, showing the costs to be incurred each month throughout the project life cycle.
  
4. **Exclusions to this contract: (These services can be provided as an additional service)**
  - a. Formal Value Engineering & Value Analysis after 50% Schematic Design
  - b. Alternate Pricing After 50% Design Development Phase
  - c. CMAR Procurement Process
  - d. Validation of Selected CMAR's 100% Schematic Design Estimate
  - e. Validation of CMAR's 100% Design Development Construction Estimate
  - f. Validation of CMAR's Proposed Final Guaranteed Maximum Price (GMP)
  - g. Project Controls Leadership

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### **Validation of Subcontractor Prequals, Solicitation, Bid Analysis & Award Process Scope**

1. Review the CMAR's proposed subcontractor pre-qualification and solicitation process for compliance with the owner's procurement requirements, and with best value practices. Review the CMAR's proposed Instructions to Bidders, Supplemental Instructions to Bidders and Bid Form. Suggest improvements and methods to broaden market penetration, if needed.
2. Validate the CMAR's bid analysis and proposed subcontractor award recommendations by bid package, focusing on reasonableness, completeness of scope, CMAR's bid adjustments, and other similar areas.

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## Telecommunications/Data, Security System and Access Control Design Scope

### Data / Voice Systems

1. Include design of outlet boxes and conduit stubs for workstation outlets and cable pathways to communication rooms (MDF and IDFs)
2. Within the initial Data / Voice design concept submittal, provide conceptual plan diagram documents which illustrate type and location of Data / Voice devices as well as Data / Voice distribution concept for owner understanding. Along with these conceptual Data / Voice plan diagrams submit a detailed booklet of suggested manufacturer data sheets for devices.
3. Include coordination with owner' IT department
4. Include design and coordination with (utility) for service to the facility.
5. Include complete design and specifications for workstation outlets, data & voice jacks, wireless access points, copper & Fiber optic horizontal cable, copper and fiber optic patch panels, equipment racks, telecom grounding, wire management, and detailed build-out of communication room(s).
6. Include design of an intercom/ paging system that is integral to the telephone system. Design will include public area paging speakers.
7. Include coordination and design review meetings with owners IT department
8. Include coordinating Voice system requirements with owner's telephone system vendor
9. Include network drops to IP cameras,
10. Exclusions to the contract
  - a. Stand-alone public address system/ intercom paging system
  - b. Network electronics (i.e. network switches, POE switches, core fiber switches, routers, wireless LAN controllers and wireless access points.
  - c. Centralized UPS system

### Cable TV System Design

1. Include complete design and specifications for TV jacks, coax cable, cable management, splitters, switches and amplification equipment.
2. Within the initial Cable TV design concept submittal, provide conceptual plan diagram documents which illustrate type and location of Cable TV devices as well as Cable TV distribution concept for owner understanding. Along with these conceptual Cable TV plan diagrams submit a detailed booklet of suggested manufacturer data sheets for devices.
3. Include design and coordination of CATV service to local utility.
4. Include coordination and design review meetings with owner's IT department.
5. Exclusions to the contract include:
  - a. Specifying headend equipment, TV's, monitors and satellite equipment.

### Audio / Visual Design

1. Include design of A/V system infrastructure for classrooms, multipurpose rooms, conference rooms, lobby and general admin areas. This includes conduit infrastructure, cabling and input plates.
2. Within the initial A/V design concept submittal, provide conceptual plan diagram documents which illustrate type and location of A/V devices as well as A/V distribution concept for owner understanding. Along with these conceptual A/V plan diagrams submit a detailed booklet of suggested manufacturer data sheets for devices.
3. Specify A/V equipment (i.e. Projectors, displays, speakers, amplifiers, controllers, mixers, matrix switches, AV racks, etc.)
4. Include coordinating system requirements with City's A/V staff.

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5. Provide design for single space AV equipment that can be operated separately in the room, or as part of the overall building AV system. Provide design in these rooms:
  - a. Event Space
  - b. Natatorium
  - c. Dance Room
  - d. Group Exercise Rooms
  - e. Gymnasiums

#### Video Surveillance System Design (CCTV)

1. Include complete design of IP video surveillance system to cover exterior of building and perimeter access points into the building.
2. Within the initial CCTV design concept submittal, provide conceptual plan diagram documents which illustrate type and location of CCTV devices as well as CCTV distribution concept for owner understanding. Along with these conceptual CCTV plan diagrams submit a detailed booklet of suggested manufacturer data sheets for devices.
3. Design will include (fixed & PTZ) cameras, camera mounts, video recorder servers, associated network infrastructure and software. Drawings will indicate the location of cameras, power supplies, network switches, patch panels, servers, equipment racks, system details and the conduit and wiring to support the system.
4. Exclusions to the contract include:
  - a. Custom security consoles or furniture.

#### Security Access & Control System Design

1. Include complete design of Exterior Access Control System for building perimeter doors.
2. Design will include centralized control panel(s), power supplies, card readers, door contacts, request to exit devices and remote release button door controlled system will be tied into the LAN network.
3. Within the initial Access Control design concept submittal, provide conceptual plan diagram documents which illustrate type and location of Access Control devices as well as Access Control distribution concept for owner understanding. Along with these conceptual Access Control plan diagrams submit a detailed booklet of suggested manufacturer data sheets for devices.
4. Coordinate design of security system operation with City's security Consultant.
5. Coordinate system operation with City's security Consultant.
6. Coordinate door hardware with Architect and contractors.
7. Exclusions to the contract include:
  - a. Design of Graphic User interface (GUI) control panel system.
  - b. Design of Interior access control or interior intrusion detection system.

#### Other Systems

1. Exclusions to the contract included
  - a. Video Conferencing Systems are not included
  - b. Digital Signage Systems are not included
  - c. Electronic Clock systems are not included.

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## Energy/Sustainability/Commissioning Scope

The Lewisville Multigenerational Recreation Center project will not be applying for LEED certification, however the Sustainability Consultant will provide the following services to assist the Design Team, Contractor and Owner develop a high-performance, energy efficient building.

1. Energy modeling services based on ASHRAE 90.1-2010 baseline using the Appendix G protocols; as defined for LEED NC v4.
2. Identify Energy Efficiency measures and evaluation of preliminary designs.
  - a. Conduct an energy charrette to propose and review prospective energy efficiency measures (EEMs) for the project. Prepare an EEM checklist, to be used for tracking which measures will be incorporated into the design, how the EEM is to be analyzed, and what incentives and/or LEED® restrictions might apply. Note any action items for follow up by design team members. Address any baseline issues, operating conditions or design assumptions to be used for the analysis.
  - b. Using indices, simple models or prototypes of the building, and previous experience, develop simplified modeling or analysis of the building complex's thermal performance for specific types of EEM (sets of EEMs or design alternatives). This analysis could include building envelope options or variations such as alternate insulation, windows, external shading, improved lighting, photovoltaic, solar DHW, and HVAC system variations. Measure analysis can include variation of a parameter (such as window shading coefficient, for example) through several values, but does not include optimization. From the analysis results, develop a preliminary estimate of baseline energy use and total combined energy savings potential.
3. Analyze Energy Efficiency Measures
  - a. Develop a baseline model of the building, compliant with ASHRAE 90.1-2004, Appendix G, using up-to-date DD drawings as the basis.
  - b. EEM research: Using information from project team, vendors, and Internet resources, identify the key performance characteristics and inputs needed to analyze EEMs.
  - c. EEM analysis: Using DOE-2, analyze energy efficiency measures. The measures are limited to those identified at the scoping meeting and subsequently refined in the preliminary analysis.
  - d. Provide guidance to contractors for preparing costs of the proposed energy measures. Request contractor pricing as additions to or reductions of the current design (at the time of modeling); this pricing is in the form of incremental savings or costs. Circulate incremental cost opinions to the design team for comment. Arrange to have the costs reviewed at an opportune design meeting.
  - e. Describe baseline and design EEMs, system/plant options, analysis methods, and incremental cost opinions. Provide a report with a summary table on the modeled annual energy use and first cost of each option. Include costs for both baseline and all EEM measures, determining incremental cost for measures along with simple payback values. This draft report is used to decide which EEMs will be incorporated into a project.
  - f. Selection of final EEMs: Collect comments on the draft report. Working with the design team, narrow down the EEMs to select the ones most likely to be incorporated into the building design. Ask for a decision on what measures are to be incorporated into the project.
  - g. Interactive modeling: Incorporate measures selected for design into a single interactive

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- model to show the combined energy savings impact. The total savings in the interactive model is typically less than the sum of the savings from individual measures.
- h. Communicate results of the EEM analysis to the design team to support timely incorporation of cost-effective EEMs with the building designs.

4. Provide Daylighting Analysis.
  - a. Provide day lighting criteria for building programming.
  - b. Meet with design team to establish building envelope design criteria (orientation, shape, window area, window sizes, space depth) and develop alternative integrated envelope, lighting and HVAC building section concepts.
  - c. Using computer daylight models to quantify interior daylight illuminance for alternative solutions for up to four major space types. If needed, model for atypical geometries such as 2-3 story lobby/atrium spaces will be estimated separately based on the design complexity.
  - d. Use computer models to evaluate sun-control option to reduce direct sun on task areas for up to four major space types.
  - e. Present day lighting analysis results within project report.
5. Consultant shall function as the Commissioning Authority (CxA) to lead, review and oversee the commissioning process for the project.
6. Review and input to construction documents, including authoring and implementing the commissioning plan to achieve equivalent of LEED "Energy and Atmosphere" prerequisite 1. Provide all commissioning services to complete this prerequisite credit.
7. Verify the installation and performance of systems to be commissioned consistent with the standard of care currently being executed in Texas. Commissioning should verify that systems are installed correctly and functionally perform under partial and full load conditions.
8. Complete a summary commissioning report as part of the Commissioning
9. Commissioned systems shall include: (part of the Commissioning add services fee on attached Consultant Fee Proposal Spreadsheet)
  - a. Project HVAC systems and controls. Note there are multiple systems to accommodate the different requirements for the various program spaces
  - b. Lighting and day lighting controls
  - c. Domestic hot water systems
  - d. Aquatics systems
10. Include attendance at client workshops in Lewisville; (1-SD, 1-DD, 0-CD), attend remaining client meetings as invited via video conference call.
11. Exclusions to this contract:
  - a. Multiple design alternates requested by the Client to be included in the CMAR milestone pricing documents shall be an additional service after DD pricing and approval.

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## Commissioning Scope

1. Consultant shall function as the Commissioning Authority (CxA) to lead, review and oversee the commissioning process for the project.
2. Review of design development documents, including mechanical, electrical and plumbing drawings and specifications consistent with the standard of care, and post occupancy commissioning.
3. Review and input to construction documents, including authoring and implementing the commissioning plan.
4. BRSA will assist the Owner in developing the Owner's Project Requirements.
5. Verify the installation and performance of systems to be commissioned consistent with the standard of care currently being executed in Texas. Commissioning should verify that systems are installed correctly and functionally perform under partial and full load conditions.
6. Complete a summary commissioning report.
7. Commissioned systems shall include:
  - a. Project HVAC systems and controls. Note there are multiple systems to accommodate the different requirements for the various program spaces
  - b. Lighting and daylighting controls
  - c. Domestic hot water systems
  - d. Aquatics systems

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## Acoustical Design Scope

1. The Acoustical Consultant shall provide the following services to the Architect.
  - a. Acoustics - Gymnasiums, Natatorium, Classrooms, Dance, Weights & Fitness, and Spinning areas.
  - b. Active Adult Spaces – Games, Arts and Crafts, Multi-Purpose Rooms, Computer, Adult Lounge, and Event Spaces.
2. Meet with the Architect, Owner, and project engineer(s) as required for coordination of acoustical input with the other disciplines associated with the project.
3. Provide concepts and recommendations to create a proper environment for the natural reinforcement of sound in intended listening areas.
4. Provide concepts and recommendations to provide suitable sound isolation between adjacent spaces, between the interior and the exterior of the building, and between mechanical, electrical and plumbing equipment rooms and adjacent noise-sensitive spaces identified above.
5. Review of the architectural contract documents as they relate to the acoustical characteristics of these spaces, including but not limited to; Wall, Ceiling & Floor assembly design as well as overall wall and building section review.
6. Include attendance at client workshops in Lewisville; (0-SD, 1-DD, 0-CD), attend remaining client meetings as invited via video conference call. Provide your reimbursable travel costs broken out in your fee proposal for these design trips on attached Consultant Fee Proposal Spreadsheet.
7. Provide recommendations and suggested specifications for sound retarding doors and operable partitions, if required.
8. Prepare mechanical, electrical, & plumbing (MEP) systems noise and vibration control guideline recommendations for reference by the project engineer(s) during systems design. This will include recommended noise criteria for spaces identified above.
9. Review MEP systems documents as required to identify potential noise and vibration concerns in spaces identified above. Review and recommendations will include (but may not be limited to) the following:
  - a. Control of fan noise transmitted via supply, return, and exhaust air duct systems.
  - b. Control of noise generated by variable volume boxes and fan-powered terminals.
  - c. Selection of grilles, diffusers, and other duct system elements to meet recommended noise criteria.
  - d. Control of noise generated by electrical system power transformers, emergency generators, variable speed drive controllers, and other applicable electrical equipment.
  - e. Control of noise generated by chillers, compressors, condensers, pumps, and other refrigeration and/or plumbing equipment.
  - f. Provide concepts and recommendations to control noise associated with lighting systems and related dimming controls.
  - g. Recommend vibration isolation for MEP systems equipment.
  - h. Recommendations will be provided in the form of concept drawings, letters, suggested specifications, meetings, teleconferences, etc., and will be submitted to the Architect for incorporation into the contract drawings and specifications.
10. Construction Review
  - a. When requested, travel to the construction site on one occasion for the purposes of answering questions pertaining to the incorporation of acoustical elements, and to review, if possible, the acoustical performance of the areas identified in Section a. (Acoustics) above.
  - b. Prepare and distribute a report which outlines the results of the construction review.

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## Kitchen Design Scope

1. Confirm program/menu, operational goals and design criteria with Client
2. Consult with design team to prioritize objectives and formalize concepts related to food service
3. Advise design team of Health Department requirements and coordinate to provide compliant plans and finishes
4. Provide food service equipment cost estimates.
5. Submit a detailed booklet of suggested manufacturer data sheets.
6. Provide utility load information to project engineers.
7. Prepare mechanical, electrical and ventilation rough-in and point of connection dimensioned drawings indicating the required size and the height of each utility.
8. Prepare plans showing all food service equipment layout(s), curbs, depressions, remote refrigeration runs, requirements for soda systems, point-of-sale cash register systems and special building requirements for the food facilities
9. Prepare equipment schedules for all items.
10. Coordinate with MEP consultants on equipment rough-in.
11. Coordinate with interiors consultant on room finishes.
12. Provide Kitchen design in Revit 2016 or Revit A360.
13. Prepare ventilation plans showing cooking exhaust and equipment ventilation requirements
14. Prepare custom-fabricated equipment elevations, sections and details, if necessary.
15. Prepare specifications for all food service equipment including cold storage rooms, exhaust hoods and refrigeration systems.
16. Provide necessary information to the Architects for Health Department submittal.
17. Incorporate Building or Health Department comments on food service equipment into equipment drawings.
18. Assist with the pre-qualification of Kitchen Equipment Contractors (KEC) and in the solicitation of bids.
19. Tabulate and analyze bids and assist in the negotiation and award of contracts for Kitchen Equipment through the Client's CM.
20. Review Food Service Equipment Contractor proposals for alternates and/or substitutions and other value engineering proposals.
21. Respond to RFI's related to food service scope.
22. Complete a final inspection visit to the site and identify other trips at rough in, at equipment installation, etc., as necessary. Provide your reimbursable travel costs broken out in your fee proposal on attached Consultant Fee Proposal Spreadsheet.
23. Provide as-built drawings based on drawings marked up by the CMAR
24. Include attendance at client workshops in Lewisville; (1-SD, 1-DD, 0-CD), attend remaining client meetings as invited via video conference call.
25. Exclusions to this contract.
  - a. Project commissioning, except for the specification noted above.

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### **Accessibility Consulting Scope**

This project to consist of the renovation of a new recreation center with an estimated construction cost of \$32,800,000. Access by Design proposes to provide the following services:

1. Access by Design will provide up to 8 hours of general consulting on an as-needed basis, including meetings, teleconferences, and email correspondence at an hourly rate of \$140 per hour.
2. Access by Design will perform a preliminary plan review, based upon drawings provided by the Architect. The project will be evaluated for compliance with the 2012 Texas Accessibility Standards as required by the State of Texas. The findings will be documented in a written report.

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## Geotechnical Engineering Scope

The purposes of this study are to examine the subsurface conditions and develop design recommendations for the geotechnical aspects of the project.

### Project Description

It is our understanding that the project will consist of the design and construction of approximately 90,000 square feet, one- to two-story building, paved parking lots, and drives. In addition, deceleration lanes will be added to the entrances on S. Valley Parkway and W. Corporate Drive.

The proposed building will have a footprint area of about 70,000 square feet. The building will include a 5,000 square feet swimming pool. Structural information is not available at the time of preparation of this proposal. We assume the maximum column loads will be on the order of 250 kips. We also assume the swimming pool will be about 15 feet deep at the deepest point.

The project site is about 25 acres and located at 1950 S. Valley Parkway. The site is currently improved on the south side with buildings and paved areas used as a Senior Citizen Center. We understand that some of these structures will be demolished prior to the new construction. We further understand some of the existing parking areas will be reused.

### Field Exploration

We propose to explore the subsurface conditions at the subject site by drilling and sampling a total of 16 borings. Four borings will be advanced 15 feet into bedrock or to a maximum depth of 45 feet within the footprint of the proposed building. In addition, three borings will be advanced 5 feet into bedrock or to a maximum depth of 30 feet within the footprint of the proposed building. Seven borings will be sampled to a depth of 5 feet in the parking lot and drives. Two borings will be sampled to a depth of 10 feet at the proposed deceleration lanes. Bulk samples will also be retrieved from the deceleration lane areas for laboratory testing.

We assume that traffic control or right-of-way permits will not be required for drilling operations on the deceleration lanes. We also assume that the proposed boring locations are accessible to a truck-mounted drilling rig and drilling can be performed during regular business hours.

Field personnel will stake the boring locations using a hand-held GPS unit. Surveying of boring locations is not included in our scope of services. Approximate locations of the borings will be shown in the geotechnical report.

Cohesive soil samples will be obtained using 3-inch diameter, tube samplers pushed into the soil. Granular soil samples will be obtained using split-barrel samplers. Bedrock will be evaluated in situ using Texas Department of Transportation cone penetration tests. At the completion of drilling operations, borings will be backfilled with soil cuttings.

### Laboratory Testing

The engineering properties of the soil and rock will be evaluated in the laboratory using tests performed on selected samples. The samples will be visually examined and classified. We will conduct classification,

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strength, swell, and analytical tests on selected samples. Considering the nature of the project, we recommend the following tests be performed:

1. Moisture content;
2. Liquid and plastic limit (Plasticity Index);
3. Percent passing a No. 200 sieve;
4. Overburden swell;
5. Unconfined compressive strength of soil;
6. Soluble sulfate;
7. Lime-pH series;
8. Resistivity;
9. Standard Proctor; and
10. California bearing ratio (CBR).

#### Geotechnical Engineering Report

The results of the field and laboratory data will be evaluated to develop geotechnical recommendations. An engineering report will be prepared that will include the following:

1. Plan of borings, boring logs, laboratory test results, and water level observations;
2. Local geology, general soil, rock, and groundwater conditions;
3. Swell characteristics of the soils;
4. Geotechnical recommendations for:
  - a. Foundation type, depth, and allowable bearing capacity;
  - b. Lpile parameters;
  - c. Foundation construction considerations;
  - d. Grade beams;
  - e. IBC Seismic Site Class;
  - f. Subgrade preparation procedures for ground supported floor slab;
  - g. Retaining wall for swimming pool;
  - h. Subgrade stabilization;
  - i. Asphalt and concrete pavement sections.
5. Earthwork recommendations.

#### Anticipated Schedule

Weather and site conditions permitting, we can typically begin the field investigation within one week after notice to proceed. The drilling should take about three days to complete. Laboratory testing and preparation of the engineering report will require an additional four weeks to complete. We will make preliminary information and recommendations available earlier, if requested.

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## Exhibit C - Reimbursable Expense Budget

Lewisville Multigenerational Recreation Center  
Reimbursable Expense Budget



Prepared 1/25/2016  
Revised 7/12/2016

Expenses	Base and Additional Services
BRS Reimbursables	\$ 52,088
Sub-Consultant Reimbursables	\$ 23,403
Electronic Service Fee	\$ 6,435
Copies	\$ 6,600
Deliveries	\$ 1,100
Large Format Copies	\$ 3,167
Bid Sets	\$ 1,382
Misc.	\$ -
Sub-Total	\$ 94,175
0% mark-up	\$ -
TOTAL	\$ 94,175





**AIA**<sup>®</sup>

# Document A201™ – 2007

## General Conditions of the Contract for Construction

**A201-2007 v4 (04-18-16) City**

**for the following PROJECT:**

*(Name and location or address)*

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:

1950 South Valley Parkway

Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:

1925 and 1955 S. Valley Parkway

Lewisville, TX 75067

New construction of a Multigenerational Recreational Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

**THE OWNER:**

*(Name, legal status and address)*

The City of Lewisville, Texas

151 West Church Street

P. O. Box 299002

Lewisville, TX 75029-9002

**THE ARCHITECT:**

*(Name, legal status and address)*

Barker Rinker Seacat Architecture

3457 Ringsby Court, Unit 200

Denver, CO 80216

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- 6      **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7      **CHANGES IN THE WORK**
- 8      **TIME**

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents shall include the bidding documents as listed in the Instructions to Bidders and any alterations made thereto by addenda. In the event of a conflict or contradiction within the Contract Documents and for the resolution of same, the following order of hierarchy shall prevail:

- 1) Contract;
- 2) Addenda;
- 3) Supplementary General Conditions;
- 4) General Conditions;
- 5) Specifications;
- 6) Drawings;
- 7) Instructions to Bidders;
- 8) Invitation to Bid;
- 9) Sample Forms.

**§ 1.1.1.1** The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions.

### § 1.1.9 EQUAL TO (OR APPROVED EQUAL)

Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents during the bidding phase and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

### § 1.1.10 FORCE MAJEURE

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

### § 1.1.11 KNOWLEDGE

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§1.2.1.1 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

**§1.2.5** Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

*(Paragraph deleted)*

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

**§ 1.6.1** AIA Document E201-2007 is hereby made a part of the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Paragraph Intentionally Deleted.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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§ 2.2.3.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. If the Contractor discovers conditions that vary from those that it anticipated, whether such anticipation was reasonable or not, the Contractor's sole remedy against the Owner will be an extension of the Contract Time, but in no event will such condition entitle the Contractor to an increase in the Contract Sum.

§ 2.2.4 The information identified in Section 2.2.3, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and if the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure.

### § 2.5 ADDITIONAL RIGHTS

§ 2.5.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.5.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project **with cause but without cost** to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions,

etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner, Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays or/ or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephrasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with the requirements of the Contract Documents.

*(Paragraph deleted)*

§ 3.3.3. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under contract or other arrangement with Contractor.

§ 3.3.4 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.5 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect under the Contract for Construction or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.6 Contractor shall be responsible for inspection of portions of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. In areas and locations where the proper and most effective space shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the

Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property Owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

**§ 3.3.9** Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

**§ 3.3.10** Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

**§3.3.11** Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

#### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

**§3.4.4** Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

**§3.4.5** After the Contract has been executed and only during the bidding phase, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

**§3.4.6** By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§3.4.7** The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **§ 3.6 TAXES**

The Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

### **§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4** Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in

no event later than 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and such determination shall be final and binding.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 Prior to starting Work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the Superintendent shall be as binding as if given to Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

*(Paragraphs deleted)*

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10

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(the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

**§ 3.10.2** The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) (deleted) phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) (deleted); and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of \$5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the submittal, shop drawing and mock-up requirements, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

**§ 3.10.3** Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

**§ 3.10.4** Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

**§ 3.10.4.1** A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

**§ 3.10.4.2** A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

**§ 3.10.4.3** A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

**§ 3.10.4.4** A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

**§ 3.10.4.5** An explanation of any corrective action taken or proposed;

**§ 3.10.4.6** A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

**§ 3.10.4.7** A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

**§ 3.10.4.8** A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3 or 2.4.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner, Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Within ten (10) days of the Owner's Notice to Proceed, Contractor shall provide and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or

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provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

**§3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§3.13.2** The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

**§3.13.3** Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, accept for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

**§3.13.4** The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

**§3.13.5** The General Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

### § 3.14 CUTTING AND PATCHING

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect, and their representatives, access to the Work in preparation and progress at all times and wherever located and shall provide proper and safe facilities for such access.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), caused in whole or in part by any act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect in printed and digital format (CD in Tagged Image File Format and DGN Format) for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable in print and digital pdf format.

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Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

- .1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.
- .2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.
- .3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.
- .4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.
  - (a) Recommended spare parts including catalog number and name of local suppliers or factory representative.
  - (b) Belt sizes, types, and lengths.
  - (c) Wiring diagrams.
- .5 Manufacturer's Certificate of Warranty: Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.
- .6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or

charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

**§ 4.2.12** Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the

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Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

#### §5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount is paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

#### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction

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schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

#### § 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.6.1 through 7.3.6.5;
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
- .7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 Claims for extension of time shall be stated in whole or half calendar days.

§ 8.1.6 The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only if, in the opinion of the Architect, climatological conditions that impede the progress of construction significantly exceed average conditions for the local area. A guide for average climatological conditions will be the bulletin "Local Climatological Data," published by the Department of Commerce. No request for an extension of time due to weather conditions will be considered unless accompanied by Weather Bureau documentary evidence showing by comparison that such weather is abnormal to any of the past five (5) years.

## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

### § 9.2 SCHEDULE OF VALUES

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Architect; unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the

Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further

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

**§9.4.3** Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

**§9.4.4** Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

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the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

*(Paragraph deleted)*

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 Whenever in the opinion of the Architect any section or portion of the Work may be used or occupied by the Owner without interference to the remaining Work, such section or portion may be so used and occupied, and neither such partial use and occupancy nor any insurance, if purchased by Owner in connection therewith, shall constitute an acceptance of any such Work, or portion thereof, as either substantially complete or complete. Such opinion of Architect shall be in writing and shall state, with respect to the portions to be so used and occupied, the date or dates of commencement of Contractor's warranties and Owner's obligations to maintain.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) a maintenance bond in the amount equal to 100% of the total Cost of the Work for a period of two (2) years from the date of final completion; (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract for Construction, to the extent and in such form as may be designated by the Owner and Owner's lender; (7) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and (8) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems;

(ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys fees.

**§9.10.2.1** In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall  
*(Paragraphs deleted)*  
not constitute a waiver of any Claims by the Owner.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**§ 9.10.6** In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§10.2.8 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.9 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.10 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.11 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and

disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Intentionally Deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

*(Paragraph deleted)*

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.

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4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.

**§11.1.2.1** The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:
  - (a) State: Statutory
  - (b) Applicable Federal: Statutory
  - (c) Employer's Liability: \$500,000 per Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):
  - (a) Bodily Injury: \$1,000,000 Each Occurrence  
\$2,000,000 Aggregate
  - (b) Property Damage: \$1,000,000 Each Occurrence  
\$2,000,000 Aggregate
  - (c) Products and Completed Operations to be maintained for two years after final payment: \$2,000,000 Aggregate
  - (d) Broad Form Property Damage Coverage shall include Completed Operations.
  - (e) Coverage to be extended to include the interests of the Architect and his consultants.
  - (f) No total pollution exclusion should be included.
3. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
4. Umbrella Excess Liability:
  - (a) Over Primary Insurance: \$1,000,000 Each Occurrence
5. Occurrence Policy: \$1,000,000 Each Occurrence  
(applicable for asbestos related projects only.)

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

**§11.1.2.2** Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

**§11.1.2.3** Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. 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. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of

the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner's officers, agents, representatives and employees, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and its officers, agents, representatives and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

#### § 11.2 OWNER'S LIABILITY INSURANCE

An Owners' protective liability insurance policy shall be furnished by the Contractor which shall name the Owner, and its officers, agents, representatives and employees and the Contractor of the Owner as insureds with the above-stated minimum limits

#### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The all risk policy shall be written using standard ISO forms incorporating a general change endorsement which grants permission for the project to be occupied and used with the insurance remaining in full force and effect until such time as the project has been accepted by the Owner. It shall include coverage for resultant damage from defective workmanship, materials and design, no coinsurance clause, coverage for site preparation, coverage for temporary structures, cribbing or falsework built on the construction site, and coverage for fences, scaffolding, construction forms and signs while at the construction site.

§ 11.3.1.2 Paragraph Intentionally Deleted.

§ 11.3.1.3 Paragraph Intentionally Deleted.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Intentionally Deleted.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE Paragraph Intentionally Deleted.

§ 11.3.4 Intentionally Deleted.

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**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The original all risk insurance policy certificate shall be delivered to and left in the safekeeping of Owner, a certificate or copy being retained by the Contractor. All insurance provided under this section shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the project is fully accepted by the Owner. The Owner shall provide written notification to the Contractor of the cancellation or expiration of any insurance required by Sections 11.2 and 11.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** Intentionally Deleted.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall furnish a Performance Bond and a Payment Bond covering faithful performance of the Contract and payment of obligations arising thereunder. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Works made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

**§11.4.1.1** The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished

§11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.4.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.4.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3**

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twenty-four (24) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (a) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§12.2.6** Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

**§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

**§13.1.2** The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

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## § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

## § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at ten percent (10%) per annum.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

#### §13.8 EQUAL OPPORTUNITY

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.9 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

#### §13.10 WORKING TIME AND WORKING RESTRICTIONS

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

### §13.11 APPLICATION TO CONSTRUCTION MANAGER

§13.11.1 If used in connection with a Standard Form of Agreement Between Owner and Construction Manager (A133), the term "Contractor" as used herein shall mean and refer to Construction Manager.

§13.11.2 To the extent of any conflict between these General Conditions and the provisions of the Agreement Between Owner and Construction Manager, the terms of the Agreement Between Owner and Construction Manager shall prevail so long as the overall intent of the documents, when read together, is maintained..

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be

*(Paragraphs deleted)*  
stopped.

§ 14.1.2 Paragraph Intentionally Deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed.

§ 14.1.4 Paragraph Intentionally Deleted.

§14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

- (a) the fair value (not Contractor's cost or profit) of the properly executed Work; or
- (b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed on same basis provided in Subparagraph 14.1.5.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by Contractor must be initiated by written notice to the Owner and Architect. Claims by Contractor must be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with paragraph 10.4 Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor’s predefined critical work sequence. Contractor’s schedule shall take into consideration normal seasonal weather conditions, number of precipitation days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days indicated.

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

*(Paragraphs deleted)*

damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to Owner’s termination in accordance with Article 14. Nothing contained in this Subparagraph 15.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 INITIAL DECISION** Paragraph Intentionally Deleted

*(Paragraphs deleted)*

**§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.5 and 15.1.6 shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be filed in writing with the other party to this Contract.

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

**§ 15.4 ARBITRATION** Paragraph Intentionally Deleted.

*(Paragraphs deleted)*

**§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES**

**§16.1 CONTRACTUAL PROVISIONS**

**§16.1.1** It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed and shall be substantially complete within \_\_\_ days thereafter (the "Substantial Completion Date").

**§16.1.2** Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.

**§16.1.3** If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for \$500.00, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

**§16.1.4** The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

**§16.1.5** It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

- .1 To any performance, priority or allocated order duly issued by the Government;
- .2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
- .3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

(Paragraph deleted)



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# **Additions and Deletions Report for** **AIA® Document A201™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## **PAGE 1**

### **A201-2007 v4 (04-18-16) City**

...

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Multigenerational Recreation Center at Memorial Park:  
1950 South Valley Parkway  
Lewisville, TX 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New construction of a Multigenerational Recreational Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

*(Name, legal status and address)*  
The City of Lewisville, Texas  
151 West Church Street  
P. O. Box 299002  
Lewisville, TX 75029-9002

...

Barker Rinker Seacat Architecture  
3457 Ringsby Court, Unit 200  
Denver, CO 80216

## **PAGE 11**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or~~

~~proposal, or portions of Addenda relating to bidding requirements.~~ The Contract Documents shall include the bidding documents as listed in the Instructions to Bidders and any alterations made thereto by addenda. In the event of a conflict or contradiction within the Contract Documents and for the resolution of same, the following order of hierarchy shall prevail:

- 1) Contract;
- 2) Addenda;
- 3) Supplementary General Conditions;
- 4) General Conditions;
- 5) Specifications;
- 6) Drawings;
- 7) Instructions to Bidders;
- 8) Invitation to Bid;
- 9) Sample Forms.

**§ 1.1.1.1** The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, ~~equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

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The Initial Decision Maker is the person identified in the Agreement to render initial ~~decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.~~ decisions.

### **§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)**

Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents during the bidding phase and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

### **§ 1.1.10 FORCE MAJEURE**

An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or

omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

**§ 1.1.11 KNOWLEDGE**

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

...

§1.2.1.1 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

...

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.6.1 AIA Document E201-2007 is hereby made a part of the Contract Documents.

...

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such

information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Paragraph Intentionally Deleted.

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§ 2.2.3.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. If the Contractor discovers conditions that vary from those that it anticipated, whether such anticipation was reasonable or not, the Contractor's sole remedy against the Owner will be an extension of the Contract Time, but in no event will such condition entitle the Contractor to an increase in the Contract Sum.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. information identified in Section 2.2.3, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and if the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section ~~6-1.3-6.1.3~~, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner

may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~

## **§ 2.5 ADDITIONAL RIGHTS**

**§ 2.5.1** The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

**§ 2.5.2** The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project **with cause but without cost** to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has ~~visited the site, become generally familiar with local~~ carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

...

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract

Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures. Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner, Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays or/ or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work in accordance with the requirements of the Contract Documents.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.3. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under contract or other arrangement with Contractor.

§ 3.3.4 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.5 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect under the Contract for Construction or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.6 Contractor shall be responsible for inspection of portions of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. In areas and locations where the proper and most effective space shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property Owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

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**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

**§3.4.4** Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

**§3.4.5** After the Contract has been executed and only during the bidding phase, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

**§3.4.6** By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§3.4.7** The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

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The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7

PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

...

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. ~~If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.~~reasons and such determination shall be final and binding.

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- .1 ~~Allowances~~allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

- .3 ~~Whenever~~whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who shall be~~Prior to starting Work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the~~throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the superintendent~~Superintendent shall be as binding as if given to the Contractor. ~~Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.~~

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~

~~§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~

~~§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.~~

~~§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) (deleted) phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) (deleted); and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of \$5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the submittal, shop drawing and mock-up requirements, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.~~

~~§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.~~

~~§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:~~

~~§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;~~

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3 or 2.4.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Within ten (10) days of the Owner's Notice to Proceed, Contractor shall provide and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

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The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.  
§3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, accept for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The General Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract~~. Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about ~~the Project~~. the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

...

The Contractor shall provide the Owner and ~~Architect~~. Architect, and their representatives, access to the Work in preparation and progress ~~wherever located~~. at all times and wherever located and shall provide proper and safe facilities for such access.

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions caused in whole or in part by any act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect in printed and digital format (CD in Tagged Image File Format and DGN Format) for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable in print and digital pdf format. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

- .1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.
- .2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.
- .3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.
- .4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

- (a) Recommended spare parts including catalog number and name of local suppliers or factory representative.
- (b) Belt sizes, types, and lengths.
- (c) Wiring diagrams.
- .5 Manufacturer's Certificate of Warranty:  
Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.
- .6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

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**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

**§ 4.2.13** ~~The Architect's decisions on matters relating to aesthetic effect will be final if~~ Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents. Documents, and any such determination shall be communicated through the Architect.

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**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within ~~the 14 day~~ 14 day period shall constitute notice of no reasonable objection.

...

**§5.2.5** Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

**§5.2.6** The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

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§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract. be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

#### **§5.5 OWNER PAYMENTS TO SUBCONTRACTORS**

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount is paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount—amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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#### **§ 7.5 AGREED OVERHEAD AND PROFIT RATES**

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
- .5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.6.1 through 7.3.6.5;
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
- .7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

...

§8.1.5 Claims for extension of time shall be stated in whole or half calendar days.

§8.1.6 The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only if, in the opinion of the Architect, climatological conditions that impede the progress of construction significantly exceed average conditions for the local area. A guide for average climatological conditions will be the bulletin "Local

Climatological Data," published by the Department of Commerce. No request for an extension of time due to weather conditions will be considered unless accompanied by Weather Bureau documentary evidence showing by comparison that such weather is abnormal to any of the past five (5) years.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~an a wrongful act~~ or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; ~~or by delay authorized by the Owner pending mediation and arbitration;~~ or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

...

§8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

...

The Contract Sum is stated in the Agreement ~~and, including authorized adjustments, is the total and is the maximum~~ amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect. Before any work is done on the site and before the first Application for Payment, a schedule of values allocating the entire Contract Sum~~ the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the Work and prepared in such form work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Such schedule, when approved by the Architect; unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section ~~9.2, 9.2.1~~ for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with ~~the Contract Documents~~ the Contract Documents; or
- .8 failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents~~ any Work.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the ~~Architect or awarded by binding dispute resolution, Architect~~, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...

~~§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.~~

§ 9.8.1. Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

~~§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.~~

~~§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~

~~§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.~~

~~§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

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~~§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and~~

~~submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Whenever in the opinion of the Architect any section or portion of the Work may be used or occupied by the Owner without interference to the remaining Work, such section or portion may be so used and occupied, and neither such partial use and occupancy nor any insurance, if purchased by Owner in connection therewith, shall constitute an acceptance of any such Work, or portion thereof, as either substantially complete or complete. Such opinion of Architect shall be in writing and shall state, with respect to the portions to be so used and occupied, the date or dates of commencement of Contractor's warranties and Owner's obligations to maintain.~~

...

~~§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of~~ In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

...

~~§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

~~§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner:~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to effect; (3) a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment and (5); final payment; (5) a maintenance bond in the amount equal to 100% of the total Cost of the Work for a period of two (2) years from the date of final completion; (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract; (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, Contract for Construction, to the extent and in such form as may be designated by the Owner; (7) certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and (8) evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery

to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

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§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from  
.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;  
.2 — failure of the Work to comply with the requirements of the Contract Documents; or  
.3 — terms of special warranties required by the Contract Documents.not constitute a waiver of any Claims by the Owner.

...

§ 9.10.6 In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.

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§ 10.2.2.1 If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.

...

§10.2.8 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.9 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.10 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.11 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity-Intentionally Deleted.

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

...

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

- ...
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's ~~employees~~ employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;
- ...

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.

**§11.1.2.1** The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:
 

(a) State:	Statutory
(b) Applicable Federal:	Statutory
(c) Employer's Liability:	\$500,000 per Accident \$500,000 Disease, Policy Limit \$500,000 Disease, Each Employee
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):
 

(a) Bodily Injury:	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
(b) Property Damage:	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
(c) Products and Completed Operations to be maintained for two years after final payment:	\$2,000,000 Aggregate
(d) Broad Form Property Damage Coverage shall include Completed Operations.	
(e) Coverage to be extended to include the interests of the Architect and his consultants.	
(f) No total pollution exclusion should be included.	
3. Business Auto \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
4. Umbrella Excess Liability:
 

(a) Over Primary Insurance:	\$1,000,000 Each Occurrence
-----------------------------	-----------------------------
5. Occurrence Policy: \$1,000,000 Each Occurrence  
(applicable for asbestos related projects only.)

If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.2 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.3 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. ~~These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.~~ An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. 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. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner's officers, agents, representatives and employees, the Architect and the Architect's consultants Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and its officers, agents, representatives and employees as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. An Owners' protective liability insurance policy shall be furnished by the Contractor which shall name the Owner, and its officers, agents, representatives and employees and the Contractor of the Owner as insureds with the above-stated minimum limits

...

§ 11.3.1 Unless otherwise provided, the ~~Owner-Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. The all risk policy shall be written using standard ISO forms incorporating a general change endorsement which grants permission for the project to be occupied and used with the insurance remaining in full force and effect until such time as the project has been accepted by the Owner. It shall include coverage for resultant damage from defective workmanship, materials and design, no coinsurance clause, coverage for site preparation, coverage for temporary structures, cribbing or falsework built on the construction site, and coverage for fences, scaffolding, construction forms and signs while at the construction site.

§ 11.3.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~Paragraph Intentionally Deleted.

§ 11.3.1.3 ~~If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~Paragraph Intentionally Deleted.

...

§ 11.3.1.5 ~~Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~Intentionally Deleted.

...

~~The Owner-Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

### § 11.3.3 LOSS OF USE INSURANCE

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~Paragraph Intentionally Deleted.

§ 11.3.4 ~~If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~Intentionally Deleted.

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§ 11.3.6 ~~Before an exposure to loss may occur, the Owner-Contractor shall file with the Contractor-Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. The original all risk insurance policy certificate shall be delivered to and left in the safekeeping of Owner, a certificate or copy being retained by the Contractor.~~

All insurance provided under this section shall provide by endorsement or otherwise that the insured property may be occupied and that the insurance will remain in full force and effect until the project is fully accepted by the Owner. The Owner shall provide written notification to the Contractor of the cancellation or expiration of any insurance required by Sections 11.2 and 11.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

...

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~Intentionally Deleted.~~

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~insurers.~~

...

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds ~~Contractor shall furnish a Performance Bond and a Payment Bond covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract thereunder.~~ The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Works made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

§11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished

§11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.4.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.4.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one-year~~ two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one-year~~ two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The ~~one-year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The ~~one-year~~ period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2:

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twenty-four (24) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (a) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

...

The Contract shall be governed by the law of the place where the Project is ~~located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars (\$60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, ~~ten percent (10%) per annum.~~

...

### §13.8 EQUAL OPPORTUNITY

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

### §13.9 CRIMINAL BACKGROUND Paragraph Intentionally Deleted.

### §13.10 WORKING TIME AND WORKING RESTRICTIONS

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays.

and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

### **§13.11 APPLICATION TO CONSTRUCTION MANAGER**

**§13.11.1** If used in connection with a Standard Form of Agreement Between Owner and Construction Manager (A133), the term "Contractor" as used herein shall mean and refer to Construction Manager.

**§13.11.2** To the extent of any conflict between these General Conditions and the provisions of the Agreement Between Owner and Construction Manager, the terms of the Agreement Between Owner and Construction Manager shall prevail so long as the overall intent of the documents, when read together, is maintained.

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- ~~2~~ An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- ~~3~~ Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~4~~ The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1-stopped.

~~§ 14.1.2~~ The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. Paragraph Intentionally Deleted.

~~§ 14.1.3~~ If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven-fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages properly executed.

~~§ 14.1.4~~ If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. Paragraph Intentionally Deleted.

~~§14.1.5~~ Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

- ~~(a)~~ the fair value (not Contractor's cost or profit) of the properly executed Work; or
- ~~(b)~~ an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

...

- ~~3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents. Documents; or
- ~~5~~ Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

...

- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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§ 14.2.4.1 The costs of finishing the Work include, without limitation, all reasonable attorneys' fees, additional title costs, insurance, additional interest because of any delay in completing the Work, and all other direct and indirect and consequential costs incurred by the Owner by reason of the termination of the Contractor as stated herein.

...

~~§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent~~

...

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed properly executed on same basis provided in Subparagraph 14.1.5.~~

...

A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the ~~party making the Claim.~~ Contractor.

...

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.~~

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~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work except in an emergency endangering life or property arising under Section 10.4, in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.~~

...

~~§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Abnormal weather conditions~~

not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration normal seasonal weather conditions, number of precipitation days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days indicated.

...

The Contractor and Owner waive Claims against each other waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This mutual-waiver includes

- ~~1~~—damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- ~~2~~—damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual-waiver is applicable, without limitation, to all consequential damages due to either party's Owner's termination in accordance with Article 14. Nothing contained in this Section Subparagraph 15.1.6 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 INITIAL DECISION Paragraph Intentionally Deleted**

~~§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

~~§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections ~~9.10.4, 9.10.5, 9.10.5~~ and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution~~; the institution of legal or equitable proceedings by either party.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, ~~which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings, filed in writing with the other party to this Contract.

...

#### ~~§ 15.4 ARBITRATION~~ Paragraph Intentionally Deleted.

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### ~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

## **§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES**

### **§16.1 CONTRACTUAL PROVISIONS**

**§16.1.1** It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed and shall be substantially complete within days thereafter (the "Substantial Completion Date").

**§16.1.2** Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.

**§16.1.3** If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for \$500.00, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

**§16.1.4** The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.

**§16.1.5** It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

- .1** To any performance, priority or allocated order duly issued by the Government;
- .2** To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
- .3** To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Robert H. Roeder, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:04:34 on 07/15/2016 under Order No. 0095950857\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



**AIA**<sup>®</sup>

# Document E201™ – 2007

## Digital Data Protocol Exhibit

This Exhibit is incorporated into the accompanying agreement (the "Agreement") dated the Eleventh day of July in the year Two Thousand Sixteen  
*(In words, indicate day, month and year.)*

**BETWEEN:**

*(Name, address and contact information, including electronic addresses)*

City of Lewisville, Texas  
151 West Church Street  
P.O. Box 299002  
Lewisville, Texas 75029-9002

Representative: Donna Barron, City Manager  
Email Address: dbarron@cityoflewisville.com

**AND:**

*(Name, address and contact information, including electronic addresses)*

Barker Rinker Seacat Architecture  
3457 Ringsby Court  
Unit 200  
Denver, CO 80216  
Telephone Number: 303.455.1366  
Fax Number: 303.455.7457  
Email Address: craigbouck@brsarch.com

for the following Project:  
*(Name and location or address)*

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Lewisville Multigenerational Recreation Center  
1950 South Valley Parkway  
Lewisville, Texas 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 TRANSMISSION OF DIGITAL DATA
- 3 PROJECT PROTOCOL TABLE

### ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the procedures the parties agree to follow with respect to the transmission or exchange of Digital Data for this Project. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

§ 1.1.2 Signatures may be made by electronic methods to the fullest extent permitted by applicable law.

### § 1.2 DEFINITIONS

§ 1.2.1 **Digital Data.** Digital Data is defined as information, communications, drawings, or designs created or stored for the Project in digital form.

§ 1.2.2 **Confidential Information.** Confidential Information is defined as Digital Data that the transmitting party has designated as confidential and clearly marked with an indication such as "Confidential" or "Business Proprietary."

§ 1.2.3 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, "written" or "in writing" shall mean any communication, including without limitation a notice, consent or interpretation, prepared and sent to an address provided in this Exhibit using a transmission method set forth in this Exhibit that permits the recipient to print or store the communication. Communications transmitted electronically are presumed received if sent in conformance with this Section 1.2.3.

### ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the transmitting party to the receiving party that the transmitting party (1) is the copyright owner of the Digital Data, (2) has permission from the copyright owner to transmit the Digital Data for its use on the Project, or (3) is authorized to transmit Confidential Information.

§ 2.2 The receiving party agrees to keep Confidential Information strictly confidential and not to disclose it to any other person except to (1) its employees, (2) those who need to know the content of the Confidential Information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information, or (4) as may be required by provisions of Chapter 552, Texas Government Code.

§ 2.3 The transmitting party does not convey any right in the Digital Data or in the software used to generate the data. The receiving party may not use the Digital Data unless permission to do so is provided in the Agreement, in other documents incorporated by reference into the Agreement, such as the general conditions of the contract for construction, or in a separate license.

§ 2.4 Unless otherwise granted in a separate license, the receiving party's use, modification, or further transmission of the Digital Data, as provided in the Agreement, is specifically limited to the design and construction of the Project in accordance with the Project Protocols set forth in Article 3, and nothing contained in this Exhibit conveys any other right to use the Digital Data for another purpose.

§ 2.5 To the fullest extent permitted by law, the receiving party shall indemnify and defend the transmitting party from and against all claims arising from or related to the receiving party's modification to, or unlicensed use of, the Digital Data.

**ARTICLE 3 PROJECT PROTOCOL TABLE**

§ 3.1 The parties agree to comply with the data formats, transmission methods and permitted uses set forth in the Project Protocol Table below when transmitting or using Digital Data on the Project.

(Complete the Project Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting or modifying the listed Digital Data as necessary. Use Section 3.2 Project Protocol Table Definitions to define abbreviations placed, and to record notes indicated, in the Project Protocol Table.)

Digital Data	Data Format	Transmitting Party	Transmission Method	Receiving Party	Permitted Uses	Notes (Enter #)
§ 3.1.1 Project Agreements and Modifications	PDF	TBD	EM	TBD	TBD	
§ 3.1.2 Project communications		TBD		TBD	TBD	
General communications	EM		EM	TBD	TBD	
Meeting notices	EM		EM	TBD	TBD	
Agendas	PDF		EM	TBD	TBD	
Minutes	PDF		EM	TBD	TBD	
Requests for information	PDF		EM	TBD	TBD	
Other:						
§ 3.1.3 Architect's pre-construction submittals						
Schematic Design Documents	PDF		NF	TBD	TBD	
Design Development Documents	PDF		NF	TBD	TBD	
Construction Documents	PDF		NF	TBD	TBD	
§ 3.1.4 Architect's Drawings and Specifications						
Contract Documents	PDF		NF	TBD	TBD	
Drawings	PDF		NF	TBD	TBD	
Specifications	PDF		NF	TBD	TBD	
Other:						
§ 3.1.5 Contractor's submittals						
Product data						
Submitted by Contractor	PDF		NF	TBD	TBD	
Returned by Architect	PDF		NF	TBD	TBD	
Shop drawings						
Submitted by Contractor	PDF		NF	TBD	TBD	
Returned by Architect	PDF		NF	TBD	TBD	
Other submittals:						
§ 3.1.6 Subcontractor's submittals						
Product data						
Submitted by Subcontractor	PDF		NF	TBD	TBD	
Returned by Contractor	PDF		NF	TBD	TBD	
Shop drawings						
Submitted by Subcontractor	PDF		NF	TBD	TBD	
Returned by Contractor	PDF		NF	TBD	TBD	
Other Submittals:						
§ 3.1.7 Modifications						
Architect's Supplemental Instructions	PDF		NF	TBD	TBD	
Requests for proposal	PDF		EM	TBD	TBD	
Proposal	PDF		EM	TBD	TBD	
Modification communications	PDF		EM	TBD	TBD	
§ 3.1.8 Project payment documents	PDF		EM	TBD	TBD	
§ 3.1.9 Notices and Claims	PDF		EM	TBD	TBD	
Other:						
§ 3.1.10 Closeout documents	PDF		EM	TBD	TBD	
Record documents	TIFF/DGN Microstation version 8		NF	TBD	TBD	

Init.


**§ 3.2 PROJECT PROTOCOL TABLE DEFINITIONS**

*(Below are suggested abbreviations and definitions. Delete, modify or add as necessary.)*

**Data Format:**

*(Provide required data format, including software version.)*

- W .docx, Microsoft® Word 2016
- E .xlsx, Microsoft Excel 2016
- PDF Adobe PDF or Bluebeam PDF (compatible with Adobe)
- DGN Microstation version 8

**Transmitting Party:**

- O Owner
- A Architect
- C Contractor

**Transmission Method:**

- EM Via e-mail
- EMA As an attachment to an e-mail transmission
- CD Delivered via Compact Disk
- PS Posted to Project Web site
- FTP FTP transfer to receiving FTP server
- NF Newforma Project Center site

**Receiving Party:**

- O Owner
- A Architect
- C Contractor

**Permitted Uses:**

*(Receiving Party's permitted use(s) of Digital Data)*

- S Store and view only
- R Reproduce and distribute
- I Integrate (incorporate additional digital data without modifying data received)
- M Modify as required to fulfill obligations for the Project

**Notes:**

*(List by number shown on table.)*

# **Additions and Deletions Report for** **AIA® Document E201™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:09:11 on 07/12/2016.

## **PAGE 1**

This Exhibit is incorporated into the accompanying agreement (the "Agreement") dated the Eleventh day of July in the year Two Thousand Sixteen

...

City of Lewisville, Texas  
151 West Church Street  
P.O. Box 299002  
Lewisville, Texas 75029-9002

...

Representative: Donna Barron, City Manager  
Email Address: dbarron@cityoflewisville.com

...

Barker Rinker Seacat Architecture  
3457 Ringsby Court  
Unit 200  
Denver, CO 80216  
Telephone Number: 303.455.1366  
Fax Number: 303.455.7457  
Email Address: craigbouck@brsarch.com

...

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Lewisville Multigenerational Recreation Center  
1950 South Valley Parkway  
Lewisville, Texas 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the

multigenerational facility.

**PAGE 2**

§ 2.2 The receiving party agrees to keep Confidential Information strictly confidential and not to disclose it to any other person except to (1) its employees, (2) those who need to know the content of the Confidential Information in order to perform services or construction solely and exclusively for the Project, ~~or~~ (3) its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information, or (4) as may be required by provisions of Chapter 552, Texas Government Code.

**PAGE 3**

§ 3.1.1	Project Agreements and Modifications	PDF	TBD	EM	TBD	TBD
§ 3.1.2	Project communications		TBD		TBD	TBD
	General communications	EM		EM	TBD	TBD
	Meeting notices	EM		EM	TBD	TBD
	Agendas	PDF		EM	TBD	TBD
	Minutes	PDF		EM	TBD	TBD
	Requests for information	PDF		EM	TBD	TBD
	Other:					
§ 3.1.3	Architect's pre-construction submittals					
	Schematic Design Documents	PDF		NF	TBD	TBD
	Design Development Documents	PDF		NF	TBD	TBD
	Construction Documents	PDF		NF	TBD	TBD
§ 3.1.4	Architect's Drawings and Specifications					
	Contract Documents	PDF		NF	TBD	TBD
	Drawings	PDF		NF	TBD	TBD
	Specifications	PDF		NF	TBD	TBD
	Other:					
§ 3.1.5	Contractor's submittals					
	Product data					
	Submitted by Contractor	PDF		NF	TBD	TBD
	Returned by Architect	PDF		NF	TBD	TBD
	Shop drawings					
	Submitted by Contractor	PDF		NF	TBD	TBD
	Returned by Architect	PDF		NF	TBD	TBD
	Other submittals:					
§ 3.1.6	Subcontractor's submittals					
	Product data					
	Submitted by Subcontractor	PDF		NF	TBD	TBD
	Returned by Contractor	PDF		NF	TBD	TBD
	Shop drawings					
	Submitted by Subcontractor	PDF		NF	TBD	TBD
	Returned by Contractor	PDF		NF	TBD	TBD
	Other Submittals:					
§ 3.1.7	Modifications					
	Architect's Supplemental Instructions	PDF		NF	TBD	TBD
	Requests for proposal	PDF		EM	TBD	TBD
	Proposal	PDF		EM	TBD	TBD
	Modification communications	PDF		EM	TBD	TBD
§ 3.1.8	Project payment documents	PDF		EM	TBD	TBD
§ 3.1.9	Notices and Claims	PDF		EM	TBD	TBD
	Other:					
§ 3.1.10	Closeout documents	PDF		EM	TBD	TBD
	Record documents	TIFF/DGN		NF	TBD	TBD

	<u>Microstation version 8</u>					

**PAGE 4**

**Data Format:**

*(Provide required data format, including software version.)*

- W .docx, Microsoft® Word 2016
- E .xlsx, Microsoft Excel 2016
- PDF Adobe PDF or Bluebeam PDF (compatible with Adobe)
- DGN Microstation version 8

**Transmitting Party:**

- O Owner
- A Architect
- C Contractor

**Transmission Method:**

- EM Via e-mail
- EMA As an attachment to an e-mail transmission
- CD Delivered via Compact Disk
- PS Posted to Project Web site
- FTP FTP transfer to receiving FTP server
- NF Newforma Project Center site

**Receiving Party:**

- O Owner
- A Architect
- C Contractor

**Permitted Uses:**

*(Receiving Party's permitted use(s) of Digital Data)*

- S Store and view only
- R Reproduce and distribute
- I Integrate (incorporate additional digital data without modifying data received)
- M Modify as required to fulfill obligations for the Project

**Notes:**

*(List by number shown on table.)*

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Christen Snyder, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:09:11 on 07/12/2016 under Order No. 5627942848\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E201™ – 2007, Digital Data Protocol Exhibit, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Accountant/Project Administrator

(Title)

07/12/2016

(Dated)



**AIA**<sup>®</sup>

# Document E202™ – 2008

## ***Building Information Modeling Protocol Exhibit***

This Exhibit is incorporated into the accompanying agreement (the "Agreement") dated the Eleventh day of July in the year Two Thousand Sixteen  
*(In words, indicate day, month and year.)*

**BETWEEN:**

*(Name, address and contact information, including electronic addresses)*

City of Lewisville, Texas  
151 West Church Street  
P.O. Box 299002  
Lewisville, Texas 75029-9002

Representative: Donna Barron, City Manager  
Email Address: dbarron@cityoflewisville.com

**AND:**

*(Name, address and contact information, including electronic addresses)*

Barker Rinker Seacat Architecture  
3457 Ringsby Court  
Unit 200  
Denver, CO 80216  
Telephone Number: 303.455.1366  
Fax Number: 303.455.7457  
Email Address: craigbouck@brsarch.com

for the following Project:  
*(Name and location or address)*

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Lewisville Multigenerational Recreation Center  
1950 South Valley Parkway  
Lewisville, Texas 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	PROTOCOL
3	LEVEL OF DEVELOPMENT
4	MODEL ELEMENTS

### ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the protocols, expected levels of development, and authorized uses of Building Information Models on this Project and assigns specific responsibility for the development of each Model Element to a defined Level of Development at each Project phase. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

#### § 1.2 Definitions

§ 1.2.1 **Building Information Model.** A Building Information Model(s) is a digital representation of the physical and functional characteristics of the Project and is referred to in this Exhibit as the "Model(s)," which term may be used herein to describe a Model Element, a single Model or multiple Models used in the aggregate. "Building Information Modeling" means the process and technology used to create the Model.

§ 1.2.2 **Level of Development.** The Level(s) of Development (LOD) describes the level of completeness to which a Model Element is developed.

§ 1.2.3 **Model Element.** A Model Element is a portion of the Building Information Model representing a component, system or assembly within a building or building site. For the purposes of this Exhibit, Model Elements are represented by the Construction Specifications Institute (CSI) UniFormat™ classification system in the Model Element Table at Section 4.3.

§ 1.2.4 **Model Element Author.** The Model Element Author is the party responsible for developing the content of a specific Model Element to the LOD required for a particular phase of the Project. Model Element Authors are identified in the Model Element Table at Section 4.3.

§ 1.2.5 **Model User.** The Model User refers to any individual or entity authorized to use the Model on the Project, such as for analysis, estimating or scheduling.

### ARTICLE 2 PROTOCOL

#### § 2.1 Coordination and Conflicts

Where conflicts are found in the Model, regardless of the phase of the Project or LOD, the discovering party shall promptly notify the Model Element Author(s). Upon such notification, the Model Element Author(s) shall act promptly to mitigate the conflict.

#### § 2.2 Model Ownership

In contributing content to the Model, the Model Element Author does not convey any ownership right in the content provided or in the software used to generate the content. Unless otherwise granted in a separate license, any subsequent Model Element Author's and Model User's right to use, modify, or further transmit the Model is specifically limited to the design and construction of the Project, and nothing contained in this Exhibit conveys any other right to use the Model for another purpose.

#### § 2.3 Model Requirements

§ 2.3.1 **Model Standard.** The Model shall be developed in accordance with the following standard, if any: *(Set forth below object naming conventions, graphic standards, common symbology, etc., or state an applicable standard, such as the National Building Information Model Standards (NBIMS).)*

§ 2.3.2 **File Format(s).** Models shall be delivered in the following format(s) as appropriate to the use of the Model:

Use of Model	Required File Format(s)
Development and Production of Construction Documents	Autodesk Revit 2015 "RVT"

§ 2.4 **Model Management**

§ 2.4.1 The requirements for managing the Model include, but are not limited to, the duties set forth below in this Section 2.4. The Architect will manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another party at a particular phase of the Project, indicate below the identity of the party that will assume that responsibility, and the phase at which that party will assume those responsibilities.

Responsible Party	Project Phase
Barker Rinker Seacat Architecture	Schematic Design – Contract Administration

§ 2.4.2 **Initial Responsibilities.** The party responsible for managing the Model shall facilitate the establishment of protocols for the following:

- .1 Model origin, coordinate system, and units
- .2 File storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Clash detection
- .5 Access rights
- .6 Other protocols:  
*(Insert additional protocols below.)*

§ 2.4.3 **Ongoing Responsibilities.** The party responsible for managing the Model shall have the following ongoing responsibilities:

- .1 Collect incoming Models:
  - .1 Coordinate submission and exchange of Models
  - .2 Log incoming Models
  - .3 Validate that files are complete and usable and in compliance with applicable protocols
  - .4 Maintain record copy of each file received
- .2 Aggregate Model files and make available for viewing
- .3 Perform clash detection in accordance with established protocols and issue periodic clash detection reports
- .4 Maintain Model archives and backups
- .5 Manage access rights
- .6 Follow protocols established in Section 2.4.2

§ 2.4.4 **Model Archives.** The party responsible for Model management as set forth in this Section 2.4 shall produce a Model Archive at the end of each Project phase and shall preserve the Model Archive as a record that may not be altered for any reason.

§ 2.4.4.1 The Model Archive shall consist of two sets of files. The first set shall be a collection of individual Models as received from the Model Element Author(s). The second set of files shall consist of the aggregate of those individual Models in a format suitable for archiving and viewing. The second set shall be saved in the following file format:

Autodesk Revit 2015, Autodesk Design Review, 3D DWF Navisworks. Other file formats available at possible additional cost/fee.

§ 2.4.4.2 Additional Model Archive requirements, if any, are as follows:

§ 2.4.4.3 The procedures for storing and preserving the Model upon final completion of the Project are as follows:

A DVD containing all model data will be delivered to the Owner.

§ 2.4.5 Other requirements for Model management, if any, are as follows:

*(Describe in detail any other Model management requirements.)*

### ARTICLE 3 LEVEL OF DEVELOPMENT

§ 3.1 The following LOD descriptions identify the specific content requirements and associated authorized uses for each Model Element at five progressively detailed levels of completeness. Each subsequent LOD builds on the previous level and includes all the characteristics of previous levels. The parties shall utilize the five LOD described below in completing the Model Element Table at Section 4.3, which establishes the required LOD for each Model Element at each phase of the Project.

#### § 3.2 LOD 100

§ 3.2.1 **Model Content Requirements.** Overall building massing indicative of area, height, volume, location, and orientation may be modeled in three dimensions or represented by other data.

#### § 3.2.2 Authorized Uses

§ 3.2.2.1 **Analysis.** The Model may be analyzed based on volume, area and orientation by application of generalized performance criteria assigned to the representative Model Elements.

§ 3.2.2.2 **Cost Estimating.** The Model may be used to develop a cost estimate based on current area, volume or similar conceptual estimating techniques (e.g., square feet of floor area, condominium unit, hospital bed, etc.). Contractor is responsible to confirm all quantities and material areas.

§ 3.2.2.3 **Schedule.** The Model may be used for project phasing and overall duration.

§ 3.2.2.4 **Other Authorized Uses.** Additional authorized uses of the Model developed to a Level 100, if any, are as follows:

#### § 3.3 LOD 200

§ 3.3.1 **Model Content Requirements.** Model Elements are modeled as generalized systems or assemblies with approximate quantities, size, shape, location, and orientation. Non-geometric information may also be attached to Model Elements.

#### § 3.3.2 Authorized Uses

§ 3.3.2.1 **Analysis.** The Model may be analyzed for performance of selected systems by application of generalized performance criteria assigned to the representative Model Elements.

§ 3.3.2.2 **Cost Estimating.** The Model may be used to develop cost estimates based on the approximate data provided and conceptual estimating techniques (e.g., volume and quantity of elements or type of system selected).

§ 3.3.2.3 **Schedule.** The Model may be used to show ordered, time-scaled appearance of major elements and systems.

§ 3.3.2.4 **Other Authorized Uses.** Additional authorized uses of the Model developed to a Level 200, if any, are as follows:

### § 3.4 LOD 300

**§ 3.4.1 Model Content Requirements.** Model Elements are modeled as specific assemblies accurate in terms of quantity, size, shape, location, and orientation. Non-geometric information may also be attached to Model Elements.

### § 3.4.2 Authorized Uses

**§ 3.4.2.1 Construction.** Suitable for the generation of traditional construction documents and shop drawings.

**§ 3.4.2.2 Analysis.** The Model may be analyzed for performance of selected systems by application of specific performance criteria assigned to the representative Model Elements.

**§ 3.4.2.3 Cost Estimating.** The Model may be used to develop cost estimates based on the specific data provided and conceptual estimating techniques.

**§ 3.4.2.4 Schedule.** The Model may be used to show ordered, time-scaled appearance of detailed elements and systems.

**§ 3.4.2.5 Other Authorized Uses.** Additional authorized uses of the Model developed to a Level 300, if any, are as follows:

### § 3.5 LOD 400

**§ 3.5.1 Model Content Requirements.** Model Elements are modeled as specific assemblies that are accurate in terms of size, shape, location, quantity, and orientation with complete fabrication, assembly, and detailing information. Non-geometric information may also be attached to Model Elements.

### § 3.5.2 Authorized Uses

**§ 3.5.2.1 Construction.** Model Elements are virtual representations of the proposed element and are suitable for construction.

**§ 3.5.2.2 Analysis.** The Model may be analyzed for performance of approved selected systems based on specific Model Elements.

**§ 3.5.2.3 Cost Estimating.** Costs are based on the actual cost of specific elements at buyout.

**§ 3.5.2.4 Schedule.** The Model may be used to show ordered, time-scaled appearance of detailed specific elements and systems including construction means and methods.

**§ 3.5.2.5 Other Authorized Uses.** Additional authorized uses of the Model developed to a Level 400, if any, are as follows:

### § 3.6 LOD 500

**§ 3.6.1 Model Content Requirements.** Model Elements are modeled as constructed assemblies actual and accurate in terms of size, shape, location, quantity, and orientation. Non-geometric information may also be attached to modeled elements.

### § 3.6.2 Authorized Uses

**§ 3.6.2.1 General Usage.** The Model may be utilized for maintaining, altering, and adding to the Project, but only to the extent consistent with any licenses granted in the Agreement or in a separate licensing agreement.

**§ 3.6.2.2 Other Authorized Uses.** Additional authorized uses of the Model developed to a Level 500, if any, are as follows:

**ARTICLE 4 MODEL ELEMENTS**

**§ 4.1 Reliance on Model Elements**

**§ 4.1.1** The Model Element Table at Section 4.3 identifies (1) the LOD required for each Model Element at the end of each Project phase, and (2) the Model Element Author responsible for developing the Model Element to the LOD identified. Each Model Element Author’s content is intended to be shared with subsequent Model Element Authors and Model Users throughout the course of the Project.

**§ 4.1.2** It is understood that while the content of a specific Model Element may include data that exceeds the required LOD identified in Section 4.3 for a particular phase, Model Users and subsequent Model Element Authors may rely on the accuracy and completeness of a Model Element consistent only with the content required for a LOD identified in Section 4.3.

**§ 4.1.3** Any use of, or reliance on, a Model Element inconsistent with the LOD indicated in Section 4.3 by subsequent Model Element Authors or Model Users shall be at their sole risk and without liability to the Model Element Author. To the fullest extent permitted by law, subsequent Model Element Authors and Model Users shall indemnify and defend the Model Element Author from and against all claims arising from or related to the subsequent Model Element Author’s or Model User’s modification to, or unauthorized use of, the Model Element Author’s content.

**§ 4.2 Table Instructions**

**§ 4.2.1** The table in Section 4.3 indicates the LOD to which each Model Element Author (MEA) is required to develop the content of the Model Element at the conclusion of each phase of the Project.

**§ 4.2.2** Abbreviations for each MEA to be used in the Model Element Table are as follows:  
(Provide abbreviations such as "A – Architect," or "C – Contractor.")

Abbreviation	Model Element Author (MEA)
A	Architect
I	Interiors
C	Contractor
S	Structural
CI	Civil
L	Landscape
MP	Mechanical / Plumbing
E	Electrical
AQ	Aquatics

<b>§ 4.3 Model Element Table</b>					Preliminary Design	Schematic Design	Design Development	Construction Documents	Construction						Note Number (See 4.4)	
<i>Identify (1) the LOD required for each Model Element at the end of each phase, and (2) the Model Element Author (MEA) responsible for developing the Model Element to the LOD identified.</i>																
<i>Insert abbreviations for each MEA identified in the table below, such as "A – Architect," or "C – Contractor."</i>																
<i>NOTE: LODs must be adapted for the unique characteristics of each Project.</i>																
Model Elements Utilizing CSI UniFormat™					LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA
A	SUBSTRUCTURE	A10	Foundations	A1010	Standard Foundations		S	100	S	200	S	300	S	TBD	TBD	
				A1020	Special Foundations		S	100	S	200	S	300	S	TBD	TBD	
				A1030	Slab on Grade		S	100	S	200	S	300	S	TBD	TBD	
	A20	Basement Construction	A2010	Basement Excavation						NA		TBD	TBD			
			A2020	Basement Walls		A / S	100	A / S	200	A / S	300	A / S	TBD	TBD		
B	SHELL	B10	Superstructure	B1010	Floor Construction		A / S	100	A / S	200	A / S	300	A / S	TBD	TBD	
				B1020	Roof Construction		A / S	100	A / S	200	A / S	300	A / S	TBD	TBD	
		B20	Exterior	B2010	Exterior Walls		A	100	A	200	A	300	A	TBD	TBD	

		Enclosure	B2020	Exterior Windows	A	100	A	200	A	300	A	TBD	TBD				
			B2030	Exterior Doors	A	100	A	200	A	300	A	TBD	TBD				
	B30	Roofing	B3010	Roof Coverings	A	100	A	200	A	300	A	TBD	TBD				
			B3020	Roof Openings	A	100	A	200	A	300	A	TBD	TBD				
C	INTERIORS	C10	Interior Construction	C1010	Partitions	A	100	A	200	A	300	A	TBD	TBD			
				C1020	Interior Doors	A	100	A	200	A	300	A	TBD	TBD			
				C1030	Fittings	A	100	A	200	A	300	A	TBD	TBD			
		C20	Stairs	C2010	Stair Construction	A / S	100	A / S	200	A / S	300	A / S	TBD	TBD			
				C2020	Stair Finishes	A / I		A / I		A / I	100	A / I	TBD	TBD			
		C30	Interior Finishes	C3010	Wall Finishes	A / I		A / I		A / I	100	A / I	TBD	TBD			
				C3020	Floor Finishes	A / I		A / I		A / I	100	A / I	TBD	TBD			
				C3030	Ceiling Finishes	A / I		A / I		A / I	100	A / I	TBD	TBD			
D	SERVICES	D10	Conveying	D1010	Elevators & Lifts	A	100	A	200	A	300	A	TBD	TBD			
				D1020	Escalators & Moving Walks	A	100	A	200	A	300	A	TBD	TBD			
				D1030	Other Conveying Systems	A	100	A	200	A	300	A	TBD	TBD			
		D20	Plumbing	D2010	Plumbing Fixtures	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2020	Domestic Water Distribution	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2030	Sanitary Waste	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2040	Rain Water Drainage	CI / MP	100	CI / MP	200	CI / MP	300	CI / MP	TBD	TBD			
				D2090	Other Plumbing Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
		D30	HVAC	D3010	Energy Supply	MP		MP	100	MP	200	MP	TBD	TBD			
				D3020	Heat Generating Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3030	Cooling Generating Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3040	Distribution Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3050	Terminal & Package Units	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3060	Controls & Instrumentation	MP		MP		MP	100	MP	TBD	TBD			
				D3070	Systems Testing & Balancing						NA		TBD	TBD			
				D3090	Other HVAC Systems & Equipment	MP		MP	100	MP	200	MP	TBD	TBD			
		D40	Fire Protection	D4010	Sprinklers	C		C	100	C	200	C	TBD	TBD			
				D4020	Standpipes	C		C	100	C	200	C	TBD	TBD			
				D4030	Fire Protection Specialties	C		C	100	C	200	C	TBD	TBD			
				D4090	Other Fire Protection Systems	C		C	100	C	200	C	TBD	TBD			
		D50	Electrical	D5010	Electrical Service & Distribution	E		E	100	E	200	E	TBD	TBD			
				D5020	Lighting and Branch Wiring	E		E	100	E	200	E	TBD	TBD			
				D5030	Communications & Security	E		E	100	E	100	E	TBD	TBD			
				D5090	Other Electrical Systems	E		E	100	E	100	E	TBD	TBD			
E	EQUIPMENT & FURNISHINGS	E10	Equipment	E1010	Commercial Equipment	A	100	A	200	A	300	A	TBD	TBD			
				E1020	Institutional Equipment	A	100	A	200	A	300	A	TBD	TBD			
				E1030	Vehicular Equipment	A / CI		A / CI	100	A / CI	200	A / CI	TBD	TBD			
				E1090	Other Equipment	A		A	100	A	200	A	TBD	TBD			
		E20	Furnishings	E2010	Fixed Furnishings	A / I	100	A / I	200	A / I	300	A / I	TBD	TBD			
				E2020	Movable Furnishings	I		I	100	I	200	I	TBD	TBD			
F	SPECIAL CONSTR. & DEMO	F10	Special Construction	F1010	Special Structures	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			
				F1020	Integrated Construction	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			
				F1030	Special Construction Systems	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			

Init.

		F1040	Special Facilities		TBD	100	TBD	200	TBD	300	TBD	TBD	TBD				
		F1050	Special Controls & Instrumentation		TBD		TBD		TBD	100	TBD	TBD	TBD				
	F20	Selective Bldg Demo	Building Elements Demolition		TBD		TBD	100	TBD	200	TBD	TBD	TBD				
		F2020	Hazardous Components Abatement		TBD		TBD		TBD	100	TBD	TBD	TBD				
G BUILDING SITEWORK	G10	Site Preparation	G1010	Site Clearing		CI		CI		CI	100	CI	TBD	TBD			
			G1020	Site Demolition & Relocations		CI		CI	100	CI	200	CI	TBD	TBD			
			G1030	Site Earthwork		CI / L		CI / L	100	CI / L	200	CI / L	TBD	TBD			
			G1040	Hazardous Waste Remediation		TBD		TBD	100	TBD	100	TBD	TBD	TBD			
	G20	Site Improvements	G2010	Roadways		CI		CI	100	CI	200	CI	TBD	TBD			
			G2020	Parking Lots		CI		CI	100	CI	200	CI	TBD	TBD			
			G2030	Pedestrian Paving		L		L	100	L	200	L	TBD	TBD			
			G2040	Site Development		CI		CI	100	CI	200	CI	TBD	TBD			
			G2050	Landscaping		L		L		L	100	L	TBD	TBD			
	G30	Site Civil/ Mech. Utilities	G3010	Water Supply & Distribution Systems		CI		CI	100	CI	200	CI	TBD	TBD			
			G3020	Sanitary Sewer Systems		CI		CI	100	CI	200	CI	TBD	TBD			
			G3030	Storm Sewer Systems		CI		CI	100	CI	200	CI	TBD	TBD			
			G3040	Heating Distribution		CI		CI	100	CI	200	CI	TBD	TBD			
			G3050	Cooling Distribution		CI		CI	100	CI	200	CI	TBD	TBD			
			G3060	Fuel Distribution		CI		CI	100	CI	200	CI	TBD	TBD			
			G3090	Other Civil/ Mechanical Utilities		CI		CI	100	CI	200	CI	TBD	TBD			
			G40	Site Electrical Utilities	G4010	Electrical Distribution		E		E	100	E	200	E	TBD	TBD	
	G4020	Site Lighting				E		E	100	E	200	E	TBD	TBD			
	G4030	Site Communications & Security				E		E	100	E	200	E	TBD	TBD			
	G4090	Other Electrical Utilities				E		E	100	E	200	E	TBD	TBD			
	G50	Other Site Construction	G5010	Service Tunnels		CI		CI	100	CI	200	CI	TBD	TBD			
			G5090	Other Site Systems & Equipment		TBD		TBD	100	TBD	200	TBD	TBD	TBD			
	<b>Model Elements Not Utilizing CSI UniFormat™</b>					LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA

#### § 4.4 Model Element Table Notes

Notes:

(List by number shown on table.)

# **Additions and Deletions Report for** **AIA® Document E202™ – 2008**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:18:47 on 07/11/2016.

## **PAGE 1**

This Exhibit is incorporated into the accompanying agreement (the "Agreement") dated the Eleventh day of July in the year Two Thousand Sixteen

...

City of Lewisville, Texas  
151 West Church Street  
P.O. Box 299002  
Lewisville, Texas 75029-9002

...

Representative: Donna Barron, City Manager  
Email Address: dbarron@cityoflewisville.com

...

Barker Rinker Seacat Architecture  
3457 Ringsby Court  
Unit 200  
Denver, CO 80216  
Telephone Number: 303.455.1366  
Fax Number: 303.455.7457  
Email Address: craigbouck@brsarch.com

*(Name and location or address)*

ARBH File: Lewisville 5376.0003 Multigenerational Recreation Center

Lewisville Multigenerational Recreation Center  
1950 South Valley Parkway  
Lewisville, Texas 75067

Valley Vista Nature Park at Cotter/Tomkavitch Site:  
1925 and 1955 S. Valley Parkway  
Lewisville, TX 75067

New Construction of a Multigenerational Recreation Center and conceptual design and feasibility study for a 20+ acre nature park located across the street from the building site, to be designed to work in conjunction with the multigenerational facility.

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Development and Production of Construction Documents

Autodesk Revit 2015 "RVT"

...

Barker Rinker Seacat Architecture

Schematic Design – Contract Administration

...

Autodesk Revit 2015, Autodesk Design Review, 3D DWF Navisworks. Other file formats available at possible additional cost/fee.

PAGE 4

A DVD containing all model data will be delivered to the Owner.

...

**§ 3.2.2.2 Cost Estimating.** The Model may be used to develop a cost estimate based on current area, volume or similar conceptual estimating techniques (e.g., square feet of floor area, condominium unit, hospital bed, etc.). Contractor is responsible to confirm all quantities and material areas.

PAGE 6

A  
I  
C  
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L  
MP  
E  
AQ

Architect  
Interiors  
Contractor  
Structural  
Civil  
Landscape  
Mechanical / Plumbing  
Electrical  
Aquatics

...

<b>§ 4.3 Model Element Table</b>					Preliminary Design	Schematic Design	Design Development	Construction Documents	Construction		Note Number (See 4.4)					
<i>Identify (1) the LOD required for each Model Element at the end of each phase, and (2) the Model Element Author (MEA) responsible for developing the Model Element to the LOD identified.</i>																
<i>Insert abbreviations for each MEA identified in the table below, such as "A – Architect," or "C – Contractor."</i>																
<i>NOTE: LODs must be adapted for the unique characteristics of each Project.</i>																
<b>Model Elements Utilizing CSI UniFormat™</b>					LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA	LOD	MEA
A SUBSTRUCTURE	A10 Foundations	A1010	Standard Foundations		S	100	S	200	S	300	S	TBD	TBD			
		A1020	Special Foundations		S	100	S	200	S	300	S	TBD	TBD			
		A1030	Slab on Grade		S	100	S	200	S	300	S	TBD	TBD			
	A20 Basement Construction	A2010	Basement Excavation						NA			TBD	TBD			
		A2020	Basement Walls		A/S	100	A/S	200	A/S	300	A/S	TBD	TBD			
B SHELL	B10 Superstructure	B1010	Floor Construction		A/S	100	A/S	200	A/S	300	A/S	TBD	TBD			
		B1020	Roof Construction		A/S	100	A/S	200	A/S	300	A/S	TBD	TBD			
	B20 Exterior	B2010	Exterior Walls		A	100	A	200	A	300	A	TBD	TBD			

		Enclosure	B2020	Exterior Windows	A	100	A	200	A	300	A	TBD	TBD				
			B2030	Exterior Doors	A	100	A	200	A	300	A	TBD	TBD				
	B30	Roofing	B3010	Roof Coverings	A	100	A	200	A	300	A	TBD	TBD				
			B3020	Roof Openings	A	100	A	200	A	300	A	TBD	TBD				
C	INTERIORS	C10	Interior Construction	C1010	Partitions	A	100	A	200	A	300	A	TBD	TBD			
				C1020	Interior Doors	A	100	A	200	A	300	A	TBD	TBD			
				C1030	Fittings	A	100	A	200	A	300	A	TBD	TBD			
		C20	Stairs	C2010	Stair Construction	A/S	100	A/S	200	A/S	300	A/S	TBD	TBD			
				C2020	Stair Finishes	A/I		A/I		A/I	100	A/I	TBD	TBD			
		C30	Interior Finishes	C3010	Wall Finishes	A/I		A/I		A/I	100	A/I	TBD	TBD			
				C3020	Floor Finishes	A/I		A/I		A/I	100	A/I	TBD	TBD			
				C3030	Ceiling Finishes	A/I		A/I		A/I	100	A/I	TBD	TBD			
D	SERVICES	D10	Conveying	D1010	Elevators & Lifts	A	100	A	200	A	300	A	TBD	TBD			
				D1020	Escalators & Moving Walks	A	100	A	200	A	300	A	TBD	TBD			
				D1030	Other Conveying Systems	A	100	A	200	A	300	A	TBD	TBD			
		D20	Plumbing	D2010	Plumbing Fixtures	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2020	Domestic Water Distribution	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2030	Sanitary Waste	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D2040	Rain Water Drainage	CI/MP	100	CI/MP	200	CI/MP	300	CI/MP	TBD	TBD			
				D2090	Other Plumbing Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
		D30	HVAC	D3010	Energy Supply	MP		MP	100	MP	200	MP	TBD	TBD			
				D3020	Heat Generating Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3030	Cooling Generating Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3040	Distribution Systems	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3050	Terminal & Package Units	MP	100	MP	200	MP	300	MP	TBD	TBD			
				D3060	Controls & Instrumentation	MP		MP		MP	100	MP	TBD	TBD			
				D3070	Systems Testing & Balancing						NA		TBD	TBD			
				D3090	Other HVAC Systems & Equipment	MP		MP	100	MP	200	MP	TBD	TBD			
		D40	Fire Protection	D4010	Sprinklers	C		C	100	C	200	C	TBD	TBD			
				D4020	Standpipes	C		C	100	C	200	C	TBD	TBD			
				D4030	Fire Protection Specialties	C		C	100	C	200	C	TBD	TBD			
				D4090	Other Fire Protection Systems	C		C	100	C	200	C	TBD	TBD			
		D50	Electrical	D5010	Electrical Service & Distribution	E		E	100	E	200	E	TBD	TBD			
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				D5030	Communications & Security	E		E	100	E	100	E	TBD	TBD			
				D5090	Other Electrical Systems	E		E	100	E	100	E	TBD	TBD			
E	EQUIPMENT & FURNISHINGS	E10	Equipment	E1010	Commercial Equipment	A	100	A	200	A	300	A	TBD	TBD			
				E1020	Institutional Equipment	A	100	A	200	A	300	A	TBD	TBD			
				E1030	Vehicular Equipment	A/CI		A/CI	100	A/CI	200	A/CI	TBD	TBD			
				E1090	Other Equipment	A		A	100	A	200	A	TBD	TBD			
		E20	Furnishings	E2010	Fixed Furnishings	A/I	100	A/I	200	A/I	300	A/I	TBD	TBD			
				E2020	Movable Furnishings	I		I	100	I	200	I	TBD	TBD			
F	SPECIAL CONSTR. & DEMO	F10	Special Construction	F1010	Special Structures	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			
				F1020	Integrated Construction	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			
				F1030	Special Construction Systems	TBD	100	TBD	200	TBD	300	TBD	TBD	TBD			

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		F1040	Special Facilities		TBD	100	TBD	200	TBD	300	TBD	TBD	TBD					
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		F2020	Hazardous Components Abatement		TBD		TBD		TBD	100	TBD	TBD	TBD					
G	BUILDING SITEWORK	G10	Site Preparation	G1010	Site Clearing		CI		CI	100	CI	TBD	TBD					
				G1020	Site Demolition & Relocations		CI		CI	100	CI	200	CI	TBD	TBD			
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			G2040	Site Development		CI		CI	100	CI	200	CI	TBD	TBD				
			G2050	Landscaping		L		L		L	100	L	TBD	TBD				
	G30	Site Civil/ Mech. Utilities	G3010	Water Supply & Distribution Systems		CI		CI	100	CI	200	CI	TBD	TBD				
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	G4030	Site Communications & Security				E		E	100	E	200	E	TBD	TBD				
	G4090	Other Electrical Utilities				E		E	100	E	200	E	TBD	TBD				
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			G5090	Other Site Systems & Equipment		TBD		TBD	100	TBD	200	TBD	TBD	TBD				

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*(Title)*

07/11/2016

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BELLAIRE BLVD

TIMBER CREEK

LEAGUE

CORPORATE DRIVE

Multi-Generational Center

20 Acre Nature Park

BUFFALO BEND

BABBLING BROOK

VALLEY PARKWAY

REGENCY

LOCATION MAP FOR PROPOSED MULTI-GENERATIONAL CENTER & 20 ARCE NATURE PARK



BELLAIRE BLVD

TIMBER CREEK

LEAGUE

CORPORATE DRIVE

BUFFALO BEND

**Multi-Generational Center**

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BABBLING BROOK

VALLEY PARKWAY

REGENCY

**LOCATION MAP  
FOR  
PROPOSED  
MULTI-GENERATIONAL CENTER  
&  
20 ARCE NATURE PARK**

# RECREATION MANAGEMENT

IDEAS AND SOLUTIONS FOR RECREATION, SPORTS AND FITNESS FACILITIES



## Building Bridges

The New Age of Multipurpose Recreation Facilities

By Rick Dandes



Modern multipurpose recreational facilities are rapidly becoming social hubs that can embrace a number of diverse community needs, whether they be located within a city center, on a college campus, or in smaller, suburban settings. In many cases, those who are investing in new facilities are finding ways to partner with others outside the realm of recreation, sports and fitness to offer an even wider variety of options within one multipurpose structure.

One up-and-coming trend creates a perfect fit between recreation and fitness, and healthcare and wellness. The trend, said facility designer Steve Blackburn, principal, Barker Rinker Seacat Architecture, Denver, is to build or renovate a structure that can accommodate the expansion of the sports and recreation programs into a wider audience of uses and users, while encompassing current health and wellness concerns.

"The idea for this kind of facility is nothing new, it's been around for a decade," Blackburn explained. "But as a trend, it is only now gaining traction, and momentum. And it all makes sense, since recreation and healthcare are a natural fit."

What's held this natural partnership back for years was the uncertainty of healthcare delivery regulations. That is changing now, and partnerships between healthcare providers and fitness operators have become the catalyst for a genre of multipurpose recreation facilities now often labeled as "Wellness Centers."

"I know a number of building projects that have, or are seriously thinking about creating partnerships with healthcare providers who want to have some kind of presence in a recreation center," said Stephen Springs, Brinkley Sargent Wiginton Architects, of Dallas. "I think this arrangement is more common in the private sector than the public, where there is actually a storefront within or in front of a recreation center." In the public sector, it is probably more common in a campus environment.

Several years ago, Brinkley Sargent Wiginton designed a university project that combined the student recreation center and the student wellness center under one roof in a new building. "It seemed like a pretty logical step at the time, especially for a smaller campus as opposed to a mega university," Springs said. "It is very beneficial for some communities to have quality-of-life facilities combined. For a small community, it makes sense to have it all in one place. Mom and Dad and other caregivers, grandparents, kids, can all go to one building and do separate things and not have to run all over town. You get exposed to programs that you might not ever be exposed to otherwise. It's almost a cross-pollination that is very natural in those kinds of groupings."



From an administrative point of view, a multipurpose recreation center makes a lot of sense as well. Rather than operating multiple centers and having redundant programs, and a redundant staff, you can put it all under one roof and deliver the same or better quality service for less money.

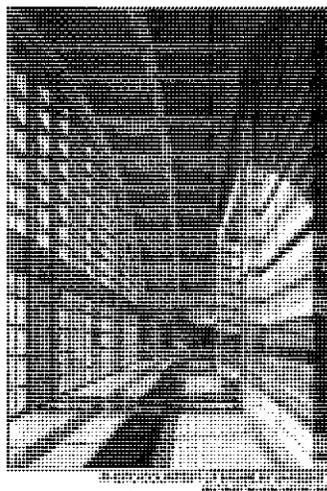
Once a user comes into the facility, the idea is to have a choice of what they want to do or need to do on that day. "I call it shopping for activities," Springs said.

Other examples of suitable partners for fitness and recreation include sports performance/training venues, an event/convention center, commercial enterprises (such as a spa, restaurant, retail shop or gymnastics academy), educational ventures (supporting curricula for preschools or even higher education by providing physical education facilities), amusement, entertainment spaces (a performing arts theater, art gallery or library), or a nonprofit entity dedicated to specialized recreational programming (a Y or a Boys & Girls Club, for example). Another idea is to use a part of the center as affinity group headquarters for everything from cyclists, runners, walkers and climbers to book clubs, sewing circles, cooking classes, art classes and dance groups. Some new recreation centers, Springs said, even double as municipal administrative offices, with workout rooms that can quickly convert to night council meeting spaces.

Regardless of what makes up such partnerships, they do have to be compatible, flexible and willing to adapt for what promise to be long-term, mutually beneficial relationships, such as you find with senior centers, active aging, libraries and childcare.

## How to Succeed

"I believe that there are just two fundamental keys to successful design of multi-partner buildings, such as healthcare,



fitness and higher education, for example," said Hervey R. Lavoie, president, Ohlson, Lavoie Collaborative, of Denver. The first key, he said, is to avoid the initial preconception that every function needs to be in its own room, surrounded by walls with a locked door labeled with the function's name.

"If there is good reason for diverse functions to coexist under a common roof," Lavoie explained, "there is also good reason to question conventional assumptions about need for doors and walls. This is what we call the 'Open Planning' approach, and it can be contrasted to the 'hallways and rooms' approach to facility design, which invariably delivers a building that can feel more like a traditional junior high school than a center for community recreation."

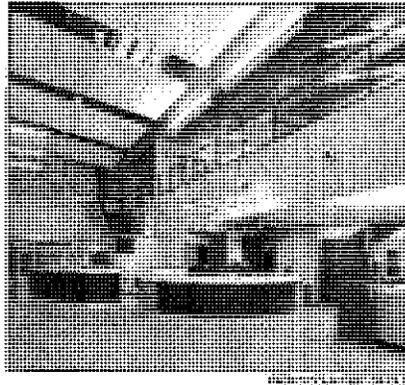
One example, regulatory and code considerations aside, is when fitness and rehabilitation choose to live side-by-side in a "medical/wellness/fitness center," where the synergy of that coexistence does not thrive under the presence of doors and walls.

The second key, Lavoie said, is for designers to invest in a single enhanced arrival experience for the building and to give this arrival experience meaning, spatial impact, wayfinding cues and visual excitement.

In other words, he emphasized, "'Wow factor' matters. It is also important to understand that a single arrival experience does not mean a single entry."

It often works well to configure several entry options into a single arrival lobby. Each entry can serve a separate user population, and its designated parking field. In this way, each user group enjoys the shared partner investment in an enriched arrival experience and begins their enhanced wayfinding to their intended destination from this common arrival space.

"In this way," Lavoie said, "cross-awareness of other partner destinations within the building can be assured. Patients will learn of fitness offerings. Recreational users will learn of rehab offerings. This is just one significant way in which far-sighted architecture can ensure successful operations."



## The Planning Stages

"Let's take a step back before the build even begins," said Sara R. Boyer, project architect, Moody Nolan, of Columbus, Ohio. "Our advice is to get the key players involved as early as possible. We designed the recreation center in Columbus, Ohio, and met with one of the local hospitals and their physical therapy group to accommodate their physical therapy program in our hybrid pool. It's not a lap pool, or just a recreation pool. It can address both functions, and by making some minor tweaks to the pool design, which involved changes in the floor slopes and adding some handholds, we were able to accommodate that function for them."

Getting key players involved from the beginning in that case was important, because changes are much more expensive the further down the road into the project you get, Boyer said. As part of your feasibility study, you note who might be your partners. "Often we do see hospitals being interested in at least being able to have some kind of function occur in the community center."



Reaching out to the community prior to the design process is essential, Springs said. "At Brinkley Sergent Wiginton, we do an entire seminar on the feasibility process because 90 percent of our projects begin with a study, which is analyzing what the market demand is within the community for these kinds of facilities: What are the voids in the marketplace for certain facilities, and where should we locate it? We also want to know how big should it be, how much will it cost and how will it be paid for? And after it is paid for, what are the business plans for that center? How much will it cost to operate? How many staff will it take? And what are the potential revenue flows to cover that operational cost, the cost recovery?"

Cost recovery means that if it costs \$1 million to operate that recreation facility and your revenue flows are \$800,000 dollars a year then your cost recovery is 80 percent. This means there is a 20 percent subsidy that has to come from somewhere. For those municipal governments doing this to keep their constituents healthy, that 20 percent will usually come from their general fund—no problem. But for districts that don't have a general fund to draw from, those officials might have to float a bond, and go to their electorate for permission to do so.

"We call it a hybrid facility when you are sharing the resources," Boyer said. "And when you can do so with partners, you get more bang for your buck, since space is expensive. Sometimes our collegiate work has the same sort of design requirements, where the community might be coming to a university building. At Purdue University, for example, we have a multipurpose facility designed with a yoga studio and other exercise classes for students and the public."

## Partnerships That Work

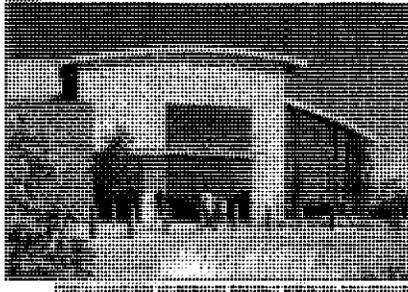
The Natatorium in Cuyahoga Falls, Ohio, designed by Barker Rinker Seacat, is a multipurpose recreation facility that illustrates how a major project can work seamlessly with partners and make money. A \$27 million project that opened in 2004, it is 116,000 square feet, and when you walk in the door you get the sense of all the opportunities that are available. On the left is the welcome and registration desk. But on the right is the Summa Health Rehab center, a long-term tenant.

The Natatorium has a combination of more than 100 land and aquatics classes each week. The main floor houses a main gym, auxiliary gym, two racquetball courts, weight floor, the Fit Kid Experience, Kids' Castle babysitting, and the aquatics area with three pools and a 21-person spa. An upper-level fitness floor is equipped with more than 200 cardio and fitness machines, a 1/8-mile walking track, and a fitness circuit.

"It gets to that question of medical and wellness, and how does that play together with other facilities in a community," Blackburn said. "In the Natatorium, we built a wellness center. The reason we placed it right at the front door was that Summa Health Systems, who was a partner of the city of Cuyahoga Falls, was at the planning table from

the very beginning. One of their requests was to have a front door. They didn't want their clients to have to wander around to find them. That's what we did. We placed it right at the front door."

Because of the partnership, the health center also can offer aquatic therapy. If someone comes to Summa for massage therapy, they can be introduced to the fitness center, which is right out the back door of the wellness center. Not too many steps from there is the natatorium, which is the complete aquatic offerings of the building. The rest of this part of the building contains everything else you could imagine a community needs, including a true government seat one night a week. There are caucus rooms in the building. And for food, there is a Subway operation in the middle of a grand atrium.



The Natatorium is a facility where parents can check their 5-year-olds and younger in and have the Cuyahoga Falls staff watch them. It is not daycare. It is not a licensed program. It is a customer service that allows mom and dad to go off to a fitness class and work out or swim and leave their kids in the able view and care of staff.

The Natatorium was not a renovation. It was originally an old building that didn't work very well, didn't flow. "We did a financial analysis of renovating it versus building new, Blackburn said. "How much would it cost and what could be the return on that investment? After the analysis the city council voted 11-0 to build new. It was a difficult build because it was right downtown, in an urban center, strategically located between their government center, city hall and courts and the high school. It was quite the project. And now they are reaping the benefits of some really wise decisions."

# RECREATION MANAGEMENT

IDEAS AND SOLUTIONS FOR RECREATION, SPORTS AND FITNESS FACILITIES

## Generation Recreation

From Multigenerational to Intergenerational Programming

By Daniel P. Smith

Tina Fleming need not look any further than the Gwinnett County (Georgia) Parks and Recreation mission statement to know that multigenerational programming is not an option.

"In partnership with our citizens," the statement begins, "Gwinnett County Parks and Recreation provides high quality, broad-based parks, facilities, programs and services creating a sense of community, enabling a safe and secure environment, and enhancing Gwinnett's quality of life."

"We go back to that mission statement over and over here," said Fleming, the organization's division director of operations, regarding the department's intense multigenerational programming efforts. "We need to provide a healthy, fun environment for everyone to enjoy and an environment that helps enhance the quality of life for people throughout this community."

In its current program catalog, aptly titled L.I.F.E. ("Leisure is for everyone"), one sees that the Gwinnett County Parks and Recreation department pays multigenerational programming more than lip service. With programs ranging from senior yoga to youth T-ball, the department's efforts crisscross generations and invite participation from all ages.

"Every group has its own interests, and it's our challenge, our mission, to make sure we're meeting those needs and expectations," Fleming said.



The same all-encompassing objective guides the Fox Valley Park District in Chicago's western suburbs, which aims to instill an appreciation for recreation and develop healthy lifestyles for people of all ages. Much like Gwinnett County, park district leaders in Fox Valley point to the organization's mission statement—"Enrich our community with fun, diverse, and safe park and recreation experiences," it reads—for motivation to institute a consistent multigenerational focus.

"It is the public that the park district is charged to serve, and in that service all ages are included," Fox Valley Park District Superintendent of Recreation Eric Lee Wilson said. "All residents are entitled to recreational activities, which includes the young and old. All ages are encouraged to enjoy programs, facilities, special events and green spaces because it is due to their financial support through fees and charges and local property tax that many of these amenities exist."

For most recreation, sports, fitness and community facilities and agencies, multigenerational programming remains a crucial element in their efforts to support a diverse age base and showcase a given department's support of and commitment to the community.

"Everything we do here in Gwinnett County is citizen-driven," Fleming said, echoing the sentiments of many recreation directors across the country.

In Gwinnett County, the importance of multigenerational programming flows from the county's unified plan. In 2010, Gwinnett County will host approximately 800,000 residents, including the largest school-aged population in Georgia and over 100,000 seniors. By 2020, however, projections hold that seniors will outnumber the school-aged population. The data demands Gwinnett County Parks and Recreation leaders activate a well-rounded, flexible and open approach to programming.

"We're planning today for the present as well as the future," Fleming said. "If we lose this opportunity to provide a greater quality of life today, then the health and social element we're trying to reach is put in jeopardy."

Multigenerational programming that focuses on the present as well as the future is not a challenge unique to Gwinnett County, but rather one shared by communities and recreation departments throughout the country.

"Developing healthy lifestyles begins at an early age and lasts a lifetime. Those who experience these opportunities throughout a lifetime become advocates for the district through their support and continued participation," said Laurie Hoffman, director of recreation and communications for the Fox Valley Park District.

Tucked into mission statements and top-of-mind with decision-makers, multigenerational programming has much to do with the current and long-term success of recreation facilities and agencies, compelling many to ensure that programming for all ages remain a central focus and, in a growing trend, inspiring the creation of opportunities for intergenerational interaction and the benefits those activities deliver.

### Ensuring Multigenerational Programming Happens

Rising from the shadow of Atlanta's urban core, Gwinnett County stands among the nation's fastest-growing counties, a reality that has forced its civic leaders, including the parks and recreation department, to respond with strategic planning and a dual focus on present and future needs. With 122 ball fields, over 100 miles of walking trails, 42 playgrounds, 5,000 acres of park land and 17 aquatic centers, Gwinnett County's efforts have been lauded, particularly for its attempts to accommodate and appease a swelling population base.

While it's easy to tout the benefits of multigenerational programming, offering a litany of diverse programs and activities to attract participation from all ages requires action, planning and analysis, not merely words and promises. Gwinnett County Parks and Recreation leaders know it all too well.

In Gwinnett County, Fleming and her colleagues regularly assemble a comprehensive plan that pairs statistical data with public input to assess the department's strengths and weaknesses. While the numbers provide objective information leaders can use to brainstorm new and different programming opportunities, Gwinnett County also relies heavily on its citizens. Gwinnett County routinely creates steering committees to help plan specific projects, from an aquatic facility to a skatepark, which helps ensure programming capable of attracting participation across the community.

"We're looking at where we are lacking and where we might be overloaded as well as gathering community feedback to make sure we're hitting the mark," Fleming explained.

When building its brand-new aquatic center in 2007, Gwinnett County Parks and Recreation leaders leaned heavily on professional and citizen input to create a facility with something for all ages. A hydro pool invited senior programs while the attached indoor waterpark witnesses the intermingling of tots, twenty-somethings and seniors.

"And then, of course, there's the unexpected: That [new aquatic] facility led to a grandparent and child group swim in the leisure pool that is among our most popular programs," Fleming said.

At the Fox Valley Park District's Aurora, Ill., offices, a similar commitment ensuring multigenerational programming dominates. The department develops separate program guides for youth and adults, while aiming to create distinct programs for both youth and adult segments that complement the family dynamic. Through the design of its facilities and careful scheduling of programs, adults are able to participate in special interest classes, such as swimming, tennis or group fitness, while their child is in another, such as the learn-to-swim program or preschool.

"When all members of a family can participate in activities together, it removes some of the day-to-day barriers and logistical considerations that exist, especially for busy families with working parents," Hoffman said. "It might be overstated, but we believe that families that play together stay together."

But Fox Valley's efforts spread even further, Wilson explained.

"Planning with a purpose is carefully undertaken, from the color and pattern of plantings outside the entrance of a recreation center to the comfort and food choices given on a trip for older adults," he said. "Program planning committees, teamwork amongst staff and listening to public feedback ensures we stay on target with the needs and wishes of the community."

### The Next Step: Intergenerational Programming

While most facilities and recreation agencies can point to an assortment of various programs as proof of fulfilling their multigenerational mission, only recently has intergenerational programming entered the industry's lexicon.

"Our society has changed a lot in recent decades, particularly with respect to mobility. Organizations have seen this and worked to bridge that gap," said Pat Ryan, vice president of education for the International Council on Active Aging (ICAA).

For many years, intergenerational interaction resided in events such as the Fourth of July festival or Breakfast with Santa. Yet, activities placing young and old side-by-side often occurred more by happenstance than specific design. Those days, however, are fading.

Recreation programming decision-makers are increasingly seeking defined programs that promote intergenerational participation as well as looking for increased opportunities to get young and old together (coincidentally, a move that also makes the given venture a more attractive candidate for grant funding). In 2006, for instance, Gwinnett County built a 10,000-square-foot community recreation center complete with game rooms and classrooms specifically aimed at hosting intergenerational programming.

According to Fox Valley's Wilson, head of another parks department with a strong intergenerational programming focus, the benefits of intergenerational interaction are "endless."

"A child encouraged to participate in recreational activities with adults can only help influence future behavior leading to the contribution to a full and meaningful life, ethnic and cultural harmony, improved health, increased crime prevention, an appreciated environment and a better economy," he said.

Research and proven programs support Wilson's assessment. From university studies to anecdotal results, intergenerational activities have been shown to provide benefits to young and old participants alike.

Adults, particularly seniors, benefit from enhanced socialization, a greater sense of engagement in their communities, and better emotional, mental and physical health than their non-participating contemporaries. Often placed in mentoring roles, adults maintain their mature status and are tapped for their wisdom and experience, a reality that delivers an enhanced sense of purpose and dignity.

Children, meanwhile, gain an emerging sense of empathy, including a more positive attitude toward aging. Studies have also shown that children participating in intergenerational activities display a higher level of maturity and manners than their peers, improved academic performance, and greater self-control and patience.

"Older adults bring years of knowledge, wisdom and experience to the interaction, which is quickly transferred to younger people," the ICAA's Ryan said of intergenerational programming. "The young are introduced to the older adults as intelligent, worthy and capable, which helps overcome the ageist fears so many tend to have about the old."

Judy Hamilton-Cantu, senior director of ONEgeneration, a private nonprofit partnered with the City of Los Angeles' Department of Recreation and Parks as well as the city's Department of Aging to promote intergenerational interaction, has witnessed the benefits of intergenerational programming firsthand since her facility's opening in 1994.



"Seniors inherit a role as a genuine mentor, and that's an important role for them," she said. "As for children, they see the seniors as friends and that ageism, largely born out of ignorance or fear, fades. The interaction inspires empathy, and the two groups together learn acceptance and fill their roles with complete satisfaction."

ONEgeneration's creation 16 years ago arose directly from the city's recognition that facilities serving a wider spectrum of the population could better benefit the community. In partnering with ONEgeneration, Los Angeles discovered a helpful ally to its intuition that intergenerational programming could deliver significant benefits.

"Together, we looked at where the holes were and how we could serve the greater population," Hamilton-Cantu said. "When you look at children, you see they want fun and learning. When you look at an aging population, you see folks who want interaction. We became the place to meet the needs and desires of both groups."

ONEgeneration's success has been widely cited and celebrated, prompting staffers to pen an upcoming textbook discussing the merits of intergenerational activity, popular activities and icebreakers, and a how-to for getting city leaders involved.

"There are a lot of people who appreciate the idea of intergenerational activities, but not enough programming that reflects it," Hamilton-Cantu said. "Of course, we're seeing real momentum now that didn't exist 20 years ago."

### Intergenerational Programming in Action

ONEgeneration's two buildings in Los Angeles stand as a testament to intergenerational care and its benefits.

At its shared site programming facility in Van Nuys, ONEgeneration offers daycare for frail seniors as well as preschoolers and kindergarten students. The two groups are brought together daily—the adults on voluntary participation—for shared activities, such as cooking, art, music and movement activities. A second site, the senior enrichment center located approximately one mile west in neighboring Reseda, hosts various classes for healthy, active seniors and at-risk youth.

"We live, eat and breathe intergenerational programming here, even if it's the Brownie troupe singing songs at the senior center or the Boy Scouts planting a garden with seniors," Hamilton-Cantu said. "Intergenerational programming can be accomplished, and we work hard to create programming that reflects the interests and needs of those young and old."

Music, gardening and art classes ranging from painting to woodworking have all been popular programs at ONEgeneration's two campuses. Given the relevance to both groups, cooking classes secure the greatest turnout. A teen parenting class for mothers and fathers, which includes adults serving as mentors, as well as a recent improv class also earned high marks from participants.

"The key to our success has been an intergenerational coordinator whose sole job is to find activities appropriate for both groups," Hamilton-Cantu said. "But a real key has been a degree of fearlessness with programming; we're not afraid to take chances and introduce new programs."

ONEgeneration's success has compelled many community and recreation departments across the country to borrow elements of their success. As a result, intergenerational programming has increasingly been woven into recreational programming lineups.

In Chicago's northern suburbs, the Deerfield Park District's preschool program began introducing senior volunteers into its child classes in the late 1990s under the "Growing Together" banner. Seniors read to students, play games, and lead arts and crafts projects.

"Seniors get a real charge out of the interaction, and our preschoolers benefit from the mentorship and experience of the adults," Preschool Co-Director Lynn Braun said.

At the Fox Valley Park District, intergenerational programs include fishing days, neighborhood concerts, art classes, adult/child swim, movies in the park and tutoring. Other events have included grandparent/child bingo and ice cream socials. Regardless of the turnout or response, Jennifer Huber, the recreation supervisor and coordinator at the Fox Valley Park District's Friendly Center Club, remains determined to consistently integrate intergenerational program offerings into the fold.

"It's important to offer intergenerational programming as an option, and I plan to continue organizing new programs that bring together people from different generations," she confirmed.

In Gwinnett County, events such as the Civil War Christmas, an educational experience that re-creates an 1860s holiday scene in Georgia, and the annual lighting of the Christmas tree on Thanksgiving Day, which attracts over 10,000 guests, bring different generations side by side.

"One of the great things intergenerational activities allow is the ability for young and old to make memories together," Fleming said. "To give this opportunity at little to no cost and to deliver this enhanced quality of life is a very special thing [for our department] and a real central piece of our mission."

As intergenerational programming gains momentum and recreation facilities and agencies seek ways to promote such activities, Hamilton-Cantu reminds that the continued push of such programming rests heavily on the purging of age bias.

"We've too long held the belief that adults don't want to be around kids and kids don't want to be around adults, but if intergenerational programming is to succeed, then we all need to drop that mindset," she said.

"Every age has its role, and it's been that way throughout history," she continued. "The challenge today is to find the right mix of programming that taps into that history, creates bonds and subsequently benefits different generations throughout the community."

## MEMORANDUM

**TO:** Melinda Galler, Assistant City Manager

**FROM:** Russ Kerbow, Police Chief

**DATE:** July 6, 2016

**SUBJECT:** **Approval of a Resolution Authorizing the City to Submit a Grant Application to the Texas Criminal Justice Division to Obtain Funding to Purchase a Public Safety Records Management System.**

### BACKGROUND

The Lewisville Police Department is preparing a Texas Conversion to the National Incident-Based Reporting System grant application. The National Incident-Based Reporting System (NIBRS) is an incident-based reporting system used by law enforcement agencies in the United States for collecting and reporting data on crimes. For each crime incident reported to a law enforcement agency, a variety of data is collected about the incident. This data includes the nature and types of specific offenses in the incident, characteristics of the victim(s) and offender(s), types and value of property stolen and recovered, and characteristics of persons arrested in connection with a crime incident.

Incident-Based data provides a large amount of information about crimes. The information is also organized in complex ways, reflecting the many different aspects of a crime incident.

Local, state and federal agencies generate NIBRS data from their records management systems.

The grant is jointly managed by the Texas Criminal Justice Division and Texas Department of Public Safety.

### ANALYSIS

Our application seeks funding to purchase a new Public Safety Records Management System. If successful, the grant funds replacement of the current outdated 15-year-old system. A new system will make comprehensive data readily available for management, training, planning, and research. The grant would cover 100% of the total cost (\$1,750,000) of a new records management system, which includes all hardware and software.

Subject: National Incident-Based Reporting System Grant Application  
July 6, 2016  
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An annual recurring cost of approximately \$100,000 is estimated after the first year of warranty for maintenance and support. The recurring cost will be absorbed within the police department's operating budget as the department already budgets for ongoing support and maintenance.

Should the Council approve the grant application, a council resolution is required.

**RECOMMENDATION**

It is City staff's recommendation that the City Council approve the proposed resolution as set forth in the caption above.

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

**A RESOLUTION OF THE LEWISVILLE CITY COUNCIL  
AUTHORIZING THE CITY TO APPLY FOR A GRANT  
FROM THE OFFICE OF THE GOVERNOR, TEXAS  
CRIMINAL JUSTICE DIVISION FOR NATIONAL  
INCIDENT BASED REPORTING SYSTEM (NIBRS)  
LEWISVILLE PROJECT.**

**WHEREAS**, the Constitution and the laws of the State of Texas and the Lewisville City Charter do not prohibit the City Council from applying for grants from the Office of the Governor, Texas Criminal Justice Division; and

**WHEREAS**, through said grants, the Office of the Governor, Texas Criminal Justice Division may provide funding for approved Criminal Justice Division projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE LEWISVILLE CITY COUNCIL THAT THE CITY COUNCIL:** 1) authorizes the Lewisville Police Department to submit an application to the Office of the Governor, Texas Criminal Justice Division (CJD) to obtain funding assistance for the fiscal year 2016/2017 for the NIBRS Lewisville Project; 2) agrees to provide all applicable matching funds as stipulated by the CJD; 3) assures the awarded funds will be returned, in full, to the CJD in the event of loss or misuse of CJD funds; 4) authorizes the City Manager, the authorized official, to execute all documents in regard to the requested funds, including the power to apply for, accept, reject, alter or terminate the grant; and 5) assures the City of Lewisville will comply with other rules set by CJD.

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

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**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
LEWISVILLE, TEXAS, ON THIS THE 1ST DAY OF AUGUST, 2016.**

**APPROVED:**

\_\_\_\_\_  
Rudy Durham, MAYOR

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, CITY ATTORNEY

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS AMENDING ORDINANCE NO. 3927-02-2012, WHICH GRANTS A FRANCHISE TO TEXAS NEW MEXICO POWER COMPANY, BY EXTENDING THE TERM AND PROVIDING FOR ITS RENEWAL; FURTHER PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR ACCEPTANCE BY TEXAS NEW MEXICO POWER COMPANY**

**WHEREAS**, on February 20, 2012 the City Council adopted Ordinance No. **3927-02-2012**, an ordinance granting Texas New Mexico Power Company (“**TNMP**” or “**Company**”), a franchise for a period of five (5) years to use and occupy the present and future streets, avenues, alleys, highways, public places, public ways and utility easements (Public Rights-of-Way) within the City of Lewisville (the “**City**”) for the purpose of constructing, extending, maintaining, using and operating an electric utility system of poles, lines, wires, towers, anchors, cables, manholes, underground conduits, transmission lines, telegraphic and telephone lines for its own use, and other structures and appurtenances necessary for the delivery of electricity to customers located in the City, (collectively, the “**Franchise**”); and

**WHEREAS**, Ordinance No. **3927-02-2012** expires on April 30, 2017; and

**WHEREAS**, the City and Company wish to extend the term of the Franchise.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:**

**SECTION 1.** The extension to the term of Ordinance No. 3927-02-2012 of the City of Lewisville, Texas until April 30, 2022, is hereby approved and agreed to by TNMP and the City of Lewisville; provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the April 30, 2022 expiration of this Franchise amendment, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

**SECTION 2.** Section 7, Compensation to the City, of Ordinance No. **3927-02-2012** is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

**SECTION 7. COMPENSATION TO THE CITY.**

A. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City a franchise fee as set forth herein.

B. Company shall pay to the City on a quarterly basis, a charge, as authorized by Section 33.008(b) of PURA, currently the product of a factor of \$0.0026358 multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility’s point of delivery is located within the City’s municipal boundaries, as such charge may be revised from time to time by agreement of the parties, per the quarterly schedule as follows:

Payment Due Date	Quarter Upon Which Payment is Based
------------------	-------------------------------------

May 15	January 1 – March 31
August 15	April 1 – June 30
November 15	July 1 – September 30
February 15	October 1 – December 31

Payments shall continue in like manner for any extension of this Franchise as provided in Section 12 hereof.

C. In addition, Company shall pay City a sum equal to four percent (4%) of gross revenues received by Company from services identified in Sections 6.1.2.3, 6.1.3.3, and 6.1.4.3 “Discretionary Charges Other Than Construction Charges,” in its Tariff for Retail Delivery Service (Tariff), effective March 1, 2016, and as subsequently amended, that are for the account and benefit of an end-use retail electric consumer located within the Lewisville, Texas city limits. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company’s current approved Tariff.

1. The franchise fee amounts based on “Discretionary Service Charges” referenced above shall be calculated on an annual calendar year basis, (i.e. from January through December 31 of each calendar year).
2. The franchise fee amounts that are due based on “Discretionary Service Charges” shall be paid at least once annually on or before April 30 each year based on the total “Discretionary Service Charges”, as set out in Section 7.C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2013 and will be based on the portion of calendar year 2012 from the City’s regulatory approval referenced in paragraph 3 below through December. The final Discretionary Service Charge franchise fee amount will be paid on or before August 30, 2022 and will be based on the calendar year January 1 through December 31, 2021, plus the period January 1, 2022 through April 30, 2022.
3. On or before April 1, 2012, Company shall file with the City a tariff or tariff amendment(s) to provide for 100% recovery of the franchise fee on Discretionary Service Charges, over and above the amount of the Discretionary Service Charges, through its nonbypassable

charges to the premises that received the related Discretionary Services. Company's obligation to account for and pay the franchise fee to City on such Discretionary Service Charges shall commence upon the City's approval, acting as regulatory authority, of that tariff or tariff amendment. For all Discretionary Services provided within the city limits beginning the first day of the month following City regulatory approval, Company shall pay the associated franchise fee amounts to the City under the schedule provided in paragraph 2 above.

4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.

D. With each payment of compensation required by Section 7.B, Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, providing the total kWh delivered by Company to each retail customer's point of delivery within the City and the amount of payment for the period covered by the payment.

E. With each payment of compensation required by Section 7.C., Company shall furnish to the City a statement, executed by an authorized officer of Company or designee, reflecting the total amount of gross revenues received by Company from services identified in its "Tariff for Retail Delivery Service," Sections 6.1.2.31, 6.1.3.3, and 6.1.4.3 "Standard Discretionary Charges Other Than Construction Charges."

F. If either party discovers that Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the City and Company and the City shall be paid by

Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded or offset against the next payment due from Company. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise Agreement, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

G. Interest on late payments and underpayments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with Texas Utilities Code Section 183.003 as amended for the time period involved.

H. No taxes, fees, or other payments by Company to the City, including, but not limited to, ad valorem taxes, shall reduce the franchise fees payable to City hereunder, except as agreed to by the City in Section.

**SECTION 3.** In all respects, except as specifically and expressly amended by this Ordinance, the Franchise shall remain in full force and effect according to its terms until the Franchise expires or otherwise terminates in accordance with the provisions of the Franchise and its amendments.

**SECTION 4.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any portion of this Ordinance is declared illegal or unconstitutional by the valid final non-appealable judgment or decree of any court of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining portions of this Ordinance.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given by City as required.

**SECTION 6.** This Ordinance shall be in full force and effect on \_\_\_\_\_ following (i) its adoption by City; and (ii) Company files its written acceptance of this Ordinance with the City Secretary's office within sixty (60) calendar days following City's adoption of this Ordinance.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF   5   TO   0  , ON THIS THE 20TH DAY OF JUNE, 2016.**

**SECOND AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, ON SECOND READING ON THIS 1<sup>st</sup> DAY OF AUGUST, 2016.**

**APPROVED:**

\_\_\_\_\_  
Rudy Durham, MAYOR

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, CITY ATTORNEY