City Council Agenda

DECEMBER 15, 2015

(For General Information and Rules of Courtesy, please see opposite side.)
(La Información General y las Reglas de Cortesía que Deben Observarse Durante las Asambleas del Consejo Municipal Aparecen en el Lado Opuesto. Por Favor, Leerlas.)

I. General Information

The Arlington City Council is comprised of a Mayor and eight City Council members. Elections are conducted every spring in May.

Arlington City Council meetings are broadcast live on the Arlington Government Channel (A.G.C.)and replayed throughout the week. Visit the City's Web site for the A.G.C. broadcast schedule.
www.arlingtontx.gov

CITY COUNCIL SCHEDULE-2015

MONTH	SCHEDULED
January	13, 20
February	10, 24
March	3, 17
April	14, 28
May	12, 19*, 26***
June	2, 16.23**
July	Break
August	4, 11**, 25
September	1, 10**, 15
October	13, 27
November	10, 17
December	1, 15

* Special Meeting – Official Canvass of Votes
**Special Meeting - Budget Related Items Only
*** Swear in newly elected Council members

II. Support or Opposition on Agenda Items

Anyone wishing to speak or register their support or opposition on a given matter should fill out a card available at the entrance and give it to a staff member at the main table before the opening of the meeting. If you've signed up that you wish to speak, and your name is called:

- Please come to the microphone at the podium and state your name and ~~address before you begin your presentation.~~
- To the extent possible, please refrain from repeating testimony which has already been given.
- Speakers in support or in opposition of an item will be given **two** minutes to make their statements.
- Public Hearings: an applicant has **five** minutes for their presentation and **two** minutes for any rebuttal.
- A bell will signal at the end of the speaker's time. Please wrap up your comments promptly.
- We ask that you address your comments to the Mayor and Council.

III. Citizen Participation

Citizen participation gives the public an opportunity to make comments or address concerns that are not posted on the evening's agenda. Please understand that the Mayor and Council are not permitted by law to respond to or address your concerns at this time, as these items are not included on the posted Council Agenda for this evening. The Mayor and Council may only ask clarifying questions and/or direct staff to take appropriate action.

IV. Rules of Courtesy

We ask that citizens and other visitors in attendance assist in preserving the order and decorum of this meeting. Any person making personal, profane, slanderous, or threatening remarks or who becomes disruptive while addressing the Mayor and the City Council or while attending the City Council meeting may be removed from the Council Chambers.

I. Información General

El Ayuntamiento de la Ciudad de Arlington consiste de un Alcalde y ocho miembros del concilio municipal. Las elecciones se llevan acabo cada Mayo en la primavera.

Las reuniones del Ayuntamiento de la Ciudad de Arlington se transmiten en vivo en el canal del Gobierno de Arlington (A.G.C.) y se repiten durante la semana. Visita la página web de la Ciudad para el horario del programa. www.arlingtontx.gov

EL HORARIO DEL AYUNTAMIENTO-2015

EL MES	PROGRAMADO
Enero	13, 20
Febrero	10, 24
Marzo	3, 17
Abril	14, 28
Mayo	12, 19*, 26***
Junio	2, 16, 23**
Julio	Descanso
Agosto	4, 11**, 25
Septiembre	1, 10**, 15
Octubre	13, 27
Noviembre	10, 17
Diciembre	1, 15

* Reunion especial – sólo para aprobar los votos officials de eleccion
** Reunions especial - sólo los artículos relacionados con el presupuesto de la cuidad
*** Jurar los nuevos miembros electos del Ayuntamiento municipal

II. Apoya u Opone los Artículos del Orden del Día

Alguno que desea hablar o registrar su apoyo u oposición en un asunto dado debe llenar una tarjeta disponible en la entrada y darlo a un empleado localizado en la mesa principal antes de la apertura de la reunión. Si usted se ha inscrito que desea hablar y tu nombre es llamado:

- Venga por favor al micrófono en el podio e indique su nombre y la dirección antes que empiece su presentación.
- Hasta el punto possible, por favor de abstenerse de repetir testimonio que ya ha sido dado.
- Los oradores en apoyo u oposición de un articulo sera dado **dos** minutos de hacer sus declaraciones.
- Las Audiciones Publicas: un solicitante tiene **cinco** minutos para su presentación y **dos** minutos para cualquier refutación.
- Una campana señalara a fines del tiempo del orador. Por favor, concluye tus comentarios inmediatamente.
- Pedimos que dirige sus comentarios al Alcalde y el Concilio.

III. Participación de los Ciudadanos

La participación del ciudadano da el publicó una oportunidad a hacer comentarios o dirigir preocupaciones que no son anunciados en el orden del día o agenda. Comprenda por favor que el Alcalde y el concilio no son permitidos por ley a responder o abordar tus preocupaciones en este tiempo, porque estos artículos no son incluidos en los anunciados del orden del día del Ayuntamiento para esta tarde. El Alcalde y el Concejo sólo pueden pedir clarificacion a preguntas y/o dirigen el personal a tomar accion apropiada.

IV. Reglas de Cortesía

Pedimos que los ciudadanos y otros visitantes presente asisten en la preservación del orden y el decoro de esta junta. Cualquier persona que haga comentarios personales, profanos, difamatorios o intimidatorios, o alguien que lo haga en forma disruptivo durante dirigirse el Alcalde y el Ayuntamiento, o cuando está asistiendo la reunión del Ayuntamiento puede ser quitado de la Sala del Ayuntamiento.

Agenda

Arlington City Council Meeting

City Hall Council Chamber
101 W. Abram St.

Tuesday, December 15, 2015
6:30 PM

I. **CALL TO ORDER**

II. **INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS**

III. **SPECIAL PRESENTATIONS**

IV. **APPOINTMENTS TO BOARDS AND COMMISSIONS**

V. **SPEAKER GUIDELINES AND GENERAL DECORUM**

VI. **APPROVAL OF ITEMS FROM EXECUTIVE SESSION**

1. **Abram Street (Collins to SH360) –Wajieh Hussein and Wael Hamed Hindi, Project No. PWST07002**
A resolution to approve settlement of a condemnation suit to acquire approximately 16,405 square feet of land situated in the Joel Blackwell Survey, Abstract No. 147, being all of Lot 9, Resubdivision of Peterman-Davis Addition, an addition to the City of Arlington, otherwise known as 1503 East Abram Street, City of Arlington, Tarrant County, Texas for the public use of constructing, maintaining, and using a permanent public street, together with all necessary appurtenances for the Abram Street (Collins to State Highway 360) project.

- The Arlington City Hall is wheelchair accessible. For accommodations or sign interpretive services, please call 817-459-6100 no later than 24 hours in advance.
- Council meetings are broadcast live on Arlington's Government Channel, and rebroadcast throughout the week at the following times:

	Afternoon meetings	Evening Meetings
Sunday	1:00 p.m.	6:00 p.m.
Wednesday	1:30 p.m.	6:30 a.m.
Saturday	6:00 p.m.	6:30 a.m.

The Council agenda can be viewed on the City's website at www.ArlingtonTX.gov
- For a complete Arlington Government Channel program schedule, please visit www.ArlingtonTX.gov/Broadcast

2. **All Cash Contract of Sale – 1860 Mansfield Webb Road - Dawn Mack Rogers and Karen Mack Harris, Each Individually, as Joint Trustee, and as Beneficiary of the Jean Mack Trust, and Donna Mack Anderson and Harold Wayne Mack, Each Individually and as Beneficiary of the Jean Mack Trust.**
A resolution authorizing the City Manager, or his designee, to execute an All Cash Contract of Sale with Dawn Mack Rogers and Karen Mack Harris, each Individually, as Joint Trustee, and as Beneficiary of the Jean Mack Trust, and Donna Mack Anderson and Harold Wayne Mack, each Individually and as Beneficiary of the Jean Mack Trust, for the purchase of fee simple property rights in land being approximately 3.025 acres of land, out of the William J. Ferrell Survey, Abstract Number 515, Tarrant County, otherwise known as 1860 Mansfield Webb Road, City of Arlington, Tarrant County, Texas.

VII. APPROVAL OF MINUTES

Afternoon Meeting, December 1, 2015
Evening Meeting, December 1, 2015

VIII. APPROVAL OF CONSENT AGENDA

Approval of the Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations and all votes on final reading will be recorded as reflected on first reading unless otherwise indicated. Public comment will be accepted on items, with the exception of those items on which a public hearing has been held and closed by Council, which will be indicated as ***(CLOSED)*** on the agenda.

A. Minute Orders

1. **Execute Contract for Group Medical Plan Stop Loss Insurance Coverage (MO#12152015-001)**
Authorizing the City Manager or his designee to negotiate and execute a one year agreement for an excess risk policy (stop loss insurance) for medical and pharmacy claims under the City health insurance plan with Berkley Accident and Health of Hamilton Square, New Jersey in the estimated amount of $488,299. Funds are budgeted in the Group Health Fund Account No. 520102-64021.

2. **Purchase & Installation of LED Video Marquee Board, Bid Project 16-0046 (MO#12152015-002)**
Authorize the City Manager or his designee to approve the purchase and installation of a new LED video marquee board with Daktronics, Inc. of Brookings, South Dakota, through the Texas Local Government Purchasing Cooperative (TLGPC) in the estimated amount of $115,897, and execute any and all documents necessary to carry out such purchase. Funds are budgeted in the Convention Center 2016 Ancillary Projects Account No. 970107-63101.

3. **Advance Funding Agreement for Interstate Highway IH-20/Bowen Road Texas U-Turn; Project No. PWST15006 (MO#12152015-003)**
Authorizing the City Manager or his designee to execute a Local Project Advance Funding Agreement (LPAFA) with the Texas Department of Transportation (TxDOT), of Fort Worth, Texas, for construction of a Texas U-Turn for westbound to eastbound Interstate Highway IH-20 at Bowen Road in the estimated amount of $43,112. Funding is available in Street Bond Fund Account No. 358504-61043-65680698.

4. **Construction Contract for Unity Arch, Project No. PKPL-13306 (MO#12152015-004)**
Authorize the City Manager or his designee to execute a construction contract with Raydon, Inc. of Breckenridge, Texas for construction of the plaza for the Unity Arch in the amount of $266,663. Funding is available in Parks Capital Fund Account No. 501801-68101-53450598 [$49,744], Convention Center Arts and Revitalization Account No. 970104-68002 [$150,000] and TIRZ 5 Account No. 488501-68101-92260103 [$66,919].

5. **Construction Contract for Julia Burgen Park Development, Project No. PKPL-13007 (MO#12152015-005)**
Authorize the City Manager or his designee to execute a construction contract with 2L Construction, LLC of Rhome, Texas for Julia Burgen Park Development in the amount not to exceed $1,734,689. Funding is available in Parks Bond Fund Account No. 508503-68101-53440599 [$1,000,000] and Parks Capital Account No. 508501-68101-53490598 [$734,689].

6. **Design Contract for Bowman Branch Linear Park Trail, Project No. PKPL-11002 (MO#12152015-006)**
Authorizing the City Manager or his designee to execute a consultant services contract with Klotz Associates of Fort Worth, Texas for preparation of construction documents for development of Bowman Branch Linear Park Trail in the amount not to exceed $149,390. Funding is available in Park Bond Account No. 508503-53010599-61043.

7. **Design Contract for Village/Rush Creek Trail Feasibility Study, PKPL-16004 (MO#12152015-007)**
Authorizing the City Manager or his designee to execute a consultant services contract with TransSystems Corporation Consultants of Fort Worth, Texas for a trail feasibility study along Village and Rush Creek in the amount not to exceed $50,272. Funding is available in Park Capital Account No. 508501-53700598-61043.

8. **CityNet FY 2016 Maintenance Agreement (MO#12152015-008)**
Authorize the City Manager or his designee to provide payments to the North Central Texas Council of Governments (NCTCOG) of Arlington, Texas for the Operation and Maintenance of the CityNet hardware and software in an amount not to exceed $618,399. Funding for the FY2016 payments is available in Information Technology Account No. 980202-63142.

9. **Three-Year Lease of Personal Computers, Bid Project 16-0039 (MO#12152015-009)**
Authorize the City Manager or his designee to negotiate and execute a contract for the three-year lease of personal computers and related computer equipment from Dell Computer Corporation of Round Rock, Texas through the State of Texas Cooperative Purchasing Program for an estimated amount of $538,678.23 ($179,559.41 annually) over a three-year period, and execute any and all documents necessary to carry out such contract. Funds are budgeted in the Information Technology Account No. 980103-69200.

10. **Annual Software Support and Maintenance Contract for Geographic Information System Software, Bid Project 16-0037 (MO#12152015-010)**
Authorize the City Manager or his designee to execute an annual software support and maintenance contract for geographic information system software (GIS) with Environmental Systems Research Institute (ESRI), Inc. of Redlands, California in the estimated amount of $75,450, and execute any and all documents necessary to carry out such contract. The software support and maintenance contract is only available from ESRI, Inc. of Redlands, California; therefore, this purchase is exempt from the competitive bidding statutes in accordance with the Texas Local Government Code, Section 252.022 (a) 7 as sole-source procurement. Funds are budgeted in the IT General Fund Account No. 980202-63142.

11. **Annual Requirements Contract for Data and Cable Supplies, Bid Project 16-0036 (MO#12152015-011)**
Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of data and cable supplies with Graybar Electrical Company, Inc. of Fort Worth, Texas through the U.S. Communities Government Purchasing Alliance (U.S. Communities) in the estimated amount of $69,500, and execute any and all documents necessary to carry out such contract. Funds are budgeted in various departmental accounts.

12. **Annual Requirements Contract for GPS Diagnostic Monitoring Services, Bid Project 16-0048 (MO#12152015-012)**
Authorize the City Manager or his designee to approve a contract for GPS Diagnostic Monitoring Services, with Networkfleet, Inc., of San Diego, California, through the United States General Services Administration (GSA) in the estimated amount of $116,852, and execute any and all documents necessary to carry out such contract. Funds are budgeted in various departmental accounts.

13. **Annual Requirements Contract for the Purchase and Delivery of Gasoline and Diesel Fuel, Bid Project 16-0049 (MO#12152015-013)**
Authorize the City Manager or his designee to approve an annual requirements contract for the purchase and delivery of gasoline and diesel fuel with Martin Eagle Oil Company of Denton, Texas, through the interlocal agreement with the National Intergovernmental Purchasing Alliance (IPA) in the estimated amount of $2,200,800, and execute any and all documents necessary to carry out such contract. Funds are budgeted in Fleet Services Account No. 790101-60018.

14. **Annual Requirements Contract for Irrigation Relocation, Tree Removal and Grass Replacement, Bid Project 16-0011 (MO#12152015-014)**
Authorize the City Manager or his designee to execute an annual requirements contract for irrigation relocation, tree removal, and grass replacement services with Northeast Service, Inc., dba Horton Tree Service of Kennedale, Texas, in the estimated amount of $92,199, and execute any and all documents necessary to carry out such contract. Funds are budgeted in Street Bond Fund Account No. 358504-68153-65450699 [$73,759.20] and Storm Water Utility Fund Account No. 308501-68151-10500199 [$18,439.80].

15. **Annual Requirements Contract for Maintenance, Repair and Operational Supplies, Bid Project 16-0055 (MO#12152015-015)**
Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of maintenance, repair and operational supplies with W.W. Grainger, Inc. of Fort Worth, Texas, through the interlocal agreement with the National Intergovernmental Purchasing Alliance (IPA) in the estimated amount of $325,000, and execute any and all documents necessary to carry out such contract. Funds are budgeted in various departmental accounts.

16. **Annual Requirements Contract for Facility and Grounds Maintenance Supplies, Bid Project 16-0050 (MO#12152015-016)**
Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of facility and grounds maintenance supplies with The Home Depot Company of Atlanta, Georgia, through the U.S. Communities Government Purchasing Alliance (U.S. Communities) in the estimated amount of $225,000, and execute any and all documents necessary to carry out such contract. Funds are budgeted in various departmental accounts.

17. **Annual Requirements Contract for Painting Services for City-Owned Properties, Bid Project 16-0015 (MO#12152015-17)**
Authorize the City Manager or his designee to execute an annual requirements contract for painting services for city-owned properties with Concord Commercial Services, Inc. of Balch Springs, Texas, in the estimated amount of $100,600, and execute any and all documents necessary to carry out such contract. Funds are budgeted in various departmental accounts.

18. **Renewal of Professional Services Contract for Accounts Payable Services, Bid Project 15-0024 (MO#12152015-018)**
Authorize the City Manager or his designee to exercise the second renewal in the successive professional services contract for accounts payable services for a one year term, with Cognizant Technology Solutions of College Station, Texas, in the estimated amount of $135,000, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in Payroll/Accounts Payable Professional Services Account No. 140501-61043.

19. **Renewal of Two-Year Requirements Contract for Ground & Elevated Storage Tank Cleaning, Bid Project 14-0062 (MO#12152015-019)**
Authorize the City Manager or his designee to exercise the first of two, two-year renewal options in the contract for ground & elevated storage tank cleaning with U.S Underwater Services, LLC of Mansfield, Texas in the estimated amount of $151,600, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in the Water Treatment Maintenance of Reservoirs and Storage Tanks Account No. 620102-63124.

20. **Renewal of Annual Requirements Contract for Hydrofluosilicic Acid, Bid Project 15-0034 (MO#12152015-020)**
Authorize the City Manager or his designee to exercise the first of four, one-year renewal options in the contract for the supply and delivery of hydrofluosilicic acid with Mosaic Global Sales, LLC of Lithia, Florida in the estimated amount of $79,520, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in Water Treatment Operations Account No. 620101-60008.

B. Consent Agenda Ordinances – Final Readings

Public comment will be accepted on items, with the exception of those items on which a public hearing has been held and closed by Council, which will be indicated as ***(CLOSED)*** on the agenda.

1. **Ordinance Granting Gas Franchise to Atmos Energy Corporation**
Final reading of an ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date

C. Consent Agenda Resolutions

1. **FY16 Investment Policy**
A resolution approving and adopting the Investment Policy for the City of Arlington, Texas.

2. **City Participation, 16-Inch Water Line for the Kroger-Sublett Addition, Project No. WUOP15010**
A resolution authorizing City participation with Kroger Texas LP, of Irving, Texas, in the cost of a 16-inch water line along US Highway 287 north of Sublett Road for an amount not to exceed $186,064.20.

3. **Salary Adjustments for Council Appointees**
a. A resolution adjusting the annual salary for the City Auditor of the City of Arlington.

b. A resolution adjusting the annual salaries for the Municipal Court Judges of the City of Arlington.

4. **Reimbursement Agreement with Kroger Texas, L.P.**
A resolution authorizing the execution of a Chapter 380 program Agreement by and between Kroger Texas, L.P., and the City of Arlington, Texas, relative to the cost of developing the property located at the northwest corner of Sublett Road and U.S. Highway 287, specifically the construction of Sublett Road to a four lane roadway with related improvements west of U.S. Highway 287 in Arlington, Texas.

5. **Assignment of Rights and Obligations of Tax Abatement and Chapter 380 Grant Agreement with Exeter 4900 Sherry, L.P. (Arlington Commerce Center Bldg. C)**
A resolution approving the assignment of all the rights and obligations accruing to Exeter 4900 Sherry, L.P. under that certain Tax Abatement and Chapter 380 Grant Agreement by and between Exeter 4900 Sherry, L.P. and the City of Arlington, Texas, previously approved by City Council Resolution No. 13-158.

END OF CONSENT AGENDA

IX. ITEMS TO BE WITHDRAWN FROM THE CONSENT AGENDA

X. CONSIDER AND VOTE ON WITHDRAWN ITEMS

XI. RESOLUTIONS

Public comment will be accepted at this time on the following items.

A. Resolutions:

1. **Resolutions to Amend the Grant Agreement with the Arlington Tomorrow Foundation, Amend the Arlington Tomorrow Foundation Program and to Authorize Future Contributions to the Arlington Tomorrow Foundation**

   a. A resolution authorizing the amendment of the Arlington Tomorrow Foundation Program relative to the funding.

   b. A resolution authorizing the execution of the First Amendment to the Second Modified and Restated Grant Agreement entered into by and between the City of Arlington, a Texas home-rule municipal corporation, and the Arlington Tomorrow Foundation, Inc., a Texas nonprofit corporation.

   c. A resolution amending Resolution No. 15-008 relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City of Arlington and the Arlington Tomorrow Foundation.

2. **Phase I Capital Improvement Plan for the Arlington Convention Center Facilities**
   A resolution adopting a Phase I Capital Improvement Plan for the Arlington Convention Center.

3. **Arlington Ballpark District Entertainment Block, LLC - Chapter 380 Agreement for Economic Development Incentives**
   A resolution authorizing the City Manager or his designee to execute an Economic Development Incentive Agreement by and among Arlington Ballpark District Entertainment Block, LLC, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas, relative to development of the southwest corner of the intersection of East Randol Mill Road and Nolan Ryan Expressway.

XII. PUBLIC HEARINGS: ORDINANCES FIRST READING AND RESOLUTIONS

Speaker Regulations: Anyone wishing to speak for or against a Public Hearing must fill out a card at the entrance to the Council Chamber.

A. Public Hearing – Ordinances First and Final Emergency Reading

1. **Alternative Sign Plan Z06-40R1/B06-40R1-ASP (Glorypark)**
Following the public hearing, consider adopting an ordinance approving Alternate Sign Plan Z06-40R1/BO6-40R1-ASP for a certain portion of the Glorypark Planned Development. An ordinance adopting Alternate Sign Plan, Z06-40R1/B06-40R1-ASP, for a certain portion of property known as the "First Phase Property" located in an area zoned Glorypark PD (a "PD for mixed uses including major sports complex; certain agricultural, animal related; auto related; commercial; institutional; office; recreation, entertainment; residential lodging; retail, personal service; temporary accessory; utility, communication, transportation; wholesale, distribution, storage; and gas drilling and production uses"); authorizing the building official to issue permits upon the effective date; providing for a fine of up to $2,000.00 for each violation; providing this ordinance be cumulative; and providing for repeal of conflicting ordinances, severability, governmental immunity, injunctions, declaring an emergency and establishing an effective date.

ORDINANCE FIRST AND FINAL READING
An ordinance adopting Alternate Sign Plan, Z06-40R1/B06-40R1-ASP, for a certain portion of property known as the "First Phase Property" located in an area zoned Glorypark PD (a "PD for mixed uses including major sports complex; certain agricultural, animal related; auto related; commercial; institutional; office; recreation, entertainment; residential lodging; retail, personal service; temporary accessory; utility, communication, transportation; wholesale, distribution, storage; and gas drilling and production uses"); authorizing the building official to issue permits upon the effective date; providing for a fine of up to $2,000.00 for each violation; providing this ordinance be cumulative; and providing for repeal of conflicting ordinances, severability, governmental immunity, injunctions, declaring an emergency and establishing an effective date.

B. Public Hearing – Resolutions

1. **(CONTINUED) Variance Appeal to the Alcohol Distance Requirements of the "Occupation Taxes" Chapter - AV15-1**
Following the public hearing, consider a resolution authorizing a variance to the distance requirements of the "Occupation Taxes and Licenses" Chapter of the Code of the City of Arlington, relative to allowing the sale of alcoholic beverages for off-premise consumption within three hundred feet (300') of a public school.

RESOLUTION
A resolution authorizing a variance to the distance requirements for the sale of alcohol for off-premise consumption at Hawk's Pantry, located at 1606 West Randol Mill Road, Arlington, Texas, pursuant to Section 1.04 of the Occupation Taxes Chapter of the Code of the City of Arlington.

XIII. ANNOUNCEMENTS

XIV. CITIZEN PARTICIPATION– Recognition of visitors with items of business not on the agenda.

Minutes

Arlington City Council Meeting

Council Briefing Room
101 W. Abram St.
3rd Floor

December 1, 2015

12:30 PM

The City Council of the City of Arlington, Texas, convened in Special Session on December 1, 2015, at 12:30 pm in the Council Briefing Room, 101 W. Abram Street, 3rd Floor with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Mayor J. Williams
Councilmember C. Parker
Councilmember S. Capehart
Councilmember R. Rivera
Councilmember K. Wilemon
Councilmember L. Wolff
Councilmember R. Shepard
Councilmember J. Bennett
Councilmember M. Glaspie

Trey Yelverton, City Manager
Teris Solis, City Attorney
Mary W. Supino, City Secretary

I. CALL TO ORDER

Mayor J. Williams called the meeting to order at 12:36 p.m., and immediately convened in Executive Session.

II. EXECUTIVE SESSION

A. Section 551.071, CONSULTATION WITH ATTORNEY

1. Discussion of New York Ave., LLC v. City of Arlington lawsuit

2. Discussion of A New Home 4 U LLC v. City of Arlington, Texas lawsuit

3. Discussion of legal issues related to potential claims of the Estate of Jonathan Paul

B. Section 551.072, DELIBERATION REGARDING REAL PROPERTY

1. Discussion of gas leases on City Property

C. Section 551.087, DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

1. Offers of Incentives to Business Prospects

At 3:13 p.m., Executive Session was adjourned, and after a short break, Council reconvened in Open Session at 3:32 p.m.

III. WORK SESSION

1. Community Relations

Gilbert Perales, Deputy City Manager, Strategic Support, presented a brief update to Council on the Community Relations Committee.

2. Students Living in Single Family Neighborhoods

Trey Yelverton, City Manager, introduced the Arlington Executive Education Program, an interdisciplinary group that consists of staff members who assisted with the Single Family Neighborhoods project. Mike Bass, Code Compliance Services Administrator, Sgt. Brook Rollins, Police Department, and Erin Roseman, Assistant Director, Municipal Court, provided an update to Council on the Students Living in Single Family Neighborhoods.

IV. ISSUES SESSION

A. Discussion of informal staff reports

1. Animal Services Update

Mike Bass, Code Compliance Services Administrator, presented the Animal Services Update to Council.

2. FY 2016 City Council Priority - Invest in Our Economy

Jim Parajon, Deputy City Manager, Economic Development/Capital Investment, presented the FY2016 City Council Priority - Invest in Our Economy newsletter.

B. Discussion of committee meetings

1. Municipal Policy - Single-Family Residential & Commercial Property Maintenance

Improvement Strategy

Councilmember R. Rivera, Chair, reported on the Committee meeting.

2. Community and Neighborhood Development - Parking of Vehicles

Councilmember L. Wolff, Chair, reported on the Committee meeting.

3. Economic Development - Executive Session: Deliberations Regarding Real Property - Lease and Fixed Base Operator Agreement with Airline Transport Professionals (ATP)

Councilmember J. Bennett, Chair, reported that discussion was held in executive session.

C. Discussion of miscellaneous items

1. Appointments to boards and commissions

There are two proposed appointments for consideration on the evening agenda.

2. Evening Agenda items

Item Nos. VII.A.12, VII.A. 13 and X.A.1. were discussed.

3. Issues relative to City construction projects

Mayor J. Williams requested Public Works Director Keith Melton provide an update on TxDOT's Cooper Street Project. Director Melton provided a brief update on the project, and reported that upon completion of the median work, the asphalt overlay project would be postponed due to weather conditions. Councilmember S. Capehart also inquired about the status of the Abram/Bowen Street water line project.

4. Future Agenda Items

There being no further business, the meeting adjourned at 4:45 p.m. At 4:45 p.m., the Council convened in Executive Session and adjourned at 4:50 p.m.

APPROVED:

W. Jeff Williams

ATTEST:

Mary W. Supino, City Secretary

Minutes

Arlington City Council
Regular Meeting

Council Chamber
101 W. Abram St.

December 1, 2015

6:30 PM

The City Council of the City of Arlington, Texas, convened in Regular Session on December 1, 2015, at 6:30 pm in the Council Chamber of the City Hall Building, 101 West Abram Street, with the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present, to-wit:

Mayor J. Williams
Councilmember C. Parker
Councilmember S. Capehart
Councilmember R. Rivera
Councilmember K. Wilemon
Councilmember L. Wolff
Councilmember R. Shepard
Councilmember J. Bennett
Councilmember M. Glaspie

Trey Yelverton, City Manager
Teris Solis, City Attorney
Mary W. Supino, City Secretary

I. CALL TO ORDER

Mayor J. Williams called the meeting to order at 6:30 p.m.

II. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS

Pastor Russ Barksdale, The Church on Rush Creek, gave the invocation and the Pledge of Allegiance to U.S. and Texas Flags were recited.

III. SPECIAL PRESENTATIONS

Mayor J. Williams introduced Arlington Heroes Run organizers, Clete and Susie McAlister, who on behalf of the Rotary Club of Arlington, presented checks benefiting the Veterans Park Foundation, the Arlington

Police Department (for the Leukemia and Lymphoma Society) and the Arlington Fire Department (for its Random Acts of Kindness Foundation).

IV. APPOINTMENTS TO BOARDS AND COMMISSIONS

Councilmember S. Capehart made a motion to approve the following resolutions appointing membership to the following Boards and Commissions. Seconded by Councilmember K. Wilemon, the motion carried with 9 ayes and 0 nays.

Ethics Review Commission
Thomas Schlueter, Place 5, term ending 6-30-17

RESOLUTION NO. 15-292

Emergency Physicians Advisory Board
Dr. Don Treichler, Place 2, term ending 6-30-16

RESOLUTION NO. 15-293

V. SPEAKER GUIDELINES AND GENERAL DECORUM

Mary W. Supino, City Secretary, recited the speaker guidelines and general decorum.

VI. APPROVAL OF MINUTES

Afternoon Meeting, November 10, 2015
Evening Meeting, November 10, 2015
Afternoon Meeting, November 17, 2015
Evening Meeting, November 17, 2015

Councilmember S. Capehart made a motion to approve the minutes from the November 10, 2015 Afternoon and Evening Meetings and the November 17, 2015 Afternoon and Evening Meetings. Seconded by Councilmember L. Wolff, the motion carried with 9 ayes and 0 nays.

VII. APPROVAL OF CONSENT AGENDA

Councilmember M. Glaspie made a motion to approve all items from the Consent Agenda. Seconded by Councilmember J. Bennett, the motion carried with 9 ayes and 0 nays.

A. Minute Orders

1. Professional Services Contract for Actuarial Services, Bid Project 16-0051 **(MO#12012015-001)**
   Authorize the City Manager or his designee to execute a one-year professional services

contract for actuarial services with Gabriel, Roeder, Smith & Company of Irving, Texas, in the estimated amount of $48,000, and execute any and all documents necessary to carry out such contract. Funds are budgeted in the following Human Resources accounts: Other Post-Employment Benefit Valuation (OPEB) Account No. 520102-61043 [$15,200]; Disability Income Plan Account No.990201-61033 [$8,100]; Part-Time, Seasonal and Temporary Deferred Income Plan (PST DIP) Account No. 990301-61033 [$12,200]; Workers' Compensation Fund Account No. 510101-61043 [$6,250]; and Arlington Property Finance Authority Fund (Risk) Account No. 800120-61043 [$6,250].

2. Water Billing System Annual Maintenance Support and Licensing **(MO#12012015-002)**
Authorizing the City Manager or his designee to execute a renewal of annual maintenance support and licensing with Systems & Software, Inc., of Williston, Vermont, for maintenance support of the enQuesta water utility billing system for calendar year 2016 in the amount of $488,634. Funding is available in Water Operating Account No. 600301-63142.

3. Phase Two for the Purchase of Replacement Tasers, Cartridges, Holsters and Batteries, Bid Project 16-0038 **(MO#12012015-003)**
Authorize the City Manager or his designee to approve the sole-source purchase of Tasers, cartridges, holsters, and batteries with TASER International, Inc. in the estimated amount of $175,000, and execute any and all documents necessary to carry out such purchase. TASER International, Inc., of Scottsdale, Arizona, is the sole provider of TASER product; therefore, the purchase is exempt from the competitive bidding statutes in accordance with Texas Local Government Code, Section 252.022 (a) 7 as sole-source procurement. Funds are budgeted in Police Federal Treasury Restricted Fund Account No. 270104-60022.

4. Purchase of Two Fire Apparatus, Bid Project 16-0045 **(MO#12012015-004)**
Authorize the City Manager or his designee to approve the purchase of two fire apparatus with Metro Fire Apparatus Specialists, Inc. of Houston, Texas, through the Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Program, in an amount not to exceed $1,184,956, and execute any and all documents necessary to carry out such purchase. Funds are budgeted in Fire Department Fire Operations Account No. 220201-68200.

5. Purchase of Ammunition, Bid Project 16-0006 **(MO#12012015-005)**
Authorize the City Manager or his designee to approve the purchase of ammunition with Precision Delta Corporation of Ruleville, Mississippi in the estimated amount of $83,978.48; GT Distributors, Inc. of Austin, Texas in the estimated amount of $43,737.15; and Bailey's House of Guns, Inc. of Houston, Texas in the estimated amount of $19,861.31, for a total estimated amount of $147,576.94, and execute any and all documents necessary to carry out such purchase. Funds are budgeted in Police Department Operations Account No. 810301-60014.

6. Purchase of 33 Dodge Chargers, Bid Project 16-0044 **(MO#12012015-006)**
Authorize the City Manager or his designee to purchase 33 Dodge Charger Police Sedans with Freedom Chrysler Dodge Jeep Ram of Dallas, Texas, through the Houston-Galveston

Area Council (H-GAC) Cooperative Purchasing Program in the amount of $820,930 and execute any and all documents necessary to carry out such purchase. Funds are budgeted in Fleet Services Administration Account No. 790101-68200.

7. Renewal of Annual Requirements Contract for Streetlight Poles, Lights and Accessories, Bid Project 13-0064 **(MO#12012015-007)**
Authorize the City Manager or his designee to exercise the third of four, one year renewal options in the contract for the purchase of streetlight poles, lights and accessories with Graybar Electrical Company, Inc. of Fort Worth, Texas, in the estimated amount of $311,195.43, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in Public Works Streetlight Maintenance Account No. 720106-63119.

8. Renewal of Annual Requirements Contract for Auto Body Shop Repair Services, Bid Project 14-0006 **(MO#12012015-008)**
Authorize the City Manager or his designee to exercise the second of four one-year renewal options in the annual requirements contract for auto body shop repair services with Align Auto Collision & Painting of Arlington, Texas, in the estimated amount of $150,000, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in various citywide Departmental Fleet Non-target Repair accounts.

9. Renewal of Annual Requirements Contract for Hot-Mix Asphaltic Concrete, Bid Project 14-0009 **(MO#12012015-009)**
Authorize the City Manager or his designee to exercise the second of four one-year renewal options in the annual requirements contracts for hot-mix asphaltic concrete with Reynolds Asphalt & Construction Company of Euless, Texas, in the estimated amount of $827,250 and JLB Contracting, L.P. of Fort Worth, Texas, in the estimated amount of $825,000, for a total estimated amount of $1,652,250, and execute any and all documents necessary to carry out such renewals. Funds are budgeted in Street Maintenance Sales Tax Account No. 720101-63132.

10. Renewal of Annual Requirements Contract for Supply and Delivery of Paper, Bid Project 12-0005 **(MO#12012015-010)**
Authorize the City Manager or his designee to exercise the fourth and final, one-year renewal option in the contract for the supply and delivery of printing paper with Western-BRW Paper Co., Inc. of Arlington, Texas, in the estimated amount of $200,367.46, and execute any and all documents necessary to carry out such renewal. Funds are budgeted in Knowledge Services Account No. 180201-60026.

11. Annual Requirements Contract for Pavement Leveling Services, Bid Project 16-0047 **(MO#12012015-011)**
Authorize the City Manager or his designee to approve an annual requirements contract for pavement leveling services with Nortex Concrete Lift and Stabilization, Inc. of Fort Worth, Texas, through an interlocal cooperative purchasing agreement with the City of Grand Prairie in the estimated amount of $100,000, and execute any and all documents necessary to carry out such contract. Funds are budgeted in Public Works Street Maintenance

Account No. 720101-63132.

12. Annual Requirements Contract for Audio Books, Bid Project 16-0022 **(MO#12012015-012)**
Authorize the City Manager or his designee to execute an annual requirements contract for the sole-source purchase of audio books with Recorded Books, LLC of Prince Frederick, Maryland, in the estimated amount of $75,000. This purchase is exempt from the competitive bidding statutes in accordance with the Texas Local Government Code, Section 252.022 as sole-source procurement. Funds are budgeted in Library Books Account No. 960301-60015.

13. Construction Contract for Miracle Field Shade Improvements, Project No. PKPL-16001 **(MO#12012015-013)**
Authorize the City Manager or his designee to execute a construction contract with Hutcherson Construction, Inc. of Arlington, Texas for construction of Miracle League Field shade improvements in the amount of $76,200. Funding is available in Parks and Recreation Bond Account No. 508501-68101-53420598.

14. Change Order No. 1 - Implementation of Phase II of the Energy Efficiency Program, Bid Project 16-0040

a. Authorize the City Manager or his designee to execute Change Order No. 1 for the implementation of Phase II to the Energy Efficiency Program with OpTerra Energy Services through an Interlocal Agreement for Cooperative Purchasing with the Dallas County Schools d/b/a Texserve in the amount of $3,356,770. **(MO#12012015-014)**

b. Authorize the City Manager or his designee to execute an agreement for the financing of Phase II of the Energy Efficiency Program to be engineered, designed, constructed and commissioned by OpTerra Energy Services with Banc of America in the amount of $3,285,570. The project cost is different from the amount financed because of $71,200 worth of incentives. The financing is cost less incentives. **(MO#12012015-015)**

Change Order No. 1 for the implementation of Phase II will extend the original contract terms from 15 years to 17 years and increase the total contract amount from $10,520,980 to $13,877,750.

Financing for the Energy Efficiency Program will be provided through a 17-year lease purchase agreement with Banc of America. Annual payments for the lease purchase period are guaranteed through cost-savings realized through Energy Efficiency Program measures.

B. Consent Agenda Resolutions

1. Brownfields Assessment Grants
A resolution authorizing the submission of a grant application to the U.S. Environmental Protection Agency's Brownfields Program for a communitywide assessment grant for hazardous substances and petroleum, and authorizing the execution of documents relative

to the submission, later acceptance and administration of such grant funds.

RESOLUTION NO. 15-294

2. Cottonwood Creek and Fish Creek Flood Protection Plan
A resolution adopting the Cottonwood Creek and Fish Creek Flood Protection Plan and the amended hydrologic and hydraulic models.

RESOLUTION NO. 15-295

3. Bethesda Water Supply Corporation Sale Agreement
A resolution authorizing the execution of an Interlocal Agreement with the Bethesda Water Supply Corporation for the sale and delivery of treated water.

RESOLUTION NO. 15-296

4. CJD Body-Worn Camera Program Grant Application
A resolution authorizing the submission of a preliminary application to the Criminal Justice Division of the Office of the Governor for funding assistance for implementation of a body-worn camera program.

RESOLUTION NO. 15-297

5. Approval to Execute Handitran FY 14 FTA Grant Award Funds
A resolution authorizing the drawing down of funds provided by the Federal Transit Administration for funding assistance during FY 2014 for Capital and operating expenses for Handitran and authorizing the execution of documents relative to the drawing down of such grant funds.

Funds for the City's share ($690,464) are available in General Fund Account No. 100049632.

RESOLUTION NO. 15-298

6. Approval to Execute Handitran FY 15 FTA Grant Award Funds
A resolution authorizing the drawing down of funds provided by the Federal Transit Administration for funding assistance during FY 2015 for Capital and operating expenses for Handitran and MAX commuter bus service and authorizing the execution of documents relative to the drawing down of such grant funds.

Funds for the City's share ($830,069) are available in General Fund Account No. 100049632.

RESOLUTION NO. 15-299

VIII. ITEMS TO BE WITHDRAWN FROM THE CONSENT AGENDA

IX. CONSIDER AND VOTE ON WITHDRAWN ITEMS

X. PUBLIC HEARINGS: ORDINANCES FIRST READING AND/OR RESOLUTIONS

A. Public Hearing - Resolutions

1. Variance Appeal to the Alcohol Distance Requirements of the "Occupation Taxes" Chapter - AV15-1
   Following the public hearing, consider a resolution authorizing a variance to the distance requirements of the "Occupation Taxes and Licenses" Chapter of the Code of the City of Arlington, relative to allowing the sale of alcoholic beverages within three hundred feet (300') of a church, public school, public hospital, or a private school.

   RESOLUTION
   A resolution authorizing a variance to the distance requirements for the sale of alcohol for off-premise consumption at Hawk's Pantry, located at 1606 West Randol Mill Road, Arlington, Texas, pursuant to Section 1.04 of the Occupation Taxes Chapter of the Code of the City of Arlington.

The public hearing regarding Variance Appeal to the Alcohol Distance Requirements of the "Occupation Taxes" Chapter - AV15-1 opened at 6:44 p.m. Jim Parajon, Deputy City Manager, presented the proposed resolution. The following individuals appeared in support of the proposed resolution: Staci Johnson, 101 E. Park Blvd., Suite 600, 75014, and Khawaja H. Haque, 2688 Pinnacle Dr., 76028.

Councilmember R. Shepard made a motion to continue to the December 15, 2015 meeting a resolution authorizing a variance to the distance requirements for the sale of alcohol for off-premise consumption at Hawk's Pantry, located at 1606 West Randol Mill Road, Arlington, Texas, pursuant to Section 1.04 of the Occupation Taxes Chapter of the Code of the City of Arlington. Seconded by Councilmember S. Capehart, the motion carried with 9 ayes and 0 nays.

CONTINUED

XI. ORDINANCES - FIRST AND/OR FINAL READINGS

A. Ordinances- First Reading

1. Ordinance Granting Gas Franchise to Atmos Energy Corporation
   First reading of an ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which

such franchise shall be exercised; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date.

David Barber, Assistant City Attorney, presented the proposed ordinance to Council. There was one individual registered in support of the proposed ordinance.

Councilmember S. Capehart made a motion to approve first reading of an ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date. Seconded by Councilmember R. Shepard, the motion carried with 9 ayes and 0 nays.

FIRST READING

XII. ANNOUNCEMENTS

XIII. CITIZEN PARTICIPATION

There being no further business, the meeting adjourned at 7:25 p.m.

APPROVED:

W. Jeff Williams

ATTEST:

Mary W. Supino, City Secretary

Staff Report

Execute Contract for Group Medical Plan Stop Loss Insurance Coverage	
City Council Meeting Date: 12-15-2015	Action Being Considered: Minute Order

RECOMMENDATION

Authorizing the City Manager or his designee to negotiate and execute a one year agreement for an excess risk policy (stop loss insurance) for medical and pharmacy claims under the City health insurance plan with Berkley Accident and Health of Hamilton Square, NJ in the estimated amount of $488,299.

PRIOR BOARD OR COUNCIL ACTION

On October 29, 2013, Council approved a contract with McGriff, Seibels and Williams to act as the City's Benefits Consultant, including procurement of insurance products. In previous years, stop loss insurance coverage was provided through Reliastar Life Insurance Company dba Voya Financial, and approved by Council.

ANALYSIS

McGriff, Seibels & Williams requested bids from nine (9) firms experienced in stop loss insurance coverage for City of Arlington employees and retirees. Four (4) responses were received ranging from an 11.95% decrease in current premium to a 25.27% increase. Current carrier, Reliastar Life Insurance Company dba Voya Financial, presented a best and final offer bid estimated at $543,508 based on a composite per member per month of $17.72, which is a decrease in current premium estimate of 1.99%. Customer service for the excess risk policy will remain through Stealth Business Partners, resulting in no significant claims processing impact to the City. Berkley Accident and Health presented a best and final offer bid estimated at $488,299 based on a composite per member per month of $15.92, which is a decrease in current premium estimate of 11.95%. Therefore, staff recommends contracting with Berkley Accident and Health for plan year 2016 for a term of one year estimated at $488,299.

FINANCIAL IMPACT

The benefits consultant negotiated contract terms resulting in savings of $66,000 to the Group Health Fund Account. The projected financial impact is as follows:

FY 2016	FY 2017
$366,226	$122,073

Funds are budgeted in the Group Health Fund Account 520102-64021

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the City Secretary's Office:	None

STAFF CONTACT(S)

Kari Jo Zika
Director, Human Resources
817-575-8987
kari.zika@arlingtontx.gov

Staff Report

Purchase & Installation of LED Video Marquee Board, Bid Project 16-0046	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to approve the purchase and installation of a new LED video marquee board with Daktronics, Inc. through the Texas Local Government Purchasing Cooperative (TLGPC) in the estimated amount of $115,897.

PRIOR BOARD OR COUNCIL ACTION

On June 25, 2002, the City Council passed Resolution 02-314, authorizing the City of Arlington to participate in the TLGPC.

ANALYSIS

This purchase is for a new LED Video Marquee Board for the Arlington Convention Center and will replace the current Daktronics Marquee board which was purchased in 2007. The video/picture quality has dramatically decreased through general age, wear and tear, and weather damage. The option to replace all of the worn out or broken parts exist, however, it would cost more to replace the parts on the current marquee than to get a new marquee.

The new Marquee will have a higher resolution, displays more colors, can be viewed clearly at a closer distance, fully waterproof, and will be brighter. It has a 33% increase in the amount of pixels which means a higher resolution and a clearer picture, overall and up close. The new Marquee also uses an updated version of the software on our current board which allows for an easier operational transition.

FINANCIAL IMPACT

Daktronics, Inc. of Brookings, South Dakota, is under contract with the TLGPC and will provide the video board and the installation in the amount of $115,897. This is a one-time purchase; therefore, no financial impact is anticipated in future fiscal years directly related to this purchase.

FY 2016	FY 2017	FY 2018
$115,897	$0	$0

Funds are budgeted in the Convention Center 2016 Ancillary Projects Account No. 970107-63101.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid File
MWBE:	No

STAFF CONTACT(S)

Mark Wisness, Director
Convention Center
817-459-5000
Mark.Wisness@arlingtontx.gov

Will Velasco, CPPB
Purchasing Agent
817-459-6302
Will.Velasco@arlingtontx.gov

Mike Finley
Director of Finance
817-459-6345
Mike.Finley@arlingtontx.gov

Staff Report

Advance Funding Agreement for Interstate Highway IH-20/Bowen Road Texas U-Turn; Project No. PWST15006	
City Council Meeting Date: 12-15-2015	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the execution of a Local Project Advance Funding Agreement (LPAFA) with the Texas Department of Transportation (TxDOT), of Fort Worth, Texas, for construction of a Texas U-Turn for westbound to eastbound Interstate Highway IH-20 at Bowen Road in the estimated amount of $43,112.

PRIOR BOARD OR COUNCIL ACTION

On September 1, 2015, Council approved Minute Order No. MO09012015-008 authorizing the execution of an Engineering Services contract with AECOM Technical Services, Inc., of Fort Worth, Texas, for the design of New York Avenue realignment and connection to State Highway SH 360 and design of a Texas U-Turn at the intersection of IH-20 and Bowen Road in an amount not to exceed $436,594.

ANALYSIS

The 2014 Bond Election included funding for design and construction of a Texas U-Turn at the intersection of Interstate Highway IH-20 and Bowen Road.

The Texas U-Turn for westbound to eastbound IH-20 at Bowen Road is currently under design by AECOM Technical Services, Inc. This project is 100 percent locally funded; however, because the project is in the right-of-way for Interstate Highway IH-20 it will be designed to TxDOT standards and the construction will be administered and inspected by TxDOT. Projects of this nature require review of the design by TxDOT to ensure compliance with their standards and requirements. TxDOT also requires a LPAFA which includes a provision for the City of Arlington to reimburse TxDOT for expenses incurred in reviewing the plans, construction administration, and inspection estimated to be $43,112.

FINANCIAL IMPACT

An advance payment of $9,487 for design and compliance review was requested with the transmittal of the LPAFA. Approximately 60 days prior to construction letting, TxDOT will make another request for advanced payment balance of $33,625 for construction administration and inspection; and preliminary construction cost which is estimated at $250,000.

The funds are available in Street Bond Fund Account No. 358504-61043-65680698.

FY 2016	FY 2017	FY 2018
$43,112	$283,625	$0

ADDITIONAL INFORMATION

Attached:	Advance Funding Agreement with Attachments
Under separate cover:	None
Available in the City Secretary's Office:	None

STAFF CONTACT(S)

Keith Melton, P.E.
Director of Public Works
and Transportation
817-459-6553
Keith.Melton@arlingtontx.gov

David G. Wynn, P.E.
Assistant Director of Public Works
and Transportation
817-459-6560
David.Wynn@arlingtontx.gov

CSJ # 2374 – 05 – 082
District # 02 – Fort Worth
Code Chart 64 #01750
Project: Texas U-Turn for Westbound to Eastbound IH-20 at Bowen Road
Federal Highway Administration
CFDA # 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT For A Non - Traditionally Funded Transportation Project (Local Contribution Project) On-System

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the **City of Arlington**, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order Number **#114264,** that provides for the development of, and funding for, the Project described herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A for the development of the Project. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. **Period of the Agreement**
   The period of this LPAFA is as stated in the Master Agreement, without exception.

2. **Termination of this LPAFA**
   Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. This LPAFA may be terminated by the State if the Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

3. **Amendments**
   Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

4. **Scope of Work**
   The scope of work for this LPAFA is described as **Design and Construction of a Texas U-Turn for Westbound to Eastbound on IH-20 at Bowen Road.**

5. **Right of Way and Real Property**
   Right of way and real property shall be the responsibility of the Local Government as stated in the Master Agreement, without exception.

6. **Utilities**
   Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement, without exception.

7. **Environmental Assessment and Mitigation**
   Environmental assessment and mitigation will be carried out as stated in the Master Agreement. Additionally, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

8. **Compliance with Texas Accessibility Standards and ADA**
   Compliance with Texas Accessibility Standards and the Americans with Disabilities Act (ADA) will be as stated in the Master Agreement, without exception.

9. **Architectural and Engineering Services**
   Architectural and engineering services will be provided by the State as stated in the Master Agreement. The State is responsible for performance of any required architectural or preliminary engineering work. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by State and Federal law.

10. **Construction Responsibilities**
    Construction responsibilities will be carried out by the State as stated in the Master Agreement.

11. **Project Maintenance**
    Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

12. **Local Project Sources and Uses of Funds**
    A. A Project Budget Estimate is provided in Attachment C. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local

Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for one hundred percent (100%) of the cost of any work performed under its direction or control before the Federal spending authority is formally obligated.

B. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

C. A Source of Funds estimate based on the Transportation Improvement Program (TIP) is also provided in Attachment C. Attachment C shows the percentage and estimated dollar amount to be contributed to the project by federal, state, and local sources. The parties agree that the LPAFA may be amended from time to time as required to meet the funding commitments based on revisions to the TIP, Federal Project Authorization and Agreement (FPAA), or other federal document.

D. The Local Government is responsible for all non-federal and non-state funding, unless otherwise provided for in this agreement or through amendment of this agreement. Where a Special Approval has been signed by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.

E. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.

F. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. Funds may only be applied by the State to the Project. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

G. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total

expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

H. When a Special Approval has been signed by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification of those amounts.

I. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Any entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

J. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

K. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

13. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

14. Incorporation of Master Agreement Provisions

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless an exception has been made in this agreement.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

17. Cost Principles and Office of Management and Budget (OMB) Audit Requirements

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

18. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
Director of Public Works & Transportation **City of Arlington** **101 W. Abram Street** **Arlington, Texas 76004-3231**	**Director of Contract Services Office** **Texas Department of Transportation** **125 E. 11th Street** **Austin, Texas 78701**

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

19. Civil Rights Compliance

The Local Government shall comply with the regulations of the U.S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order

11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

20. Disadvantaged Business Enterprise (DBE) Program Requirements

A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.

B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.

C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

21. Federal Funding Accountability and Transparency Act Requirements

A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf and http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf

B. The Local Government agrees that it shall:

1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than $25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: https://www.sam.gov/portal/public/SAM/
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website http://fedgov.dnb.com/webform; and
3. Report the total compensation and names of its top five (5) executives to the State if:
   i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than $25,000,000; and
   ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

22. Single Audit Report

A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.

B. If threshold expenditures are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/inside-txdot/office/audit/contact.html. The expenditure threshold for fiscal years beginning prior to December 31, 2014 is $500,000; the expenditure threshold for fiscal years beginning on or after December 31, 2014 is $750,000.

C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the $_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

23. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Date

THE STATE OF TEXAS

_____
Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

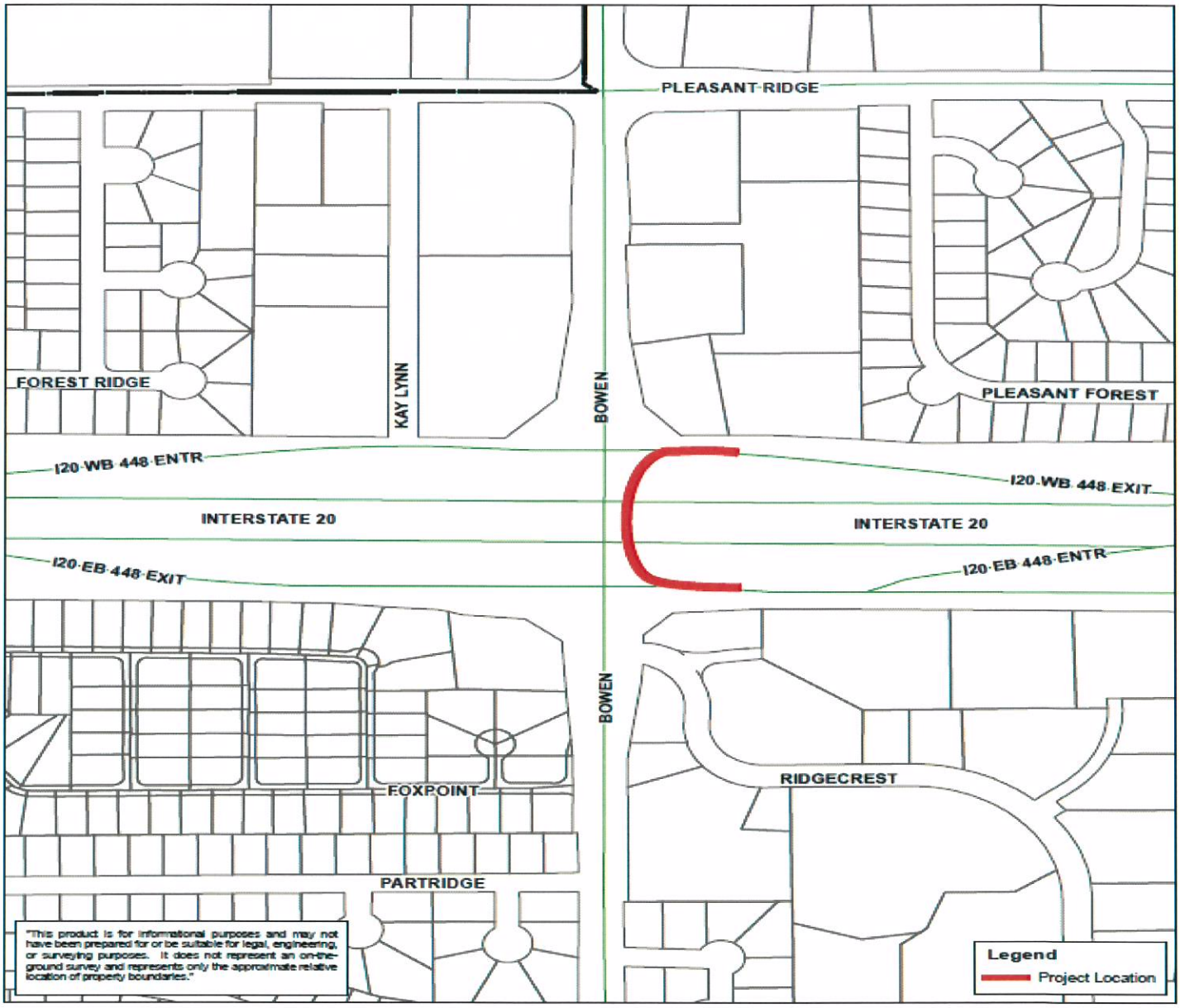
_____
Date

CSJ # 2374 – 05 – 082
District # 02 – Fort Worth
Code Chart 64 #01750
Project: Texas U-Turn for Westbound to Eastbound IH-20 at Bowen Road
Federal Highway Administration
CFDA # 20.205
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE

CSJ # 2374 – 05 – 082
District # 02 – Fort Worth
Code Chart 64 #01750
Project: Texas U-Turn for Westbound to Eastbound IH-20 at Bowen Road
Federal Highway Administration
CFDA # 20.205
Not Research and Development

ATTACHMENT B
PROJECT LOCATION MAP



IH-20 at Bowen Road Texas U-Turn
Project No. PWST15005
Location Map

ARLINGTON
THE AMERICAN DREAM CITY
Prepared By:
PWT Engineering Operations
7/8/2015

CSJ # 2374 – 05 – 082
District # 02 – Fort Worth
Code Chart 64 #01750
Project: Texas U-Turn for Westbound to Eastbound IH-20 at Bowen Road
Federal Highway Administration
CFDA # 20.205
Not Research and Development

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

Costs will be allocated based on 0% Federal funding and 100% Local Government funding until the federal funding reaches the maximum obligated amount.

The Local will then be responsible for 100% of the costs.

Description	Total Estimated Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Environmental (by Local)	$ 13,308.00			100%	$13,308.00
Engineering (by Local)	$ 176,438.00			100%	$ 176,438.00
Construction (by State)	$ 250,000.00			100%	$ 250,000.00
Subtotal	$ 439,746.00			100%	$ 439,746.00
Environmental Direct State Costs	$ 665.00			100%	$ 665.00
Engineering Direct State Costs	$ 8,822.00			100%	$ 8,822.00
Construction Direct State Costs	$ 33,625.00			100%	$ 33,625.00
Indirect State Costs	$ 25,241.00	100%	$ 25,241.00		
TOTAL	$ 508,099.00	$ 25,241.00		$ 482,858.00	

Initial payment by the Local Government to the State: **$ 9,487.00**
Payment by the Local Government to the State before construction: **$ 33,625.00**
Estimated total payment by the Local Government to the State **$43,112.00**
This is an estimate. The final amount of Local Government participation will be based on actual costs.

Staff Report

Construction Contract for Unity Arch, Project No. PKPL-13306	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute a construction contract with Raydon, Inc. of Breckenridge, Texas for construction of the plaza for the Unity Arch in the amount of $266,663. Funding is available in Parks Capital Fund Account no. 501801-68101-53450598 ($49,744), Convention Center Arts and Revitalization Account no. 970104-68002 ($150,000) and TIRZ 5 Account no. 488501-68101-92260103 ($66,919).

PRIOR BOARD OR COUNCIL ACTION

On November 18, 2014, City Council authorized the City Manager or his designee to execute a license and use agreement with Ballpark Parking Partners, LLC. of Arlington, Texas for the placement of a sculpture and landscaping to be installed within the Entertainment District Sculpture Trail.

On May 27, 2014, City Council authorized the City Manager or his designee to execute a contract with Morrel Studios Inc. of Peconic, New York for a sculpture to be installed within the Entertainment District Sculpture Trail in the amount of $235,000.00.

On June 18, 2013, City Council authorized the City Manager or his designee to execute a contract with Schrickel, Rollins and Associates of Arlington, Texas for the development of a master plan for the Sculpture Trail in the amount of $68,000.

ANALYSIS

In 2011, the Arlington Convention and Visitors Bureau assisted the City in developing a plan to memorialize Entertainment District events with a sculpture trail. The proposed trail will add to the existing foundation of community art and capture the excitement of historically significant moments. The project will also deepen the City's arts brand, stimulate tourism and strengthen occupancy tax revenue. Approximately 15-20 strategically positioned sculpture sites have been identified for Richard Greene Linear Park and Dr. Robert Cluck Linear Park. These sites will provide a variety of display options so that each sculpture tells a unique story.

The city collaborated with Morrel Studios Inc. on the development of a sculpture called Unity Arch. The sculpture is complete and will be placed by the artist once the foundation has been installed. The Parks and Recreation Department along with Ballpark Parking Partners, LLC and the Texas Rangers have identified a location for the placement of Unity Arch. The proposed sculpture site is at the corner of AT&T Way and Nolan Ryan Expressway. The Parks and Recreation Department has negotiated a license and use agreement with Ballpark Parking Partners, LLC for the placement of the artwork.

The project consists of preparing the site/plaza for the Unity Arch Sculpture to be installed. The scope of work includes constructing the sculpture pad and implementing other site work such as earthwork, grading, concrete flatwork and steps, planter beds, lighting, landscape and irrigation.

The construction contract includes the base bid and three alternates. Alternate one allows for a $5,000 owner's contingency, alternate two provides the use of Green Cement and alternate four includes the installation of decorative lighting.

Date of Bid:	December 1, 2015
Number of Bids Received:	3
Number of Bids from Arlington Firms:	1
Bidder Prequalification:	No
Project Estimate:	$110,951
Range of Bids:	$266,663 - $322,100
Recommended Low Bidder:	Raydon, Inc.
Contract time:	90 calendar days

Vendor	Total	MWBE
Raydon, Inc.	$266,663	No
Site Planning Site Development, Inc.	$317,304	No
Henneberger Construction, Inc.	$322,100	Yes – MO/WO

*MO – Minority Owned
WO – Woman Owned

FINANCIAL IMPACT

Raydon, Inc. is the recommended low bidder in the amount of $266,663. Funding is available in Parks Capital Fund Account no. 501801-68101-53450598 ($49,744), Convention Center Arts and Revitalization Account no. 970104-68002 ($150,000) and TIRZ 5 Account no. 488501-68101-92260103 ($66,919).

	FY 2016	FY 2017	FY 2018
Construction	$266,663	$0	$0
Operation and Maintenance	$0	$3,900	$7,185

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the City Secretary's office:	None
MWBE:	No

STAFF CONTACT(S)

Lemuel Randolph
Director, Parks & Recreation
817-459-5479
Lemuel.Randolph@arlingtontx.gov

Gary Packan
Assistant Director
817-459-5496
Gary.Packan@arlingtontx.gov

Staff Report

Construction Contract for Julia Burgen Park Development, Project No. PKPL-13007	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute a construction contract with 2L Construction, LLC of Rhome, Texas for Julia Burgen Park Development in the amount not to exceed $1,734,689. Funding is available in Parks Bond Fund Account No. 508503-68101-53440599 ($1,000,000) and Parks Capital Account No. 508501-68101-53490598 ($734,689).

PRIOR BOARD OR COUNCIL ACTION

On March 18th, 2014, the City Council passed MO#03182014-005, authorizing the City of Arlington to hire Halff Associates Inc. of Richardson, Texas for design services related to the preparation of a revised master plan and construction documents for phase one development of Julia Burgen Linear Park, for an amount not to exceed $124,700.

ANALYSIS

Julia Burgen Linear Park is a 67-acre property located in central Arlington along Johnson Creek. The park was created when the City of Arlington and the US Army Corps of Engineers organized a voluntary buy-out of 140 homes in the floodplain of the creek. The primary goals of the City's linear park system are to preserve the floodplain for the conveyance of storm water, protection and restoration of environmental resources, and use as a passive recreational resource. The proposed development in the linear park will benefit citizens living in central Arlington and UTA communities. Funding for these improvements was approved in the 2008 park bond program.

The scope includes demolition and removal of abandoned concrete paving/roadways and infrastructure, construction of a gated parking lot with lighting, concrete hike/bike trail, a playground for two age groups (2-5yrs and 5-12yrs), benches, picnic tables, trash receptacles, bicycle racks, water fountain, park monument sign, irrigation system and landscaping.

The contract includes the base bid and five alternates. Alternate one allows for installation of a pavilion with picnic tables and trash receptacles. Alternate two allows for installation of new playground equipment for two age groups with swings. Alternate three is a new park entry sign along Mitchell Street. Alternate four includes a $50,000 owner's contingency and alternate five provides for the use of green cement.

Date of Bid:	November 23, 2015
Number of Bids Received:	4
Number of Bids from Arlington Firms:	0
Bidder Prequalification:	No
Project Estimate Base Bid:	$2, 572,234.92
Range of Bids:	$1, 734,689.00 - $2,445,561.33
Recommended Low Bidder:	2L Construction, LLC
Contract time:	360 calendar days

Vendor	Total	MWBE
2L Construction, LLC, Rhome, Texas	**$1,734,689.00**	**No**
Fain Group, Fort Worth, Texas	**$2,004,837.86**	**No**
North Rock Construction, Denton, Texas	**$2,249,632.54**	**No**
Raydon Construction, Breckenridge, Texas	**$2,445,561.33**	**No**

FINANCIAL IMPACT

Funds are available in Parks Bond Fund Account No. 508503-68101-53440599 ($1,000,000) and Parks Capital Account No. 508501-68101-53490598 ($734,689). The anticipated annual General Fund maintenance impact for this project is estimated below.

	FY 2016	FY 2017	FY 2018
Construction	$1,734,689	$0	$0
Annual Maintenance	$0	$12,000	$12,400

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing office:	None
MWBE:	No

STAFF CONTACT(S)

Lemuel Randolph, Director
Parks & Recreation
817-459-5479
Lemuel.Randolph@arlingtontx.gov

De'Onna Garner, Parks Planning Manager
Parks & Recreation
817-459-6937
Deonna.Garner@arlingtontx.gov

Staff Report

Design Contract for Bowman Branch Linear Park Trail, Project No. PKPL-11002	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorizing the City Manager or his designee to execute a consultant services contract with Klotz Associates of Fort Worth, Texas for design documents for Bowman Branch Linear Park Trail in the amount not to exceed $149,390. Funding is available in Park Bond Account No. 508503-53010599-61043.

PRIOR BOARD OR COUNCIL ACTION

None

ANALYSIS

Bowman Branch Linear Park is a 153.7-acre property located in southeast Arlington. This project will provide a design to extend the existing trail in Webb Community Park approximately 1.4 miles east to New York Avenue. The trail will help connect neighborhoods and also provide safe pedestrian routes to and from schools, including Thelma Jones Elementary School and Timberview High School in southeast Arlington.

In addition to connectivity, the new concrete trail will provide a multi-purpose surface for a variety of recreational activities such as walking, jogging, biking, and in-line skating. The project includes a 12 foot-wide concrete trail, three pedestrian bridges over Bowman Branch, retaining walls, benches, and way finding signage.

The proposed contract with Klotz Associates will include professional planning, surveying, engineering, and landscape architectural services for design, construction documents, bidding, and construction administration for development of the Bowman Branch Linear Park Trail.

FINANCIAL IMPACT

Funding for this contract, in the amount of $149,390 is available in Park Bond account 508503-53010599-61043. There is no General Fund operating budget impact associated with this phase of work.

FY 2016	FY 2017	FY 2018
$149,390	$0	$0

ADDITIONAL INFORMATION

Attached:	Consultant Contract
Under separate cover:	None
Available in the City Secretary's office:	N/A

STAFF CONTACT(S)

Lemuel Randolph
Director of Parks and Recreation
817-459-5479
lemuel.randolph@arlingtontx.gov

De'Onna Garner
Parks Planning Manager
817-459-6937
deonna.garner@arlingtontx.gov

THE STATE OF TEXAS §

COUNTY OF TARRANT §

Consultant Services Contract

This Consultant Services Contract is entered into this _____day of_____, 2015, between Klotz Associates**,** hereinafter referred to as "CONSULTANT" and the **CITY OF ARLINGTON, TEXAS,** a municipal corporation of the State of Texas, hereinafter referred to as "CITY," acting by and through its City Manager or his designee.

W I T N E S S E T H:

WHEREAS, CITY desires assistance in the preparation of plans and construction documents for the Bowman Branch Linear Park Trail and

WHEREAS, CONSULTANT is qualified and capable of performing the professional planning, surveying, engineering, and landscape architectural services proposed herein and is willing to enter into this Contract with CITY to perform said services; NOW THEREFORE,

In consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.
Employment of Consultant

For and in consideration of the covenants herein contained, CONSULTANT hereby covenants and agrees as an independent contractor, to perform the services herein described with diligence and in a manner consistent with the level of care and skill normally exercised for such professional planning, engineering, surveying, and landscape architectural services in the State of Texas. CONSULTANT agrees to perform professional planning, surveying, engineering, and landscape architectural services in connection with the Project as set forth below, and CITY agrees to pay, and CONSULTANT agrees to accept, fees as set forth in this Contract as full and final compensation for all services performed under this Contract. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards. CONSULTANT shall provide professional planning, surveying, engineering, and landscape architectural services to provide plans and construction documents for the Bowman Branch Linear Park Trail, being located within the City of Arlington, Tarrant County, Texas, and hereinafter referred to as the "Project."

II.
Payment for Services

Total payment for services described herein for the Project shall be a sum not to exceed One Hundred Forty Nine Thousand Three Hundred Ninety Dollars and Zero Cents ($149,390.00). Payments shall be made as set forth in Exhibit "A." No interest shall ever be due on late payments. Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract. CITY will not be required to make any payments to CONSULTANT when CONSULTANT is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance under this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

III.
Character and Extent of Consulting Services

A. CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering or landscape architectural profession(s), both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards. CONSULTANT will provide professional services necessary for the work described in Exhibit "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Exhibit "A" the terms and conditions of this Professional Services Contract shall be final and binding upon both parties hereto.

B. It is agreed and understood that this Contract contemplates the full and complete professional planning, surveying, engineering, and landscape architectural services for the Project including changes necessary to complete the Project as outlined herein. CONSULTANT acknowledges by the execution of this Contract that all contingencies known to CONSULTANT and CITY at the date of this Contract, as may be deemed necessary and proper to complete the assignment, have been included in the fee stated herein. CONSULTANT will advise CITY as to the necessity of CITY's providing or obtaining from others special services and data required in connection with the Project (which services and data CONSULTANT is not to provide hereunder). Nothing contained herein shall be construed as authorizing additional fees for services to complete the plans, specifications, inspections, tests, easements and permits necessary for the successful completion of the Project.

IV.
Time for Completion

A. CONSULTANT agrees to complete and submit all work required by CITY within ninety (90) calendar days.

B. Construction Administration and Observation shall be completed upon final payment and receipt of documents from contractor.

Calendar days shall commence when CONSULTANT is notified to proceed and shall terminate when CITY has accepted the plans as being final. No extensions of time shall be granted unless CONSULTANT submits a written request, and CITY approves such request in writing.

V.
Revisions of Schematic Drawings

CITY reserves the right to direct substantial revision of the schematic drawings after acceptance by CITY as CITY may deem necessary, but in such event CITY shall pay CONSULTANT equitable compensation for services rendered in making such revisions. In any event, when CONSULTANT is directed to make substantial revisions under this Section of the contract, CONSULTANT shall provide to CITY a written proposal for the entire costs involved in the revisions. Prior to CONSULTANT undertaking any substantial revisions as directed by CITY, CITY must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

If revisions of the final schematic drawings are required by reason of CONSULTANT'S error or omission, then such revisions shall be made by CONSULTANT without additional compensation to the fees herein specified, and in a time frame as directed by CITY.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Section II., "Payment for Services," may require Arlington City Council approval and is subject to funding limitations.

VI.
Consultant's Coordination with Owner

CONSULTANT shall be available for conferences with CITY so that Project can be designed with the full benefit of CITY'S experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. CITY shall make available to CONSULTANT all existing plans, maps, field notes, and other data in its possession relative to the Project. CONSULTANT may show justification to CITY for changes in design from CITY standards due to the judgement of said CONSULTANT of a cost savings to CITY and/or due to the surrounding topographic conditions. CITY shall make the final decision as to any changes after appropriate request by CONSULTANT.

VII.
Termination

This contract may be terminated at any time by CITY for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by CITY, CONSULTANT shall immediately discontinue all services and CONSULTANT shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract. As soon as practicable after receipt of notice of termination, CONSULTANT shall submit a statement, showing in detail the services performed but not paid for under this contract to the date of termination. CITY shall then pay CONSULTANT promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by CITY.

This contract may be terminated by CONSULTANT with mutual consent of CITY at any time for any cause without penalty or liability except as may otherwise be specified herein. CONSULTANT shall submit written notice to terminate contract and shall submit to CITY all plans and documents relative to the design of Project. CITY shall then ascertain cost to complete the balance of the work under this contract. If the cost to complete the balance of the work is greater than the unpaid contract amount, CITY shall retain all unpaid balances and, in addition, CONSULTANT shall pay directly to CITY the difference in the unpaid balance and the cost to complete the work. In no case shall CITY pay CONSULTANT any additional monies other than those previously paid under the contract.

VIII.
Ownership of Documents

All drawings, specifications, and other documents or instruments of professional services prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use. CONSULTANT shall retain in its files all original drawings, specifications, documents or instruments of professional services as well as all other pertinent information for the work. CONSULTANT shall have no liability for re-use on other projects and/or changes made to the drawings and other documents by other consultants subsequent to the completion of the contract. CITY shall require that any such change be sealed, dated, and signed by the engineer or landscape architect making that change and shall be appropriately marked to reflect what was changed or modified.

IX.
Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by CITY, nor shall the CONSULTANT allow any sub-

consultant to commence work on its own subcontract until all similar insurance of the sub-consultant has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis, except as may be otherwise provided herein below. The insurance requirements shall remain in effect throughout the term of this Contract.

1. Worker's Compensation Insurance, as required by law; with the policy endorsed to provide a waiver of subrogation as to the CITY, Employers Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease-each employee, $1,000,000 disease-policy limit.

2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Contract, fully insuring CONSULTANT's liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of $1,000,000 per occurrence.

3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of $1,000,000 per occurrence.

4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be $1,000,000 per claim. The coverage under this policy shall include a contractual liability endorsement. CONSULTANT must maintain this policy for a period of four (4) years after the completion of the project or shall purchase the extended reporting period or “tail” coverage insurance providing equivalent coverage for the same period of time.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy:

1. Name CITY as an additional insured as to all applicable coverage(s) except Worker's Compensation and Employer’s Liability Insurance and Professional Liability Insurance;

2. Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail to:

Risk Manager
City of Arlington
Post Office Box 90231
Arlington, Texas 76004-3231

If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to CITY is required;

3. The term “Owner” or “CITY” shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of CITY and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of CITY;

4. The policy phrase “other insurance” shall not apply to CITY where CITY is an additional insured on the policy; and

2. All provisions of the Contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by CONSULTANT. The CITY's decision thereon shall be final; and,

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CITY, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against CITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by CITY regarding any insurance supplied by CONSULTANT (or any sub-consultants) shall not relieve CONSULTANT of full responsibility or liability, if any, for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability;

4. No special payments shall be made for any insurance that CONSULTANT and subcontractors, if any, are required to carry; all are included in the contract price and the contract unit prices; and

5. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby. CITY's Risk Manager reserves the right to review the insurance requirements stated in this Contract during the effective period.

X.
Monies Withheld

When CITY has reasonable grounds for believing that:

A. CONSULTANT will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or

B. A claim exists or will exist against CONSULTANT or CITY arising out of the negligence of the CONSULTANT or the CONSULTANT'S breach of any provision of this contract; then CITY may withhold payment of any amount otherwise due and payable to CONSULTANT under this contract. Any amount so withheld may be retained by CITY for that period of time as it may deem advisable to protect CITY against any loss and may, after written notice to CONSULTANT, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of CITY by reason of CITY'S failure or refusal to withhold monies. No interest shall be payable by CITY on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of CITY.

XI.
No Damages for Delays

Notwithstanding any other provision of this contract, CONSULTANT shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

XII.
Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses

In performing this Contract, CONSULTANT agrees to use diligent efforts to purchase all goods and services from Arlington Businesses whenever such goods and services are comparable in availability, quality, and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons in organizations proposed for work on this Contract, the CONSULTANT agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

CONSULTANT agrees to provide information about its minority status at time of contract execution. City will provide a Data Gathering Form with the award letter. CONSULTANT will also be required to submit cost information toward Minority/Women Business Enterprises. The information submitted shall include the CONSULTANT and any other firms performing work as a part of this contract, such as surveying services. See attached form. CONSULTANT will be required to submit this form with anticipated dollar amounts (if applicable) upon execution of the contract for this project and to resubmit the same form with actual costs spent prior to final payment of this contract.

XIII.
Right to Inspect Records

CONSULTANT agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits.

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subconsultant or consultant agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subconsultant involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. CITY shall give the consultant or subconsultant reasonable advance notice of intended audits.

XIV.
No Third-Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (CITY and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XV.
Successors and Assigns

CITY and CONSULTANT each bind themselves, their successors, executors, administrators and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XVI.
Consultant's Liability

Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents prepared by said CONSULTANT, its employees, subconsultants, agents and consultants.

XVII.
Indemnification

CONSULTANT does hereby covenant and contract to indemnify and hold harmless CITY and all of its officials, officers, agents, employees and invitees, in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including reasonable attorney fees of litigation and/or settlement, that may arise by reason of death of or injury to persons or damage to or loss of use of property occasioned by any wrongful intentional act or omission of CONSULTANT as well as any negligent omission, act or error of CONSULTANT, its officials, officers, agents, employees and invitees, or other persons for whom CONSULTANT is legally liable with regard to the performance of this Contract, whether said negligence is sole negligence, contractual comparative negligence, concurrent negligence or any other form of negligence. In the event of joint or concurrent negligence of CONSULTANT and CITY, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas. Nothing in this paragraph is intended to waive any governmental immunity available to CITY under Texas law or waive any defenses of CONSULTANT or CITY under Texas law. This paragraph shall not be construed for the benefit of any third party, nor does it create or grant any right or cause of action in favor of any third party against CITY or CONSULTANT.

CONSULTANT warrants that no music, literary or artistic work or other property protected by copyright will be reproduced or used, nor will the name of any entity protected by

trademark be reproduced or used by CONSULTANT unless CONSULTANT has obtained written permission from the copyright or trademark holder as required by law, subject also to CITY's consent. CONSULTANT covenants to comply strictly with all laws respecting copyrights, royalties and trademarks and warrants that it will not infringe any related statutory, common law or other right of any person or entity in performing this Contract. CONSULTANT will indemnify and hold CITY and its officers, agents and employees harmless from all claims, losses and damages (including reasonable attorney's fees) with respect to such copyright, royalty or trademark rights to the extent caused by CONSULTANT or for whom CONSULTANT is legally liable.

The provisions of this section are intended to only provide indemnification to the extent allowed by Texas Local Gov't Code Sec. 271.904 and shall be construed to that effect. The CONSULTANT as allowed by Texas Local Gov't Code Sec. 271.084 will still name CITY as additional insured in its General Liability Policy and provide any defense as allowed by the policy.

XVIII.
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XIX.
Independent Contractor

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

XX.
Disclosure

By signature of this Contract, CONSULTANT acknowledges to CITY that he/she has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. CONSULTANT further agrees that he/she will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

XXI.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Tarrant County, Texas.

XXII.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

XXIII.
Applicable Law

This Contract is entered into subject to the Arlington City Charter and ordinances of CITY, as same may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and Federal laws. Situs of this Contract is agreed to be Tarrant County, Texas, for all purposes, including performance and execution.

XXIV.
Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy, the cost to CITY of the performance of the balance of the work is in excess of that part of the contract sum which has not therefore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess.

XXV.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXVI.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVII.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVIII.
Equal Employment Opportunity

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, ancestry, national origin or place of birth. CONSULTANT shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, disability, ancestry, national origin or place of birth. This action 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 of training

including apprenticeship. Upon final determination by a court of competent jurisdiction that the CONSULTANT has violated this section, this Contract shall be deemed terminated and CONSULTANT 'S further rights hereunder forfeited.

XXIX.
Construction of Contract

Both parties have participated fully in the review and revision of this contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this contract.

XXX.
Title VI Requirements

Notification:

The City of Arlington, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

To be Included in Bid Documents and all contracts and subcontracts:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Arlington or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City of Arlington, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Arlington shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or

directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the City of Arlington or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of Arlington to enter into such litigation to protect the interests of the City of Arlington, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

XXXI.
Notices

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for CITY, to:

City of Arlington – Mail Stop 05-0100
ATTN: Lemuel Randolph
Director of Parks and Recreation
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for CONSULTANT, to:

Klotz Associates
ATTN: William R. Abbott, P.E.
Senior Vice President
9500 Ray White, Suite 216
Fort Worth, Texas, 76244

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

William R. Abbott, P.E.

BY: _____
Signature

WITNESS:

_____

William R. Abbott, P.E.
Tax Identification No. 76-0147348

CITY OF ARLINGTON, TEXAS

BY_____
Lemuel Randolph, Director
Parks & Recreation Department

ATTEST:

_____
Mary Supino,
City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____

THE STATE OF TEXAS §

COUNTY OF DALLAS §

Consultant Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared William R. Abbott, P.E., who is known to me or who was proved to me on the oath of _____ (name of person identifying the acknowledging person) or who was proved to me through _____ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **Klotz Associates,** a _____ of Tarrant County, Texas, and as _____ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

_____ _____
My Commission Expires Notary's Printed Name

THE STATE OF TEXAS §

COUNTY OF TARRANT §

City Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Lemuel Randolph**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **City of Arlington, Texas**, a municipal corporation of Tarrant County, Texas, and as the Director of the Parks & Recreation Department thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

_____ _____
My Commission Expires Notary's Printed Name

FOR MINORITY AND/OR WOMAN OWNED
BUSINESS ENTERPRISES
(To be completed only if applicable)

Minority and/or Woman Owned Business Enterprises are encouraged to participate in Arlington's procurement process. In order to be identified as a Qualified Minority and/or Woman Owned Business Enterprise in the City of Arlington, this form, along with a copy of your certification, must be returned to the RFQ Contact in the City of Arlington Community Development and Planning Department. You should return these documents with this response, or if you have already submitted this form and a copy of your certification to the Purchasing Division, it is not necessary to re-send certification.

COMPANY NAME: _____

REPRESENTATIVE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

EMAIL: _____

TELEPHONE NO.: _____**FAX NO.:** _____

INDICATE ALL THAT APPLY

_____ Minority Owned Business Enterprise

_____Woman Owned Business Enterprise

MINORITY STATUS: Has this firm been certified as a minority, women or disadvantaged business enterprise by any governmental agency?
____Yes No ____ if yes, please specify government agency:

_____

Date of certification: _____

The above information is for information only. The City of Arlington encourages minority business participation; however no preferences shall be given.

MINORITY/WOMEN BUSINESS ENTERPRISE (MWBE)
DATA GATHERING FORM
(CONSULTANT SERVICES CONTRACT)

The City of Arlington is gathering data on MWBE businesses. In order to be identified as a certified Minority/Woman Business Enterprise (MWBE) in the City of Arlington, please complete this form, include copy of your Certification and return with your RFQ documents. Please note that this data is for information only.

Name of Consultant: _____

Is Consultant MWBE? ☐ YES ☐ NO

If yes, please check all that applies:

- ☐ Native American (AI)
- ☐ Native American, Women-Owned (NW)
- ☐ Asian (AS)
- ☐ Asian, Women-Owned (AW)
- ☐ Black (BL)
- ☐ Black, Women-Owned (BW)
- ☐ Hispanic (HI)
- ☐ Hispanic, Women-Owned (HW)
- ☐ Women-Owned (WO)

MWBE Certifications accepted by the City of Arlington. The City will review other MWBE Certification.

- ☐ North Central Texas Regional Certification Agency (NCTRCA)
- ☐ State of Texas, historically Underutilized Business (HUB)
- ☐ Dallas/Fort Worth Minority Supplier Development Council (DFW MSDC)
- ☐ Women's Business Council – Southwest (WBC-SW)
- ☐ Texas Department of Transportation (TxDOT)
- ☐ South Central Texas Regional Certification Agency (SCTRCA)
- ☐ Others (please specify) - _____

ATTACHMENT "A"

November 19, 2015

Mr. Eric Seebock, RLA
Park Project Manager / Landscape Architect
Arlington Parks and Recreation Department
717 West Main St.
Arlington, TX 76013

Re: Proposal for Engineering Services for Bowman Branch Trail
Limits: Webb Community Park to New York Avenue

Dear Mr. Seebock,

RPS Klotz Associates appreciates the opportunity to provide the City of Arlington (City) with professional engineering services for the design, bidding, and construction of the Bowman Branch Hike & Bike Trail from Webb Community Park to New York Avenue.

PROJECT UNDERSTANDING

The project will construct a 12-foot wide shared-use path within the limits described above (approximately 7,500 feet) and will be designed to meet AASHTO Standards as well as follow City of Arlington Hike and Bike System Master Plan Design Guidelines. The alignment will be determined in a preliminary phase of design through coordination and site meetings with the City. RPS Klotz Associates will provide preliminary design, final design, additional services, bidding, and construction phase services.

SCOPE OF WORK

The Scope of Work for the engineering services to complete the Bowman Branch Trail includes the following:

<u>Basic Services</u>

1. Prepare preliminary alignment exhibits utilizing aerial images
2. Attend preliminary design review meetings and site visits (2 meetings)
3. Coordinate topographic survey
4. Coordinate soil investigations/geotechnical report
5. Attend monthly design progress meetings (8 meetings)
6. Prepare trail plan & profile sheets

7. Prepare retaining wall layouts (as necessary)
8. Prepare culvert & drainage layouts
9. Complete bridge layouts and design (as necessary)
10. Provide design and standard details
11. Prepare SWPPP
12. Prepare cost estimates at preliminary, 60%, 90% and 100%.
13. Submit design documents at Preliminary, 60%, 90% and 100%. For each submittal phase provide (2) full size 22"x34" plans, (2) half size 11"x17" plans, pdf's of plan set and specifications. At 100% submittal provide specifications in Word format.
14. Provide TDLR Submittals
15. Address review comments from the City at all submittals
16. Prepare project manual including specifications and all necessary bidding documents.
17. Provide Bid Phase Services
    a. Attend Pre-Bid Conference
    b. Address bidder questions
    c. Prepare addendums as needed
18. Provide Construction Phase Services
    a. Attend Pre-Construction Conference
    b. Schedule bi-weekly site visits (12 meetings)
    c. Address contractor questions and RFI's
    d. Attend Substantial completion inspection
    e. Prepare punch list
    f. Attend final inspection
19. Obtain topographic survey
20. Complete soil investigations/geotechnical report
21. Prepare Hydrology & Hydraulics (H&H) Analysis and Report
    a. Prepare analysis and report
    b. Complete Floodplain Development Permit
22. Prepare environmental documentation for approval to include reports needed to meet national environmental standards
    a. Prepare threatened and endangered species investigation and documentation
    b. Prepare Cultural Resources investigation and documentation
    c. Prepare wetlands and waters of the US investigation and documentation
    d. Prepare final report for approvals

Additional Services

1. Right-of-Way Services (as needed) but not included in this proposal fee.

ASSUMPTIONS

1. City will coordinate with Utility companies including Oncor.
2. City will provide front end specifications.
3. City to provide internal costs for budgeting purposes.
4. Building Permit Fees and inspections are not included in this proposal.
5. City will distribute plans during bidding phase through online portal as well as hard copies from the Parks offices.
6. Landscape Architecture services are not included in this proposal
7. Design of Trail Signing & Wayfinding Signs is not included in this proposal

ENGINEERING, BIDDING, AND CONSTRUCTION PHASE ENGINEERING FEES AND SCHEDULE

RPS Klotz Associates proposes to perform the basic engineering for a not-to-exceed fee of $149,390.00. Reimbursable printing, mileage, and other expenses will be charged at cost plus 15%. H&H study and Environmental studies are included in the preliminary trail alignment. Surveying (topographic), Geotechnical services, and environmental services are included in the Construction Documents and will be provided on a lump sum basis with a 10% mark-up. Surveying needed for right of way services is not included in the fee breakdown below. The total services fee including reimbursable expenses is shown below. The breakdown of the hours per task for RPS Klotz Associates is attached for your reference. The detailed proposals from Gorrondona & Associates for surveying, Alliance Geotechnical Group for geotechnical, and Benchmark Environmental Consultants for environmental are also attached.

FEE SCHEDULE BREAKDOWN

Preliminary Trail Alignment /Staking/Design Development Phase	$25,870.00
Construction Documents (including survey and geotechnical)	$109,640.00
Bidding/Construction Phase Services	$13,880.00
Total Not-To-Exceed Fee	$149,390.00

The design schedule duration, which includes the services discussed above, will be approximately 8 months (240 days).

RPS Klotz Associates will perform the work to meet the necessary schedule set out by the City. If you have any questions or need additional information, please do not hesitate to call Bart Hines or myself at your convenience.

Sincerely,

Brad Brown, P.E.
Vice President

BRB:azm

Attachments

Staff Report

Design Contract for Village/Rush Creek Trail Feasibility Study, Project No. PKPL-16004	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorizing the City Manager or his designee to execute a consultant services contract with TranSystems Corporation Consultants of Fort Worth, Texas for a trail feasibility study along Village and Rush Creek in the amount not to exceed $50,272. Funding is available in Park Capital Account No. 508501-53700598-61043.

PRIOR BOARD OR COUNCIL ACTION

None

ANALYSIS

The purpose of the study is to explore the possibility of constructing a 12-foot wide hike/bike trail along Village and Rush Creeks. The alignment would connect Veterans Park to the Village Creek Historical Area, ultimately linking into River Legacy Park via trail along Green Oaks Boulevard.

The study will require coordination with both the Texas Department of Transportation (TXDOT) and Union Pacific Railroad (UPR) in order to secure permission to construct a trail under their existing infrastructure. The current alignment will require below grade crossings at Division Street (Highway 157), the railroad line running adjacent to it and Pioneer Parkway (SPUR 303). This section of trail was identified as a major north/south connection in the Hike and Bike Plan adopted by Council in 2011.

The scope of work will include site visits, topographic surveying, review of all data associated with available floodplain studies, schematic trail alignment and an opinion of probable cost. The primary deliverable will be a report summarizing the findings, conclusions and recommendations of the trail alignment.

FINANCIAL IMPACT

Funding for this contract, in the amount of $50,272 is available in Park Capital Account No. 508501-53700598-61043. There will be no General Fund operating budget impact associated with this phase of work.

FY 2016	FY 2017	FY 2018
$50,272	$0	$0

ADDITIONAL INFORMATION

Attached:	Consultant Contract
Under separate cover:	None
Available in the City Secretary's office:	N/A

STAFF CONTACT(S)

Lemuel Randolph
Director of Parks and Recreation
817-459-5479
lemuel.randolph@arlingtontx.gov

De'Onna Garner
Parks Planning Manager
817-459-6937
deonna.garner@arlingtontx.gov

THE STATE OF TEXAS §

COUNTY OF TARRANT §

Consultant Services Contract

This Consultant Services Contract is entered into this_____day of _____2015, between **TransSystems Corporation Consultants,** 500 West 7th Street, Ste. 1100, Fort Worth, Texas 76102, hereinafter referred to as "CONSULTANT" and the **CITY OF ARLINGTON, TEXAS,** a municipal corporation of the State of Texas, hereinafter referred to as "CITY," acting by and through its City Manager or his designee.

W I T N E S S E T H:

WHEREAS, CITY desires assistance in determining the feasibility of constructing a hike/bike trail along Village and Rush Creeks.

WHEREAS, CONSULTANT is qualified and capable of conducting a feasibility study and conceptual designs for a potential trail along Village and Rush Creeks proposed herein and is willing to enter into this Contract with CITY to perform said services; NOW THEREFORE,

In consideration of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.
Employment of Consultant

For and in consideration of the covenants herein contained, CONSULTANT hereby covenants and agrees as an independent contractor, to perform the services herein described with diligence and in a manner consistent with the level of care and skill normally exercised for such professional planning, engineering, surveying, and landscape architectural services in the State of Texas. CONSULTANT agrees to perform professional civil engineering, design and surveying services in connection with the Project as set forth below, and CITY agrees to pay, and CONSULTANT agrees to accept, fees as set forth in this Contract as full and final compensation for all services performed under this Contract. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards. CONSULTANT shall provide site visits, topographic surveying, review of all data associated with available floodplain studies, schematic trail alignment and an opinion of probable of cost, being located within the City of Arlington, Tarrant County, Texas, and hereinafter referred to as the "Project."

II.
Payment for Services

Total payment for services described herein for the Project shall be a sum not to exceed **Fifty Thousand Two Hundred and Seventy-two Dollars ($50,272).** Payments shall be made as set forth in Exhibit "A." No interest shall ever be due on late payments. Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by

CITY or which is not submitted in compliance with the terms of this Contract. CITY will not be required to make any payments to CONSULTANT when CONSULTANT is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance under this Contract. W aiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

III.
Character and Extent of Consulting Services

A. CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering or landscape architectural profession(s), both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards. CONSULTANT will provide professional services necessary for the work described in Exhibit "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Exhibit "A" the terms and conditions of this Professional Services Contract shall be final and binding upon both parties hereto.

B. It is agreed and understood that this Contract contemplates the full and complete professional civil engineering, design and surveying services for the Project including changes necessary to complete the Project as outlined herein. CONSULTANT acknowledges by the execution of this Contract that all contingencies known to CONSULTANT and CITY at the date of this Contract, as may be deemed necessary and proper to complete the assignment, have been included in the fee stated herein. CONSULTANT will advise CITY as to the necessity of CITY's providing or obtaining from others special services and data required in connection with the Project (which services and data CONSULTANT is not to provide hereunder). N othing contained herein shall be construed as authorizing additional fees for services to complete the plans, specifications, inspections, tests, easements and permits necessary for the successful completion of the Project.

IV.
Time for Completion

A. CONSULTANT agrees to complete and submit all work required by CITY within **120 (One Hundred and Twenty)** calendar days.

B. Construction Administration and Observation shall be completed upon final payment and receipt of documents from contractor.

Calendar days shall commence when CONSULTANT is notified to proceed and shall terminate when CITY has accepted the plans as being final. No extensions of time shall be granted unless CONSULTANT submits a written request, and CITY approves such request in writing.

V.
Revisions of Schematic Drawings

CITY reserves the right to direct substantial revision of the schematic drawings after acceptance by CITY as CITY may deem necessary, but in such event CITY shall pay CONSULTANT equitable compensation for services rendered in making such revisions. In any event, when CONSULTANT is directed to make substantial revisions under this Section of the contract, CONSULTANT shall provide to CITY a written proposal for the entire costs involved in the revisions. Prior to CONSULTANT undertaking any substantial revisions as directed by CITY, CITY must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

If revisions of the final schematic drawings are required by reason of CONSULTANT'S error or omission, then such revisions shall be made by CONSULTANT without additional compensation to the fees herein specified, and in a time frame as directed by CITY.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Section II., "Payment for Services," may require Arlington City Council approval and is subject to funding limitations.

VI.
Consultant's Coordination with Owner

CONSULTANT shall be available for conferences with CITY so that Project can be designed with the full benefit of CITY'S experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. CITY shall make available to CONSULTANT all existing plans, maps, field notes, and other data in its possession relative to the Project. CONSULTANT may show justification to CITY for changes in design from CITY standards due to the judgement of said CONSULTANT of a cost savings to CITY and/or due to the surrounding topographic conditions. CITY shall make the final decision as to any changes after appropriate request by CONSULTANT.

VII.
Termination

This contract may be terminated at any time by CITY for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by CITY, CONSULTANT shall immediately discontinue all services and CONSULTANT shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract. As soon as practicable after receipt of notice of termination, CONSULTANT shall submit a statement, showing in detail the services performed but not paid for under this contract to the date of termination. CITY shall then pay CONSULTANT promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by CITY.

This contract may be terminated by CONSULTANT with mutual consent of CITY at any time for any cause without penalty or liability except as may otherwise be specified herein. CONSULTANT shall submit written notice to terminate contract and shall submit to CITY all plans and documents relative to the design of Project. CITY shall then ascertain cost to complete the balance of the work under this contract. If the cost to complete the balance of the work is greater than the unpaid contract amount, CITY shall retain all unpaid balances and, in addition, CONSULTANT shall pay directly to CITY the difference in the unpaid balance and the cost to

complete the work. In no case shall CITY pay CONSULTANT any additional monies other than those previously paid under the contract.

VIII.
Ownership of Documents

All drawings, specifications, and other documents or instruments of professional services prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use. CONSULTANT shall retain in its files all original drawings, specifications, documents or instruments of professional services as well as all other pertinent information for the work. CONSULTANT shall have no liability for re-use on other projects and/or changes made to the drawings and other documents by other consultants subsequent to the completion of the contract. CITY shall require that any such change be sealed, dated, and signed by the engineer or landscape architect making that change and shall be appropriately marked to reflect what was changed or modified.

IX.
Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by CITY, nor shall the CONSULTANT allow any sub-consultant to commence work on its own subcontract until all similar insurance of the sub-consultant has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis, except as may be otherwise provided herein below. The insurance requirements shall remain in effect throughout the term of this Contract.

1. Worker's Compensation Insurance, as required by law; with the policy endorsed to provide a waiver of subrogation as to the CITY, Employers Liability Insurance of not less than $1,000,000 for each accident, $1,000,000 disease-each employee, $1,000,000 disease-policy limit.

2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Contract, fully insuring CONSULTANT's liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of $1,000,000 per occurrence.

3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of $1,000,000 per occurrence.

4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be $1,000,000 per claim. The coverage under this policy shall include a contractual liability endorsement. CONSULTANT must maintain this policy for a period of four (4) years after the completion of the project or shall purchase the extended reporting period or “tail” coverage insurance providing equivalent coverage for the same period of time.

5. "Umbrella" Excess Liability Insurance: Insuring CONTRACTOR for an amount not less than $2,000,000.00 combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required hereinabove.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy:

1. Name CITY as an additional insured as to all applicable coverage(s) except Worker's Compensation and Employer's Liability Insurance and Professional Liability Insurance;

2. Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail to:

Risk Manager
City of Arlington
Post Office Box 90231
Arlington, Texas 76004-3231

If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to CITY is required;

3. The term "Owner" or "CITY" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of CITY and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of CITY;

4. The policy phrase "other insurance" shall not apply to CITY where CITY is an additional insured on the policy; and

2. All provisions of the Contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by CONSULTANT. The CITY's decision thereon shall be final; and,

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CITY, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against CITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by CITY regarding any insurance supplied by CONSULTANT (or any sub-consultants) shall not relieve CONSULTANT of full responsibility or liability, if any, for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability;

4. No special payments shall be made for any insurance that CONSULTANT and subcontractors, if any, are required to carry; all are included in the contract price and the contract unit prices; and

5. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby. CITY's Risk Manager reserves the right to review the insurance requirements stated in this Contract during the effective period.

X.
Monies Withheld

When CITY has reasonable grounds for believing that:

A. CONSULTANT will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or

B. A claim exists or will exist against CONSULTANT or CITY arising out of the negligence of the CONSULTANT or the CONSULTANT'S breach of any provision of this contract; then CITY may withhold payment of any amount otherwise due and payable to CONSULTANT under this contract. Any amount so withheld may be retained by CITY for that period of time as it may deem advisable to protect CITY against any loss and may, after written notice to CONSULTANT, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of CITY by reason of CITY'S failure or refusal to withhold monies. No interest shall be payable by CITY on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of CITY.

XI.
No Damages for Delays

Notwithstanding any other provision of this contract, CONSULTANT shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

XII.
Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses

In performing this Contract, CONSULTANT agrees to use diligent efforts to purchase all goods and services from Arlington Businesses whenever such goods and services are comparable in availability, quality, and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons in organizations proposed for work on this Contract, the CONSULTANT agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

CONSULTANT agrees to provide information about its minority status at time of contract execution. City will provide a D ata Gathering Form with the award letter. CONSULTANT will also be required to submit cost information toward Minority/Women Business Enterprises. The information submitted shall include the CONSULTANT and any other firms performing work as a part of this contract, such as surveying services. See attached form. CONSULTANT will be required to submit this form with anticipated dollar amounts (if applicable) upon execution of the contract for this project and to resubmit the same form with actual costs spent prior to final payment of this contract.

XIII.
Right to Inspect Records

CONSULTANT agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits.

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subconsultant or consultant agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subconsultant involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. C ITY shall give the consultant or subconsultant reasonable advance notice of intended audits.

XIV.
No Third-Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (CITY and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

XV.
Successors and Assigns

CITY and CONSULTANT each bind themselves, their successors, executors, administrators and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XVI.
Consultant's Liability

Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents prepared by said CONSULTANT, its employees, subconsultants, agents and consultants.

XVII.
Indemnification

CONSULTANT does hereby covenant and contract to indemnify and hold harmless CITY and all of its officials, officers, agents, employees and invitees, in both their public and private capacities, from any and all liability, claims, suits, demands or causes of action, including reasonable attorney fees of litigation and/or settlement, that may arise by reason of death of or injury to persons or damage to or loss of use of property occasioned by any wrongful intentional act or omission of CONSULTANT as well as any negligent omission, act or error of CONSULTANT, its officials, officers, agents, employees and invitees, or other persons for whom CONSULTANT is legally liable with regard to the performance of this Contract, whether said negligence is sole negligence, contractual comparative negligence, concurrent negligence or any other form of negligence. In the event of joint or concurrent negligence of CONSULTANT and CITY, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas. Nothing in this paragraph is intended to waive any governmental immunity available to CITY under

Texas law or waive any defenses of CONSULTANT or CITY under Texas law. This paragraph shall not be construed for the benefit of any third party, nor does it create or grant any right or cause of action in favor of any third party against CITY or CONSULTANT.

CONSULTANT warrants that no music, literary or artistic work or other property protected by copyright will be reproduced or used, nor will the name of any entity protected by trademark be reproduced or used by CONSULTANT unless CONSULTANT has obtained written permission from the copyright or trademark holder as required by law, subject also to CITY's consent. CONSULTANT covenants to comply strictly with all laws respecting copyrights, royalties and trademarks and warrants that it will not infringe any related statutory, common law or other right of any person or entity in performing this Contract CONSULTANT will indemnify and hold CITY and its officers, agents and employees harmless from all claims, losses and damages (including reasonable attorney's fees) with respect to such copyright, royalty or trademark rights to the extent caused by CONSULTANT or for whom CONSULTANT is legally liable.

The provisions of this section are intended to only provide indemnification to the extent allowed by Texas Local Gov't Code Sec. 271.094 and shall be construed to that effect. The CONSULTANT as allowed by Texas Local Gov't Code Sec. 271.084 will still name CITY as additional insured in its General Liability Policy and provide any defense as allowed by the policy.

XVIII.
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XIX.
Independent Contractor

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

XX.
Disclosure

By signature of this Contract, CONSULTANT acknowledges to CITY that he/she has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. CONSULTANT

further agrees that he/she will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

XXI.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Tarrant County, Texas.

XXII.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties

XXIII.
Applicable Law

This Contract is entered into subject to the Arlington City Charter and ordinances of CITY, as same may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and Federal laws. Situs of this Contract is agreed to be Tarrant County, Texas, for all purposes, including performance and execution.

XXIV.
Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy, the cost to CITY of the performance of the balance of the work is in excess of that part of the contract sum which has not therefore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess.

XXV.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXVI.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVII.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVIII.
Equal Employment Opportunity

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, ancestry, national origin or place of birth. CONSULTANT shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, disability, ancestry, national origin or place of birth. This action 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 of training including apprenticeship. Upon final determination by a court of competent jurisdiction that the CONSULTANT has violated this section, this Contract shall be deemed terminated and CONSULTANT 'S further rights hereunder forfeited.

XXIX.
Construction of Contract

Both parties have participated fully in the review and revision of this contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this contract.

XXX.
Notices

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for CITY, to:

City of Arlington – Mail Stop 05-0100
ATTN: Lemuel Randolph
Director of Parks and Recreation
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for CONSULTANT, to:
ATTN: Raul Pena III
Senior Vice President
TransSystems Corporation Consultants
500 West 7th Street, Ste. 1100
Fort Worth, TX 76102

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

TransSystems Corporation Consultants

BY: _____
Signature

WITNESS:

Raul Pena III
TransSystems Corporation Consultants
Tax Identification No. 43-0839725

CITY OF ARLINGTON, TEXAS

BY_____
Lemuel Randolph, Director
Parks & Recreation Department

ATTEST:

_____
Mary Supino,
City Secretary

APPROVED AS TO FORM:
Teris Solis, City Attorney

BY_____

THE STATE OF TEXAS §

COUNTY OF DALLAS §

Consultant Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Raul Pena III** who is known to me or who was proved to me on the oath of _____ (name of person identifying the acknowledging person) or who was proved to me through _____ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **TransSystems Corporation Consultants.** a _____ of Tarrant County, Texas, and as _____ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

_____ _____
My Commission Expires Notary's Printed Name

THE STATE OF TEXAS §

COUNTY OF TARRANT §

City Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Lemuel Randolph**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **City of Arlington, Texas**, a municipal corporation of Tarrant County, Texas, and as the Director of the Parks & Recreation Department thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2015.

_____
Notary Public, State of Texas

_____ _____
My Commission Expires Notary's Printed Name

FOR MINORITY AND/OR WOMAN OWNED
BUSINESS ENTERPRISES
(To be completed only if applicable)

Minority and/or Woman Owned Business Enterprises are encouraged to participate in Arlington's procurement process. In order to be identified as a Qualified Minority and/or Woman Owned Business Enterprise in the City of Arlington, this form, along with a copy of your certification, must be returned to the RFQ Contact in the City of Arlington Community Development and Planning Department. You should return these documents with this response, or if you have already submitted this form and a copy of your certification to the Purchasing Division, it is not necessary to re-send certification.

COMPANY NAME: _____

REPRESENTATIVE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

EMAIL: _____

TELEPHONE NO.: _____**FAX NO.:** _____

INDICATE ALL THAT APPLY

_____ Minority Owned Business Enterprise

_____Woman Owned Business Enterprise

MINORITY STATUS: Has this firm been certified as a minority, women or disadvantaged business enterprise by any governmental agency?
____Yes No ____ if yes, please specify government agency:

_____

Date of certification:
_____

The above information is for information only. The City of Arlington encourages minority business participation; however no preferences shall be given.

MINORITY/WOMEN BUSINESS ENTERPRISE (MWBE)
DATA GATHERING FORM
(CONSULTANT SERVICES CONTRACT)

The City of Arlington is gathering data on MWBE businesses. In order to be identified as a certified Minority/Woman Business Enterprise (MWBE) in the City of Arlington, please complete this form, include copy of your Certification and return with your RFQ documents. Please note that this data is for information only.

Name of Consultant: _____

Is Consultant MWBE? ☐ YES ☐ NO

If yes, please check all that applies:

- ☐ Native American (AI)
- ☐ Native American, Women-Owned (NW)
- ☐ Asian (AS)
- ☐ Asian, Women-Owned (AW)
- ☐ Black (BL)
- ☐ Black, Women-Owned (BW)
- ☐ Hispanic (HI)
- ☐ Hispanic, Women-Owned (HW)
- ☐ Women-Owned (WO)

MWBE Certifications accepted by the City of Arlington. The City will review other MWBE Certification.

- ☐ North Central Texas Regional Certification Agency (NCTRCA)
- ☐ State of Texas, historically Underutilized Business (HUB)
- ☐ Dallas/Fort Worth Minority Supplier Development Council (DFW MSDC)
- ☐ Women's Business Council – Southwest (WBC-SW)
- ☐ Texas Department of Transportation (TxDOT)
- ☐ South Central Texas Regional Certification Agency (SCTRCA)
- ☐ Others (please specify) - _____

Exhibit A

Village/Rush Creek Trail Feasibility Study

Scope of Services

9/3/2015

Prepare a feasibility study for a hike and bike trail which will connect existing trails from Veterans Park to existing trails at Village Creek Historical Area in City of Arlington, Texas. The study shall be based upon readily available information including limited survey, aerial photos, existing topographic data, and existing utility mapping. The study areas are shown on Exhibit B.

The objectives of the feasibility study are the following:

- Determine the feasibility of constructing the above described trail facility
- Evaluate connections to existing trail
- Determine the feasibility of constructing underpasses at City, TxDOT and Union Pacific Railroad (UPRR) bridges
- Provide opinion of probable construction cost

Scope of Services:

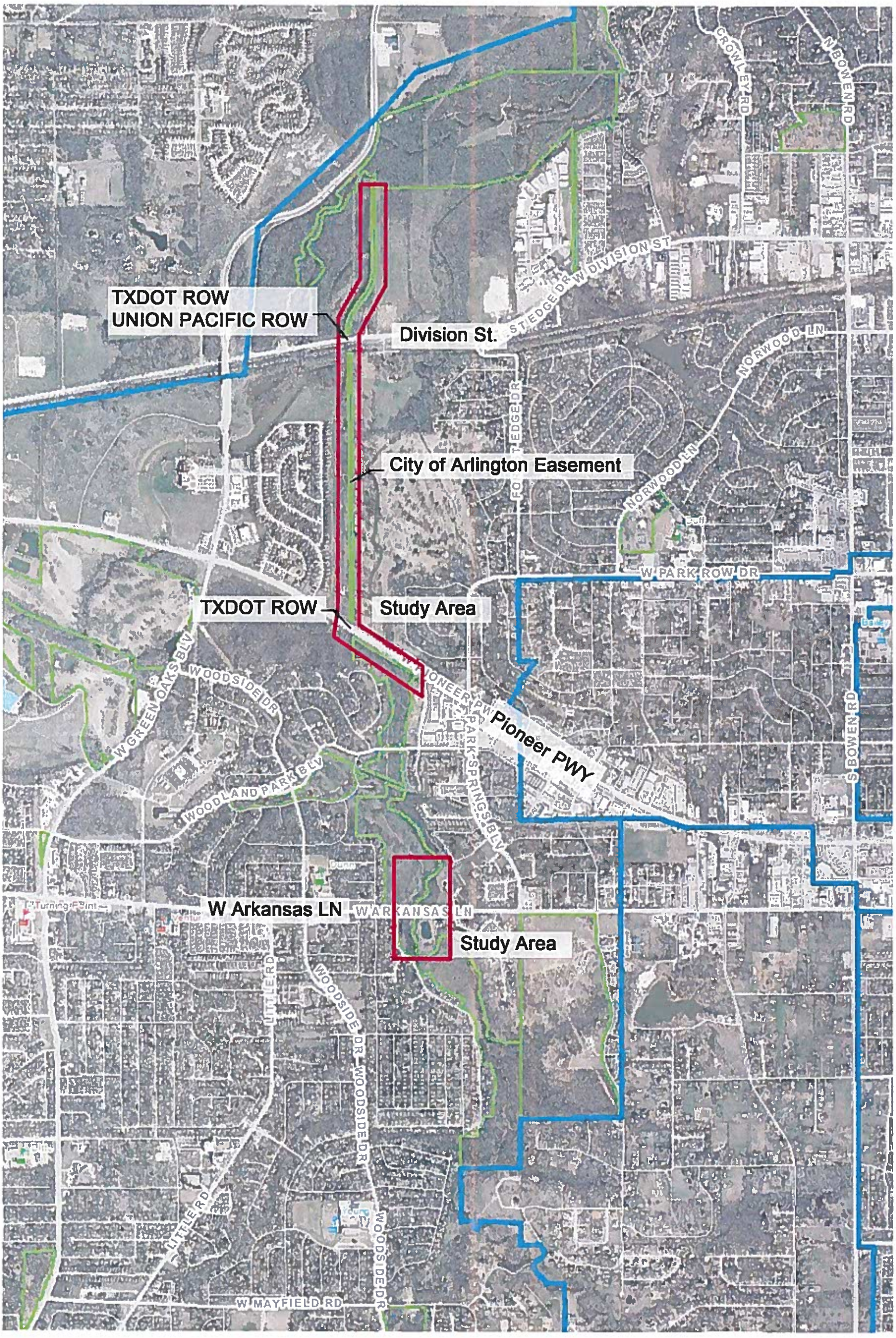
- Site visit will be made to the proposed trail and underpass locations to document conditions and constraints.
- Survey of bridges at bridge underpass locations to determine low chord and identify possible vertical clearance issues.
- Coordination with UPRR to determine requirements for underpass of the bridge along W. Division Street approximately 2000 feet east of Green Oaks Blvd.
- Coordination with TxDOT to determine requirements for underpass of the bridges at W. Pioneer Parkway and W. Division Street
- Coordination with City of Arlington Storm Water Department for locations the trail may be in floodplain
- A preliminary schematic of the trail alignments will be prepared showing the possible horizontal alignments and identifying required grades, clearances, and constraints. Proposed structure types and associated components will be identified.
- Preliminary opinion of probable construction cost will be prepared for the trail alignments.
- A brief report summarizing the findings and conclusions/recommendations will be prepared and submitted to the City of Arlington.

Deliverables:

- Draft and Final Report
- Schematic of trail alignment
- Opinion of probable cost

Assumptions:

- City to provide any existing information as to easements and commitments to adjacent property owners
- City to provide information pertaining to existing municipal utilities
- City to provide available GIS data as required for the study
- Excludes boundary or topographic surveying included, except limited survey at bridges
- Excludes Subsurface Utility Engineering included
- Excludes franchise utility research or coordination included
- Contact with the UPRR will occur only with City concurrence
- Contact with the TxDOT will occur only with City concurrence
- Environmental assessment and/or mitigation are not included
- Excludes hydraulic modeling/analysis



City of Arlington
Parks & Recreation
Planning Division
717 W. Main Street Arlington, TX, 76013

EXHIBIT B

Village/Rush Creek
Trail Feasibility Study
Dec 18, 2013

N

Scale: 1:18000

Village/Rush Creek Trail Feasibility Study
Fee Proposal
9/3/15

TASK	E4	E3	E2	E1	T4	T3	T1	RPLS	TECH	2 Man Crew	Total
	$215.00	$161.00	$120.00	$102.00	$120.00	$105.00	$65.00	$156.00	$78.00	$150.00	
											$ -
Project Management	8										$ 1,720.00
Site visit and gather data	8		8	8							$ 3,496.00
Survey bridges	2							5	12	16	$ 4,546.00
Survey - prepare base map (aerial)	2				16						$ 2,350.00
Evaluate trail constraints	8		8	8							$ 3,496.00
UPRR underpass permitting, requirements, coordination, etc.	12		12								$ 4,020.00
TxDOT underpass permitting, requirements, coordination, etc.	12		12								$ 4,020.00
Coordination with City of Arlington Storm Water Dept.	4		4	4							$ 1,748.00
Prepare schematic plans	4		32	32	16						$ 9,884.00
Evaluate drainage constraints	2			8							$ 1,246.00
Evaluate municipal utility conflicts	4			8							$ 1,676.00
Prepare opinion of cost	2		8	8							$ 2,206.00
Prepare report & meet with City	12		24	24	8						$ 8,868.00
Mileage											$ 500.00
Other expenses											$ 500.00
TOTAL HOURS	80	0	108	100	40	0	0	5	12	16	
SUBTOTAL DOLLARS	$ 17,200.00	$ -	$ 12,960.00	$ 10,200.00	$ 4,800.00	$ -	$ -	$ 780.00	$ 936.00	$ 2,400.00	**$50,276.00**
TOTAL DOLLARS											**$50,276.00**

C:\Users\cggartner\Desktop\[VIllage-Rush Creek Fee Summary - Feasibility.xls]fe

Staff Report

CityNet FY 2016 Maintenance Agreement	
City Council Meeting Date: 12-15-15	Document Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to provide payments to the North Central Texas Council of Governments (NCTCOG) of Arlington, Texas for the Operation and Maintenance of the CityNet hardware and software in an amount not to exceed $618,399. Funding for the FY2016 payments is available in Information Technology Account No. 980202-63142.

PRIOR BOARD OR COUNCIL ACTION

On December 16, 2003, Council passed Resolution No. 03-573 authorizing the execution of an Interlocal Agreement with the North Texas Council of Governments to facilitate a shared services project between Arlington, Carrollton and Grand Prairie for a financial management and human resource information system.

On November 9, 2004, Council passed Resolution No. 04-492 authorizing the execution of an Interlocal Agreement with the North Central Texas Council of Governments and cities of Grand Prairie and Carrollton to create the Shared Services Center Cooperative of North Texas and for the implementation of the Lawson Enterprise Resource Planning Computer System, a shared enterprise resource planning solution for financial management and human resources information systems.

ANALYSIS

The Shared Services Center Cooperative shares the on-going operational and maintenance costs associated with the Lawson Enterprise Resource Planning Computer System, and provides human resources, payroll, financial, and procurement functionality at a lower cost than would be possible in a stand-alone environment. The on-going costs include all licensing and maintenance fees, as well as the personnel costs associated with the operation and maintenance of the Shared Services Center. Approval of this minute order will authorize the annual operations and maintenance payments to NCTCOG approved in the Information Technology budget.

FINANCIAL IMPACT

Payments to NCTCOG would be made in quarterly installments of $272,095 (44%), $92,760 (15%), $92,760 (15%), and $160,784 (26%) for a total annual payment in FY 2016 of $618,399.

FY 2016	FY2017	FY2018
$618,399	$0	$0

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACT(S)

Mike Finley
Director of Finance
817-459-6403
Mike.Finley@arlingtontx.gov

Kari Zika
Director of Human Resources
817-575-8987
Kari.Zika@Arlingtontx.gov

Dennis John
Chief Information Officer
817-459-6704
Dennis.John@arlingtontx.gov

Staff Report

Three-Year Lease of Personal Computers , Bid Project 16-0039	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to negotiate and execute a contract for the three-year lease of personal computers and related computer equipment from Dell Computer Corporation through the State of Texas Cooperative Purchasing Program for an estimated amount of $538,678.23 ($179,559.41 annually) over a three-year period.

PRIOR BOARD OR COUNCIL ACTION

On May 28, 2002, the City Council adopted Resolution No. 02-249, allowing the City of Arlington to participate in the State of Texas Cooperative Purchasing Program.

ANALYSIS

The City of Arlington uses a lease program to refresh computers on a three-year cycle. The lease program has resulted in reduced computer downtime, decreased computer repair time and a reduction in ongoing maintenance costs. The program also allows the City to avoid technology obsolescence by refreshing every three years while maintaining compliance with EPA regulations.

The new equipment will be obtained through the Master Equipment Lease Agreement between Dell Government Leasing and the State of Texas Cooperative Purchasing Program. Approximately, 601 computers will be replaced for a total of 2277 leased personal computers citywide.

Lease term: March 1, 2016 – February 28, 2019

FINANCIAL IMPACT

The Dell Computer Corporation of Round Rock, Texas, is currently under contract with the State of Texas Cooperative Purchasing Program and will lease desktop and laptop equipment to the City of Arlington for the estimated amount of $538,678.23 ($179,559.41 annually) over a three-year period The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$179,559.41	$179,559.41	$179,559.41

Funds are budgeted in the Information Technology Account No. 980103-69200.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Dennis John	Janice Hughes, CPPB	Mike Finley
Chief Information Officer	Sr. Purchasing Agent	Director of Finance
817-459-6704	817-459-6304	817-459-6403
Dennis.John@arlingtontx.gov	Janice.Hughes@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Software Support and Maintenance Contract for Geographic Information System Software, Bid Project 16-0037	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual software support and maintenance contract for geographic information system software (GIS) with Environmental Systems Research Institute (ESRI), Inc. in the estimated amount of $75,450.

PRIOR BOARD OR COUNCIL ACTION

None.

ANALYSIS

This software contract provides for the ongoing annual software support and maintenance of GIS mapping tools which are used by all City departments including Information Technology, Fire, Police, Water Utilities, Community Development & Planning, and Public Works & Transportation.

This software is an essential tool used in emergency response in the areas of detection, risk assessment, mitigation and prevention, preparedness, response, and recovery. It is a tool used by public safety and emergency response activities, and provides automated location and data updates to systems such as Intergraph Computer-Aided Dispatch (CAD), AMANDA, e-Builder, Citizen Action Request application, and for both internal and external web-based mapping applications (Virtual Maps and Maps Online). This software also functions as the primary enterprise GIS data maintenance platform.

The software support and maintenance contract is only available from ESRI, Inc. of Redlands, California; therefore, this purchase is exempt from the competitive bidding statutes in accordance with the Texas Local Government Code, Section 252.022 (a) 7 as sole-source procurement.

Contract Term: February 9, 2016 - February 8, 2017

FINANCIAL IMPACT

This is a one-year contract that is reviewed and renewed annually. All funds for maintenance and support will be paid out of FY2016. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$75,450	$0	$0

Funds are budgeted in the IT General Fund Account No. 980202-63142.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid File
MWBE:	No

STAFF CONTACT(S)

Dennis John	Janice Hughes, CPPB	Mike Finley
Chief Information Officer	Sr. Purchasing Agent	Director of Finance
817-459-6704	817-459-6304	817-459-6403
Dennis.John@arlingtontx.gov	Janice.Hughes@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for Data and Cable Supplies, Bid Project 16-0036	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of data and cable supplies with Graybar Electrical Company, Inc. through the U.S. Communities Government Purchasing Alliance (U.S. Communities) in the estimated amount of $69,500.

PRIOR BOARD OR COUNCIL ACTION

On August 13, 2002, the City Council adopted Resolution No. 02-390, allowing the City of Arlington to participate in the U.S. Communities interlocal purchasing program.

ANALYSIS

This contract is for data and cable supplies and purchases may also include components for fiber optic construction projects authorized for City services in various departments city wide. The data and cable supplies will be purchased on an as-needed basis. The following table provides historical and projected expenditures.

	2015 Expenditures		2016 Projections	
Department	**Dollars**	**Percentage**	**Dollars**	**Percentage**
Fire	$4,500	7%	$3,500	5%
Public Works	$9,000	13%	$6,000	9%
Water	$5,000	7%	$4,000	6%
IT	$38,000	60%	$41,000	59%
Other Depts.	$9,000	13%	$15,000	21%
TOTAL	**$65,500**	**100%**	**$69,500**	**100%**

Contract term: January 1, 2016 – December 31, 2016

FINANCIAL IMPACT

Utilizing the contract through the U.S. Communities interlocal purchasing program was determined to be the most cost-effective method for obtaining data and cable supplies. Graybar Electrical Company, Inc. of Fort Worth, Texas, is currently under contract with U.S. Communities and can provide the electrical and data supplies in the estimated amount of $69,500. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$52,125	$17,375	$0

Funds are budgeted in various departmental accounts.

ADDITIONAL INFORMATION

Attached: None
Under separate cover: None
Available in the Purchasing Division: Bid file
MWBE: No

STAFF CONTACT(S)

Dennis John,
Chief Information Officer
817-459-6704
Dennis.John@arlingtontx.gov

Janice Hughes, CPPB
Sr. Purchasing Agent
817-459-6304
Janice.Hughes@arlingtontx.gov

Mike Finley
Director of Finance
817-459-6345
Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for GPS Diagnostic Monitoring Services, Bid Project 16-0048	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to approve a contract for GPS Diagnostic Monitoring Services, with Networkfleet, Inc., through the United States General Services Administration (GSA) in the estimated amount of $116,852.

PRIOR BOARD OR COUNCIL ACTION

None

ANALYSIS

This contract is for GPS monitoring services for City of Arlington fleet. Monitoring services will enhance Fleet Operations tracking and control, and will provide transparency through access to real-time data. Data provided will include vehicle location, mileage, speed, and fuel consumption. The data will be used to increase efficiency and productivity, reduce fuel costs, identify routes to job sites, confirm time on job sites, and to track idle time and scheduled maintenance.

The City currently has 291 GPS diagnostic devices, of which 271 are installed in vehicles and active. The remaining 20 devices are actively tracking the position and movement of Public Works & Transportation Departments' Electronic Variable Message Boards.

Contract term: January 1, 2016 thru December 31, 2016

FINANCIAL IMPACT

In accordance with Texas Local Government Code Section 271.103, local governments may purchase goods and services under the Federal supply schedules through the United States General Services Administration. Utilizing the contract with Networkfleet, Inc., of San Diego, California, through the United States GSA was determined to be the best value method for obtaining the GPS monitoring services. The contract term is for one year and will be reviewed annually to determine subsequent renewal terms. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$87,639	$29,213	$0

Funds are budgeted in various departmental accounts.

ADDITIONAL INFORMATION

Attachments:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid File
MWBE:	No

STAFF CONTACT(S)

Keith Melton, P.E., Director	Will Velasco, CPPB	Mike Finley
Public Works & Transportation	Purchasing Agent	Director of Finance
817-459-6553	817-459-6302	817-459-6345
Keith.Melton@arlingtontx.gov	Will.Velasco@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for the Purchase and Delivery of Gasoline and Diesel Fuel, Bid Project 16-0049	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to approve an annual requirements contract for the purchase and delivery of gasoline and diesel fuel with Martin Eagle Oil Company through the interlocal agreement with the National Intergovernmental Purchasing Alliance (IPA) in the estimated amount of $2,200,800.

PRIOR BOARD OR COUNCIL ACTION

On January 12, 2010, City Council adopted Resolution 10-018 allowing the City of Arlington to participate in the National IPA interlocal purchasing programs.

ANALYSIS

The City anticipates purchasing approximately 600,000 gallons of gasoline and 320,000 gallons of ultra-low diesel fuel for City vehicles and equipment during the upcoming year. The fuel will be purchased on an as-needed basis.

Contract term: January 1, 2016 – December 31, 2016

FINANCIAL IMPACT

Utilizing the interlocal agreement with Martin Eagle Oil Company of Denton, Texas, through the National IPA was determined to be the most cost-effective method for obtaining gasoline and diesel fuel. Based on previous usage, the City estimates expenditures to be approximately $2,200,800 annually. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$1,650,600	$550,200	$0

Funds are budgeted in Fleet Services Account No. 790101-60018.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Keith Melton, P.E., Director	Will Velasco, CPPB	Mike Finley
Public Works & Transportation	Purchasing Agent	Director of Finance
817-459-6553	817-459-6302	817-459-6345
Keith.Melton@arlingtontx.gov	Will.Velasco@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for Irrigation Relocation, Tree Removal and Grass Replacement, Bid Project 16-0011	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual requirements contract for irrigation relocation, tree removal, and grass replacement services with Northeast Service, Inc., dba Horton Tree Service in the estimated amount of $92,199.

PRIOR BOARD OR COUNCIL ACTION

None.

ANALYSIS

This contract is for irrigation relocation, tree removal, and grass replacement services in and around construction projects administered by the Public Works and Transportation Department. The contract provides for relocation of irrigation lines, removal of trees in conflict with the construction, and replacement of grass that has been damaged or removed as a result of construction. The services will be provided on an as-needed basis and includes all labor, materials, tools, and equipment.

Bid closed:	October 22, 2015, 2:00 pm
Vendors notified through Demand Star:	102
Vendors notified through Supplier Portal:	86
Bids received:	6
Contract term:	One year/four one-year renewal options
Current term:	December 16, 2015 – November 30, 2016

VENDOR	MWBE	TOTAL
Northeast Services, Inc. Kennedale, Texas	No	**$92,199**
TruBlue Services, LLC Newark, Texas	No	$106,363
C. Green Scaping, LP Fort Worth, Texas	Yes**	$156,240
MG Lawn and Landscape, LLC Fort Worth, Texas	No	$159.300
Camden Holdings Arlington, Texas	No	$184,415
Greycon, Inc. Arlington, Texas	Yes*	$328,875

* Black, ** Hispanic-Woman Owned

FINANCIAL IMPACT

Northeast Service, Inc., dba Horton Tree Service of Kennedale, Texas, returned the lowest responsive bid in the amount of $92,199. The Public Works and Transportation Department and the Purchasing Division agree that Northeast Service, Inc., dba Horton Tree Service met the bid specification requirements. The contract term is for one year and will be reviewed annually to determine subsequent renewal terms. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$76,832.50	$15,366.50	$0

Funds are budgeted in Street Bond Fund Account No. 358504-68153-65450699 [$73,759.20] and Storm Water Utility Fund Account No. 308501-68151-10500199 [$18,439.80].

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file

STAFF CONTACT(S)

Keith Melton, P.E., Director	Will Velasco, CPPB	Mike Finley
Public Works & Transportation	Purchasing Agent	Director of Finance
817-459-6553	817-459-6302	817-459-6345
Keith.Melton@arlingtontx.gov	Will.Velasco@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for Maintenance, Repair and Operational Supplies, Bid Project 16-0055	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of maintenance, repair and operational supplies with W.W. Grainger, Inc. through the interlocal agreement with the National Intergovernmental Purchasing Alliance (IPA) in the estimated amount of $325,000.

PRIOR BOARD OR COUNCIL ACTION

On January 12, 2010, City Council adopted Resolution 10-018 allowing the City of Arlington to participate in the National IPA Interlocal Purchasing Programs.

ANALYSIS

This contract is for maintenance, repair and operational supplies for the Fire, Police, Parks and Recreation, Public Works and Transportation and Water Utilities Departments. The contract includes air filters, cleaning supplies, tools, nuts, bolts, fasteners, hardware, and maintenance safety supplies, to be used for minor repairs and to perform preventative maintenance on city-owned facilities and equipment. The supplies will be purchased on an as-needed basis.

Contract term: January 1, 2016 thru December 31, 2016

FINANCIAL IMPACT

Utilizing the contract with W.W. Grainger, Inc. of Fort Worth, Texas, through the interlocal agreement with National IPA, was determined to be the most cost-effective method to purchase industrial supplies in the estimated amount of $325,000. This contract term is for one year. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$243,750	$81,250	$0

Funds are budgeted in various departmental accounts.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Keith Melton, P.E., Director	Will Velasco, CPPB	Mike Finley
Public Works & Transportation	Purchasing Agent	Director of Finance
817-459-6553	817-459-6302	817-459-6345
Keith.Melton@arlingtontx.gov	Will.Velasco@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Annual Requirements Contract for Facility and Grounds Maintenance Supplies, Bid Project 16-0050	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual requirements contract for the purchase of facility and grounds maintenance supplies with The Home Depot Company through the U.S. Communities Government Purchasing Alliance (U.S. Communities) in the estimated amount of $225,000.

PRIOR BOARD OR COUNCIL ACTION

On August 13, 2002, the City Council adopted Resolution No. 02-390, allowing the City of Arlington to participate in the U.S. Communities Interlocal Purchasing Program.

ANALYSIS

This contract is for facility and grounds maintenance supplies for use in maintaining city-owned buildings and facilities. The supplies include appliances, building materials, hardware, HVAC, irrigation equipment and supplies, janitorial, landscaping equipment and supplies, motors, pumps, paints and coatings, plumbing, pool chemicals and supplies, handheld general purpose tools, and power tools. The supplies will be purchased on an as-needed basis.

Contract term: January 1, 2016 – July 31, 2017 (19 months)

FINANCIAL IMPACT

Utilizing the agreement with U.S. Communities was determined to be the most cost-effective method for obtaining facility and grounds maintenance supplies. The Home Depot Company of Atlanta, Georgia, is currently under contract with U.S. Communities and can provide the supplies for a total estimated amount of $225,000. This contract term is for 19 months and is coterminous with the current US Communities Contract. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$106,579	$118,421	$0

Funds are budgeted in various departmental accounts.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Mike Finley
Director of Finance
817-459-6345
Mike.Finley@arlingtontx.gov

Janice Hughes, CPPB
Sr. Purchasing Agent
817-459-6304
Janice.Hughes@arlingtontx.gov

Staff Report

Annual Requirements Contract for Painting Services for City-Owned Properties, Bid Project 16-0015	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to execute an annual requirements contract for painting services for city-owned properties with Concord Commercial Services, Inc. in the estimated amount of $100,600.

PRIOR BOARD OR COUNCIL ACTION

None.

ANALYSIS

This contract is for the maintenance painting of various City buildings and structures. The contract includes all labor and materials required to perform miscellaneous painting of interior and exterior surfaces. Painting will be done on an as needed basis as requested by various departments.

Bid closed:	November 12, 2015, 2:00 pm
Vendors notified through Demand Star:	93
Vendors notified through Supplier Portal:	292
Vendors responding to bid request:	8
Contract term:	One year/four one-year renewal options
Current term:	December 16, 2015 – November 30, 2016

VENDOR	MWBE	TOTAL
Concord Commercial Services, Inc. Balch Springs, Texas	No	**$100,600**
Artistic Painting Company, Inc. Grand Prairie, Texas	No	$103,800
James Enterprise Cedar Hill, Texas	No	$111,200
Myelyn Contractors, LLC Plano, Texas	No	$114,046
RDS Enterprises, Inc. Irving, Texas	No	$138,330
A Light Construction Arlington, Texas	Yes*	$176,653
Inca-Sol Environmental, Inc. Arlington, Texas	Yes**	$218,035
Dirty Hands Construction Grand Prairie, Texas	No	$243,800

* Woman Owned, ** Hispanic Owned

FINANCIAL IMPACT

Concord Commercial Services, Inc. of Balch Springs, Texas, returned the lowest responsive bid in the amount of $100,600. The Public Works and Transportation Department and the Purchasing Division agree that Concord Commercial Services, Inc. met the bid specification requirements. The contract term is for one year and will be reviewed annually to determine subsequent renewal terms. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$83,833.33	$16,766.67	$0

Funds are budgeted in various departmental accounts.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file

STAFF CONTACT(S)

Keith Melton, P.E., Director	Will Velasco, CPPB	Mike Finley
Public Works & Transportation	Purchasing Agent	Director of Finance
817-459-6553	817-459-6302	817-459-6345
Keith.Melton@arlingtontx.gov	Will.Velasco@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Renewal of Professional Services Contract for Accounts Payable Services, Bid Project 15-0024	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to exercise the second renewal in the successive professional services contract for accounts payable services for a one year term, with Cognizant Technology Solutions in the estimated amount of $135,000.

PRIOR BOARD OR COUNCIL ACTION

On May 19, 2009, City Council approved MO051192009-001, executing a five year contract for professional services with SourceNet Solutions, Inc. of College Station, Texas for Accounts Payable Outsourcing in the estimated amount of $820,000.

On December 2, 2014, City Council approved MO12142014-001, exercising the first renewal in the successive professional services contract for accounts payable services for a one year term, with Cognizant Technology Solutions, formerly known as SourceNet Solutions, Inc., in the estimated amount of $135,000.

ANALYSIS

This contract is for accounts payable services for the City of Arlington. The contract includes receiving, verifying and processing invoices, 1099 reporting, set up & management of the vendor master file including checking vendors on the System for Award Management (SAM) and to provide internal and external reporting for compliance.

Cognizant uses the accounts payable management system Catalyst. Cognizant sorts and scans all accounts payable documents which allows end users the ability to search and print images of invoices. Through the automated workflow process, the invoices are forwarded for coding by the designated end users and then electronically forwarded to the appropriate approvers for payment. Invoices are electronically stored in Catalyst. Vendors have an option to mail or directly upload their invoices to Catalyst and can track the progress.

Original term:	Five years/successive one-year contract terms
Current term:	Second renewal (January 1, 2016 – December 31, 2016)

FINANCIAL IMPACT

In accordance with the contract terms, the City of Arlington is exercising a second renewal option in the successive contract with Cognizant Technology Solutions of College Station, Texas. The Finance Department has determined it is in the City's best interest to renew the contract for an additional term. The contract term is for one year and will be reviewed annually to determine successive renewal terms.

FY 2016	FY 2017	FY 2018
$101,250	$33,750	$0

Funds are budgeted in Payroll/Accounts Payable Professional Services Account No. 140501-61043.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Mike Finley
Director of Finance
817-459-6345
Mike.Finley@arlingtontx.gov

Karen Irwin
Payroll Supervisor
817-459-6308
Karen.Irwin@arlingtontx.gov

Staff Report

Renewal of Two-Year Requirements Contract for Ground & Elevated Storage Tank Cleaning, Bid Project 14-0062	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to exercise the first of two, two-year renewal options in the contract for ground & elevated storage tank cleaning with U.S Underwater Services, LLC. in the estimated amount of $151,600.

PRIOR BOARD OR COUNCIL ACTION

On February, 11 2014, City Council approved MO02112014-011 executing a two-year requirements contract for ground & elevated storage tank cleaning with U.S Underwater Services, LLC. of Mansfield, Texas in the estimated amount of $151,600.

ANALYSIS

The contract is for the interior cleaning of eleven elevated water storage tanks, ten ground-level water storage tanks and one raw water pump station. Cleanings will take place every two years on everything but the clearwells. The clearwells will be cleaned every year.

Cleaning of the tanks is performed by divers without draining the tanks, which saves time and money. The divers wear special disinfected wet suits to avoid impacting the quality of the drinking water.

Original contract term:	Two years/two, two-year renewals
Current term:	First renewal (February 1, 2016 - January 31, 2018)

FINANCIAL IMPACT

The Arlington Water Utilities Department and the Purchasing Division have determined it is in the City's best interest to renew the contract for an additional term. The contract term is for two years and will be reviewed bi-annually to determine subsequent renewal terms.

In accordance with bid specifications, the Purchasing Division has received a letter from U.S. Underwater Services, LLC of Mansfield, Texas requesting the first renewal at the current pricing. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$50,534	$75,800	$25,266

Funds are budgeted in the Water Treatment Maintenance of Reservoirs and Storage Tanks Account No. 620102-63124.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Walter J. Pishkur	Janice Hughes, CPPB	Mike Finley
Director of Water Utilities	Sr. Purchasing Agent	Director of Finance
817-459-6603	817-459-6304	817-459-6345
Buzz.Pishkur@arlingtontx.gov	Janice.Hughes@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Renewal of Annual Requirements Contract for Hydrofluosilicic Acid, Bid Project 15-0034	
City Council Meeting Date: 12-15-15	Action Being Considered: Minute Order

RECOMMENDATION

Authorize the City Manager or his designee to exercise the first of four, one-year renewal options in the contract for the supply and delivery of hydrofluosilicic acid with Mosaic Global Sales, LLC in the estimated amount of $79,520.

PRIOR BOARD OR COUNCIL ACTION

On January 20, 2015, City Council approved MO01202015-005 executing an annual requirements contract for the supply and delivery of hydrofluosilicic acid with Mosaic Global Sales, LLC of Lithia, Florida in the estimated amount of $79,520.

ANALYSIS

The contract is for the supply of hydrofluosilicic acid, which is a form of fluoride added to the City's drinking water to help prevent dental cavities. The addition of this fluoride is recommended by medical and health organizations. The hydrofluosilicic acid will be provided on an as-needed basis.

Original contract term:	One year/four one-year renewal options
Current term:	First renewal (February 1, 2016 – January 31, 2017)

FINANCIAL IMPACT

The Arlington Water Utilities Department and the Purchasing Division have determined that is in the City's best interest to renew the contract for an additional term. The contract term is for one year and will be reviewed annually to determine subsequent renewal terms.

In accordance with bid specifications, the Purchasing Division has received a letter from Mosaic Global Sales of Lithia, Florida, requesting the first renewal at the current pricing. The projected financial impact for this contract term is as follows:

FY 2016	FY 2017	FY 2018
$53,013.33	$26,506.67	$0

Funds are budgeted in Water Treatment Operations Account No. 620101-60008.

ADDITIONAL INFORMATION

Attached:	None
Under separate cover:	None
Available in the Purchasing Division:	Bid file
MWBE:	No

STAFF CONTACT(S)

Walter J. Pishkur	Janice Hughes	Mike Finley
Director of Water Utilities	Sr. Purchasing Agent	Director of Finance
817-459-6603	817-459-6304	817-459-6345
Buzz.Pishkur@arlingtontx.gov	Janice.Hughes@arlingtontx.gov	Mike.Finley@arlingtontx.gov

Staff Report

Ordinance Granting Gas Franchise to Atmos Energy Corporation	
City Council Meeting Date: 12-15-15	Document Being Considered: Ordinance

RECOMMENDATION

Approve second reading of an ordinance granting a gas franchise to Atmos Energy Corporation.

PRIOR BOARD OR COUNCIL ACTION

On December 20, 2005, the Arlington City Council granted a ten year franchise to Atmos Energy Corporation to deliver and sell gas in the City of Arlington.

On December 1, 2015, the City Council approved first reading of the ordinance.

ANALYSIS

Atmos Energy Corporation was granted a ten year gas franchise by the Arlington City Council in 2005. The existing gas franchise expires December 31, 2015. Consequently, Atmos Energy Corporation is seeking a new gas franchise to deliver and sell gas within the City. City staff has been involved in negotiations over several months with representatives from Atmos Energy Corporation on a renewed Franchise Agreement.

Attached is the proposed Franchise Ordinance with Atmos Energy Corporation which upon adoption will be codified in Article III of the "Utilities" Chapter of the City Code. The Franchise Ordinance grants Atmos Energy Corporation the right to use and occupy the City rights-of-way for the purpose of delivering and selling gas within the City of Arlington. In return, Atmos will pay a franchise fee equivalent to five (5) percent of their gross revenues. The franchise agreement has a ten year term with two optional five-year renewals. First reading is scheduled on the Franchise Ordinance for December 1, 2015 with second reading scheduled for December 15, 2015. Upon passage of this Ordinance, Atmos has sixty (60) days to file its written acceptance of the Franchise Ordinance or the Ordinance will be rendered null and void.

FINANCIAL IMPACT

Under the new franchise agreement, the gas franchise will continue to be five percent of gross revenues as in past years. No additional financial impact is anticipated in future fiscal years.

ADDITIONAL INFORMATION

Attached:	Ordinance
Under Separate Cover:	None
Available in City Secretary's Office:	None

STAFF CONTACT(S)

Teris Solis	David Barber
City Attorney	Assistant City Attorney
817-459-6878	817-459-6878
Teris.Solis@arlingtontx.gov	David.Barber@arlingtontx.gov

Ordinance No. _____

An ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article III, Gas, so that said article shall be and read as follows:

Section 3.01 Grant of Authority

A. The City of Arlington, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, hereinafter called "Atmos Energy" or "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 31, 2025. Unless written notice of its intent to renegotiate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for two (2) additional terms of five (5) years on the same terms and conditions as set forth herein.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

Section 3.02 <u>Definitions</u>

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. "City" shall mean the City of Arlington, Texas.

C. "Company" shall mean Atmos Energy Corporation, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 3.06.

D. "City Manager" means City's manager, or his or her designee.

E. "Gross Revenues" shall mean:

(1) all revenues received from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City;

(2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and

(4) "Gross Revenues" shall also include fees paid pursuant to this agreement, revenues billed but not ultimately collected or received by Company, and the following 'miscellaneous charges': charges to connect, disconnect, or reconnect gas, contributions in aid of construction, charges to handle returned checks from consumers within the City and State gross receipts fees.

(5) "Gross revenues" shall not include:

(a) the revenue of any affiliate or subsidiary of Atmos Energy;

(b) sales taxes;

(c) any interest or investment income earned by the Company; and

(d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Right-of-Way.

F. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

G. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

H. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation,

distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

I. "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

Section 3.03 <u>Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Company</u>

A. If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

Section 3.04 <u>Acceptance of Terms of Franchise</u>

A. The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 3.26. When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect except to the extent that payments due under the previous ordinance are required to be made after the effective date of this franchise ordinance.

B. At 11:59 P.M. on December 31, 2025, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended in accordance with Section 3.01 or by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

Section 3.05 No Third Party Beneficiaries

This Franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

Section 3.06 Successors and Assigns

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless assignee is materially weaker than Company. For the purposes of this section, "materially weaker" means that the long term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody's. If the assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the assignee. The City will grant approval to a materially weaker proposed Assignee or Transferee unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. City agrees that said approval shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

Section 3.07 Compliance With Laws, Charter and Ordinances

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Arlington City Charter, as amended, and all other generally applicable ordinances of the City of Arlington, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

Section 3.08 Previous Ordinances

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Arlington, Texas, are hereby repealed.

Section 3.09 Notices

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY	COMPANY
City Manager City of Arlington P.O. Box 90231 101 E. Abram St. Arlington, Texas 76004-3231	Manager of Public Affairs Atmos Energy Corp. Mid-Tex Division 1550 Tech Centre Pkwy. Arlington, Texas 76014

City Attorney
City of Arlington
P.O. Box 90231
101 S. Mesquite St.
Arlington, Texas 76004-3231

Section 3.10 Paragraph Headings, Construction

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

Section 3.11 Conditions of Occupancy

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force, including but not limited to the "Right-of-Way Management" Chapter and the Public Right-of-Way Permitting

and Construction Manual, and generally applicable ordinances not in conflict with this Franchise that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way. This Franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

B. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Franchise Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the opportunity to cure such failure during a period not to exceed five (5) working days from receipt of the written notice. If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.12 <u>Relocation of Company Equipment</u>

A. Whenever by reason of widening or straightening of streets, water or sewer line projects, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall be deemed necessary to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Rights-of-Way, such alterations shall be made by Company at Company's expense in accordance with the Right-of-Way Management Chapter of the Code of the City of Arlington. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by City to physically conflict with Company's facilities; or determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. City agrees to use its best effort to provide Atmos Energy with its annual capital improvements plan as well as any material updates or changes within a reasonable time after they become available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless a greater depth is necessary to avoid conflict with other facilities.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets or utilities, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

B. If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

Section 3.13 <u>Laying of Lines in Advance of Public Improvements</u>

The City shall give written notice to the Company whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes. The Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

Section 3.14 Installation of Meters

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the City the aesthetics of the meter placement. Meters shall not be placed within City sidewalks. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

Section 3.15 Duty to Serve

A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 3.15(B) or termination or forfeiture of the Franchise in accordance with Section 3.22. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

B. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.16 Rates

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefore; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

Section 3.17 Payments to the City

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business,

Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section 3.17(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 3.02(E), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before May 15, 2016, based on the preceding calendar quarter (January 1 – March 31, 2016) and shall be for the right and privilege during the preceding calendar quarter (January 1 – March 31, 2016). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	Based Upon and For Calendar Quarter
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30

The final payment under the initial term of this Franchise will be due on or before February 15, 2026 and will be for the calendar quarter October 1 – December 31, 2025.

B. The franchise fee amounts based on "Contributions in Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2016 and will be based on CIAC received from the effective date of this Ordinance through December 31, 2015. The final payment of franchise fee amounts based on CIAC will be April 30, 2026, for the calendar year ending December 31, 2025.

C. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or

franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

D. If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.

E. Company Recovery of Franchise Fees. City agrees that (i) as a regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further 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.

F. Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Rights-of-Way provided: (i) Company first notifies the City of the name of the lessee, licensee or user, the type of service(s) intended to be provided through the Facilities, and the name and telephone number of a contact person associated with such lessee, licensee or user; and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 3.17(A) and 3.17(B) of this Ordinance. This authority to lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

G. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

Section 3.18 Books and Records

A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 3.02(E). City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 3.17(D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.19 Reservation of Rights: General

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any

time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof.

D. Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

Section 3.20 <u>Right to Indemnification, Legal Defense and to be Held Harmless</u>

A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations.

B. The Company's obligation to indemnify Indemnitees under this Franchise Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. In such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

C. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

D. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the

Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 3.20. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

Section 3.21 <u>Insurance</u>

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, unless a specific amount of insurance is required by the City's Right-of-Way Ordinance, in which case said Ordinance will control. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage will name the City as an additional insured up to the amounts required by the City's Right-of-Way Ordinance.

Section 3.22 <u>Termination</u>

A. Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof.

In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 3.09 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

Section 3.23 <u>Renegotiation</u>

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being

renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

Section 3.24 Severability

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

Section 3.25 No Waiver

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

Section 3.26 Effective Date

This Franchise shall be effective on January 1, 2016, if Company has filed its acceptance as provided by Section 3.04 herein.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

PRESENTED AND GIVEN FIRST READING on the _____ day of _____, 2015, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Staff Report

Adoption of Investment Policy	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION
Approve a resolution adopting the revised Investment Policy for the City of Arlington.

PRIOR BOARD OR COUNCIL ACTION
On December 16, 2014, the City Council adopted Resolution No. 14-327, revising and confirming the City's Investment Policy.

ANALYSIS
The Public Funds Investment Act (PFIA), Chapter 2256, Government Code, requires local governments to adopt written investment policies. The policy must be reviewed and adopted annually and must be approved and amended by council action.

There are three updates to the policy as follows:

1) Update policy to reflect new training requirements for investment officers

2) Authorize the Investment Committee to approve investment officers designated by the Director of Finance rather than stating certain position titles as the delegated investment officers

3) Update language concerning the selection of a Primary Depository stating the procurement process is governed by Texas government code

FINANCIAL IMPACT
None

ADDITIONAL INFORMATION

Attached:	Resolution Investment Policy
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACT(S)

Mike Finley
Director of Finance
817-459-6345
Mike.Finley@arlingtontx.gov

Ethan Klos
Treasurer
817-459-6303
Ethan.Klos@arlingtontx.gov

Resolution No. _____

A resolution approving and adopting the Investment Policy for the City of Arlington, Texas

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Council hereby approves and adopts the Investment Policy of the City of Arlington, Texas, which policy is applicable to the investment activities of the City of Arlington and sets out the policies for administering the financial assets and the investment portfolios of the City.

II.

The Investment Policy of the City of Arlington, Texas, is subject to annual review and revision by the City Council from time to time.

III.

A substantial copy of the Investment Policy is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY Eddie Martin

CITY OF ARLINGTON, TEXAS

Investment Policy

December 15, 2015

City of Arlington
Investment Policy
December 15, 2015

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CITY OF ARLINGTON, TEXAS
INVESTMENT POLICY
Latest Revision (December 15, 2015)

I. GOVERNING AUTHORITY

The governing authority for the City of Arlington's Investment Policy (the "Policy") shall be Chapter 2256 of the Texas Government Code, cited as the Public Funds Investment Act (the "Act"). All investment activity will be done in accordance with the provisions of the Act. The Mayor and City Council on an annual basis shall consider a resolution stating they reviewed the Policy and investment strategies and the City's resolution shall record any changes made to either the Policy or strategies.

II. PURPOSE AND SCOPE

The Policy applies to the investment activities of the City of Arlington. The term "City" herein shall refer to the City of Arlington. All financial assets of the City, including the following fund types: General Fund, Capital Project, Working Capital Reserve, Cowboys Stadium Complex Debt Service Reserve, Debt Service, Self-Insurance, Landfill Trust, Water and Sewer, and other funds that may be created from time to time, shall be administered in accordance with the provisions of the Policy. With respect to non-profit corporations or trusts established by City resolution and acting as instrumentalities of the City, the Policy shall prevail in the absence of their specific investment policy. In addition to the Policy, the investment of bond proceeds and other bond funds (including debt service and reserve funds) shall be governed and controlled by their governing ordinance and by all regulations and rulings applicable to the issuance of such obligations. The Policy does not apply to the following funds that are separately administered: Arlington Tomorrow Foundation, Part-time Deferred Income Trust Fund; Thrift Savings Plan Fund; Disability Income Plan Fund; and the Deferred Compensation Fund.

III. OBJECTIVES

A. The primary objective of the City's investment activity is the preservation of capital in the overall portfolio. Each investment transaction shall seek to first ensure that capital losses are avoided, whether they are from securities defaults or erosion of market value.

1. The City's investment portfolio will remain sufficiently liquid to enable the City to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by maintaining cash equivalent investment balances, matching investment

maturities with estimated cash flow requirements and by investing in securities with active secondary markets.

2. The City's pooled operating portfolio shall be designed with the objective of achieving an appropriate market rate of return to meet or exceed a rolling one-year Treasury Bill index, annualized return for comparable time period. The investment program shall seek to augment returns above this threshold consistent with risk limitations identified herein and prudent investment principles.

3. Funds held for future capital projects shall be invested in anticipation of projected cash flow requirements, and if compatible, in a manner that reasonably can be expected to produce enough income to offset inflationary construction cost increases.

4. All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment Officers shall avoid any transactions that might impair public confidence in the City's ability to govern effectively. The City Council recognizes that in a diversified portfolio, occasional measured losses due to market volatility are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

IV. INVESTMENT COMMITTEE

A. The Investment Committee, consisting of a Deputy City Manager the Director of Finance, the Assistant Director, Financial Operations , the Assistant Director, Fiscal Policy, an Assistant Director of Utilities, and two City staff members designated by the City Manager shall meet at least quarterly to determine general strategies and to monitor results. The Investment Committee shall include in its deliberations such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the City's funds, authorized broker/dealers, approved sources of investment training, and the target rate of return on the investment portfolio. The investment committee shall provide minutes of its meetings. Any two members of the committee may request a special meeting, and three members shall constitute a quorum. The committee shall establish its own rules and procedures.

V. RESPONSIBILITY AND CONTROL

A. The Investment Committee shall designate Investment Officers who are hereby delegated the management responsibility for the investment program. The Director of Finance has the authority to temporarily designate Investment

Officers between Investment Committee meetings, at which point the Investment Committee will determine the status of the temporary Officers. No persons may engage in an investment transaction except as provided under the terms of this Policy and the procedures established by the Director of Finance. The Director of Finance shall be responsible for all transactions undertaken, and shall establish a system of controls to regulate the activities of other designated Investment Officers. In conjunction with the annual financial audit, an annual compliance audit of management controls on investments and adherence to the City's approved Investment Policy will be undertaken.

The City shall require and provide investment training for all designated Investment Officers in order to insure the quality and capability of investment management. Training will be provided through courses and seminars offered by independent professional organizations and associations, including the Government Treasurers Organization of Texas (GTOT), the Association of Financial Professionals (AFP) and its local chapters, the Association of Public Treasurers, the University of North Texas Center for Public Management and others as approved by the Investment Committee. Training shall consist of 10 hours within 12 months of assuming office and 8 hours not less than once in a two-year period that begins on the first day of the City's fiscal year and consists of the two consecutive fiscal years after that date thereafter as required by the Act.
The City maintains the right to hire Investment Advisers to assist City staff in the investment of funds. Investment Advisers shall adhere to the spirit, philosophy and specific terms of this Policy and shall invest within the same objectives. The Director of Finance shall establish criteria to evaluate Investment Advisers, including:

1. Adherence to the City's policies and strategies;
2. Investment strategy recommendations within accepted risk constraints;
3. Responsiveness to the City's request for services and information;
4. Understanding of the inherent fiduciary responsibility of investing public funds and;
5. Similarity in philosophy and strategy with the City's objectives.

Selected Investment Advisers must be registered under the Investment Advisers Act of 1940 or with the State Securities Board. A contract with an Investment Adviser may not be for a term longer than two years and any contract renewal, or extension must be approved by the City Council.

B. The Director of Finance shall submit a quarterly investment report that contains a summary statement of each pooled fund group stating the beginning market value, ending market value, and fully accrued interest

income for the quarter, and other items as may be required by the Act. The report shall also state the book value, market value, and maturity date of each separately invested asset. The report shall state the compliance of the City with the Act and the Policy. The report shall be jointly prepared and signed by all Investment Officers and submitted to the Mayor and City Council, City Manager, and Investment Committee. The quarterly investment reports shall be formally reviewed by an independent auditor as part of the annual audit and reported by that auditor to the Mayor and City Council. Weighted average yield to maturity shall be the portfolio performance standard reported by the City.

C. Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment objectives, in order of priority: preservation and safety of principal, liquidity, public trust and yield.

D. An Investment Officer who has a personal business relationship with a business organization offering to engage in an investment transaction with the City shall file a statement disclosing that personal business interest. An Investment Officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the City shall file a statement disclosing that relationship. A statement required under this subsection must be filed with The Texas Ethics Commission and the Mayor and City Council. For purposes of this subsection, an Investment Officer has a personal business relationship with a business organization if:

1. The Investment Officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

2. Funds received by the Investment Officer from the business organization exceed 10 percent of the Investment Officer's gross income for the previous year; or

3. The Investment Officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the Investment Officer.

VI. INVESTMENTS

A. Funds of the City of Arlington may be invested in the instruments described below, all of which are authorized by the Act. Maximum limits are established for the total portfolio at the time of purchase and where limits of investment quality by a nationally recognized investment rating firm are expressed, a lower rating prevails when in combination, except in cases where the higher rating was obtained by insurance:

1. United States Treasuries,
   100% of portfolio;
   100% per issuer

2. United States agencies and instrumentalities,
   100% of portfolio
   35% per issuer;

3. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
   100% of portfolio;
   10% per issuer;

4. Obligations of Texas, its agencies, counties, cities, and other political subdivisions rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent
   10% of portfolio
   2% of City's portfolio per issuer

5. Obligations of other states, its agencies, counties, cities, and other political subdivisions rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent
   10% of portfolio
   2% of City's portfolio per issuer

6. Certificates and other forms of deposit issued by a depository institution that has its main office or a branch office in Texas. The deposit must be guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor, or secured by obligations in a manner and amount as provided by this Policy for bank

deposits. In addition, deposits obtained through a broker or depository institution that has its main office or a branch office in Texas and that contractually agrees to place the funds in federally insured depository institutions in accordance with the conditions prescribed in Section 2256.010(b) of the Act are authorized investments;
50% of portfolio
20% per issue

6. Fully collateralized direct security repurchase agreements and reverse security repurchase agreements in accordance with the conditions prescribed in Section 2256.011 of the Act. A repurchase agreement shall have a defined termination date and be secured by a combination of cash and obligations of the United States or its agencies and instrumentalities. These shall be pledged to the City, held in the City's name, and deposited at the time the investment is made with a third party selected and approved by the City. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in Texas. A Repurchase Agreement must be signed by the financial institution/dealer prior to investment in a repurchase agreement. All repurchase agreement transactions will be on a delivery versus payment basis. Securities received for repurchase agreements must have a market value greater than or equal to 102% at the time funds are disbursed and throughout the term of the repurchase agreement.
40% of portfolio (excluding flexible repos for bond proceeds)
15% per counterparty (excluding flexible repos for bond proceeds)

7. Commercial paper that has a stated maturity of 270 days or less and is either rated not less than A-l+, P-l or equivalent by at least two nationally recognized credit rating agencies or is rated by one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States. The commercial paper issuer must have an underlying long term credit of at least AA or the equivalent.
20% of portfolio
5% per issue

8. Guaranteed investment contracts for **bond proceeds only** in accordance with the conditions prescribed in Section 2256.015 of the Act.
100% of bond proceeds

9. No-load money market mutual funds that are registered and regulated by the Securities and Exchange Commission, have a dollar weighted average stated maturity of 90 days or less, seek to maintain a net asset value of $1.00 per share, and are rated AAAm or an equivalent rating, by at least one nationally recognized rating service.
   100% of portfolio
   15% per fund

10. Local government investment pools, which meet the requirements of Section 2256.016 of the Act, are rated no lower than AAA, or an equivalent rating, by at least one nationally recognized rating service, and are authorized by resolution or ordinance by the City Council. In addition, a local government investment pool created to function as a money market mutual fund must mark its portfolio to the market daily and, to the extent reasonably possible, stabilize at $1.00 net asset value
    100% of portfolio
    25% of City's portfolio per pool
    2% of Pool's portfolio

B. The following are prohibited investments and not authorized under this policy:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.

2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.

3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

C. The maximum maturity and maximum weighted average maturity for each fund group is set forth in the investment strategies under Section VII. The maximum maturity for all City investments is ten years. The maximum maturity for all operating funds is three years. Debt bond covenants or other legally binding contractual investment agreements, such as flexible repurchase agreements or guaranteed investment contracts, will take

precedence over the weighted average maturity or maximum maturity limitations in the Policy.

D. It is the policy of the City to create a competitive environment for all investment activities by regularly reviewing available investment options and prevailing market conditions. The Investment Officers shall develop and maintain procedure for ensuring competition in the investments of the City's funds, including, but not limited to: comparing competitive offers or bids for each individual security purchase and sale and representative yields on depository institution deposits, money market mutual funds, "when issued" securities, and local government investment pools.

E. Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit and interest rate risk. The City will minimize credit risk, the risk of loss due to the failure of the issuer or backer of the investment, by:

- Limiting investments to the safest types of investments
- Pre-qualifying the financial institutions and broker/dealers with which the City will do business
- Diversifying the investment portfolio so that potential losses on individual issuers will be minimized.

The City will minimize the risk that the interest earnings and the market value of investments in the portfolio will fall due to changes in general interest rates, by:

- Structuring the investment portfolio so that investments mature to meet cash requirements for ongoing operations, thereby avoiding the need to liquidate investments prior to maturity.
- Diversifying maturities and staggering purchase dates to minimize the impact of market movements over time.

F. Security "swaps" may be considered as an investment option for the City. The two types of allowable swaps are "swaps to increase yield" and "swaps to increase portfolio quality." Changes in investment duration are not considered investment swaps. A security swap may be considered only if the overall yield of the fund does not decrease and the maturity of the new security is not more than 180 days longer than the maturity of the old security. Swaps may be initiated by brokers/dealers who are on the City's approved list. Consistent with City policy, proposed swaps will be competitively bid on the open market. The swap will be awarded to the broker/dealer offering the best yield and quality to the City.

G. When-issued security purchases shall be permitted with the following restrictions:

1. All when-issued purchases will be documented as a future obligation of the City.

2. No when-issued trading will occur unless the City has the funds available to accept delivery and make payment on the settlement date.

3. There will be a maximum of 45 days between purchase and settlement of security.

H. All prudent measures will be taken to liquidate an investment that is downgraded to less than the required minimum rating.

I. The City will routinely monitor ratings of obligations required by the Act or this Policy to maintain a minimum rating, including, but not limited to political subdivisions, commercial paper, mutual funds and pools.

J. The City is not required to liquidate investments that were authorized investments at the time of purchase.

VII. INVESTMENT STRATEGY BY FUND GROUPS

A. **General Operating Funds.** This pooled investment group includes the general fund, debt service fund, escrow funds, special revenue funds, capital project funds, water and wastewater funds, gas lease funds, debt service reserve funds, and enterprise funds. The primary investment strategy for operating funds is to assure that anticipated cash flows are matched with adequate investment liquidity. The dollar weighted average maturity of operating fund investments may not exceed eighteen months. The maximum maturity of an individual investment shall not exceed three years.

Suitability – Any investment eligible in the Investment Policy is eligible for General Operating Funds excluding guaranteed investment contracts.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity for the General Operating Fund's portfolio to less than 18 months and restricting the maximum allowable maturity to three years will limit the price volatility of the overall portfolio.

Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The General Operating Fund requires the greatest short-term liquidity of any of the Fund types. Short-term depository institution deposits, investment pools, and money market mutual funds will provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Diversification – Investment maturities should be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of the City. Diversifying the appropriate maturity structure out though three years will reduce market cycle risk.

Yield – Attaining a competitive market yield for comparable investment types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective.

B. **Capital Project Funds.** These funds primary revenue source is bond proceeds and are subject to arbitrage yield limitations. They are normally invested as part of the General Operating Funds but may be separately invested under the following guidelines.

Suitability – Any investment eligible in the Investment Policy is eligible for Capital Project Funds.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the Capital Project Fund's portfolio to not exceed the lesser of the anticipated expenditure schedule or the I.R.S. temporary period the market risk of the overall portfolio will be limited.

Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The Capital Project Fund used for capital improvement programs have reasonably predictable draw down schedules. Therefore, investment maturities should generally anticipate cash flow needs. Maintaining appropriate balances in short-term depository institution deposits, investment pools, and money market mutual funds will provide daily liquidity and fund unanticipated cash flow requirements A singular repurchase agreement may be utilized if disbursements are allowed in the

amount necessary to satisfy any expenditure request. This investment structure is commonly referred to as a flexible repurchase agreement.

Diversification – Market conditions, maturities, and arbitrage regulations influence the attractiveness of staggering the maturity of fixed rate investment for Capital Project Funds. Generally, when investment rates exceed the applicable cost of borrowing, the City is best served by locking in most investments. If the cost of borrowing cannot be exceeded, then concurrent market conditions will determine the attractiveness of diversifying maturities or investing in shorter and larger amounts. At no time shall the anticipated expenditure schedule be exceeded in an attempt to bolster yield.

Yield – Achieving a positive spread to the cost of borrowing is the desired objective, within the limits of the Investment Policy's risk constraints. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective for non-borrowed funds.

C. **Working Capital Reserve Funds.** The primary investment strategy for working capital reserve funds is to provide income to the appropriate funds.

Suitability – Any investment eligible in the Investment Policy is eligible for Working Capital Reserve Funds excluding guaranteed investment contracts.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity for the Working Capital Reserve Funds to less than 4 years and restricting the maximum allowable maturity to 5 years will minimize the price volatility of the overall portfolio.

Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The Working Capital Reserve Funds require less liquidity than the General Fund. Liquidity will be maintained through investing in marketable securities.

Diversification – Investment maturities will generally be spread through the allowed maturity range.

Yield – Attaining a competitive market yield for comparable investment types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective.

D. **Cowboys Stadium Complex Debt Service Reserve Funds and Debt Service Funds.** The primary investment strategy for this fund is to earn a interest income which will allow the City to accelerate the amortization of the Stadium debt and consequently to eliminate the 0.50% incremental sales tax, the incremental 2.00% Hotel Occupancy Tax and the 5.00% short term motor vehicle tax at an earlier date.

Suitability – Any investment eligible in the Investment Policy is eligible for Cowboys Stadium Complex Debt Service Reserve Funds and Debt Service Funds excluding guaranteed investment contracts.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity for the Cowboys Stadium Complex Debt Service Reserve Funds, to less than 10 years and , restricting the maximum allowable maturity to 10 years will minimize the price volatility of the overall portfolio. The Cowboys bonds are expected to be paid off in 2023 so maturities for this fund should not extend beyond 8/15/2023. Funds will be invested to ensure sufficient liquidity will be available to make scheduled debt service payments.
Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The Cowboys Stadium Complex Debt Service Reserve Funds and Debt Service Funds require less liquidity than the General Fund. Liquidity will be maintained through investing in marketable securities.

Diversification – Investment maturities will generally be spread through the allowed maturity range.

Yield – Attaining a competitive market yield for comparable investment types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective.

E. **Self-Insurance Funds.** The primary investment strategy for self-insurance funds is to match investments with actuarially estimated cash payments. The secondary investment strategy is to provide a reliable income stream for these funds.

Suitability – Any investment eligible in the Investment Policy is eligible for Self-Insurance Funds excluding guaranteed investment contracts.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity for the Self-Insurance Funds to less than 5 years and restricting the maximum allowable maturity to 7 years will minimize the price volatility of the overall portfolio.

Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The Self-Insurance Funds require less liquidity than the General Fund. Liquidity will be maintained through investing in marketable securities.

Diversification – Investment maturities will generally be spread through the allowed maturity range.

Yield – Attaining a competitive market yield for comparable investment types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective.

F. **Landfill Closure and Post Closure Care Reserve Costs Trust.** The primary investment strategy for this fund is to match investments to the closure schedule. The secondary investment strategy is to provide a market rate of return.

Suitability – Any investment eligible in the Investment Policy is eligible for Landfill Closure and Post Closure Care Reserve Costs Trust excluding guaranteed investment contracts.

Safety of Principal – All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. Investments will be made to provide funds to match the capping schedule. The weighted average days to maturity for the Landfill Closure and Post Closure Care Reserve Costs Trust will not exceed 8 years and maximum allowable maturity is 10 years. Matching the maturities to the closure schedule will minimize the risk of realized price volatility. The expected final closure payment is 9/30/2025.

Marketability – Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement.

Liquidity – The Landfill Closure and Post Closure Care Reserve Costs Trust will be invested to match the closing schedule. Additional liquidity will be maintained through investing in marketable securites.

Diversification – Investment maturities will generally be spread through the closure schedule range.

Yield – Attaining a competitive market yield for comparable investment types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling twelve-month Treasury bill portfolio will be the minimum yield objective.

VIII. SELECTION OF BANKS AND BROKER/DEALERS

A. The Primary Depository shall be selected through the City's banking service procurement process, which is governed by Texas Local Government Code, Chapter 105 – Depositories for Municipal Funds . In selecting a primary depository, the overall service value to the City and credit worthiness of institutions shall be considered, and the Finance Department shall conduct a review of a prospective depository's credit characteristics and financial history.

B. Investments shall only be made with those business organizations (including financial institutions, local government pools, mutual funds, and broker/dealers) that have provided the City with a signed instrument certifying that they have read and understand the City's Investment Policy, provided it to all sales personnel of the firm having contact with the City, and implemented reasonable procedures and controls designed to preclude imprudent investments on behalf of the City. The Investment Committee shall annually review, revise, and adopt a list of qualified broker/dealers.

IX. COLLATERAL

A. **Financial Institution Deposits.** The City's Primary Depository and other depository institutions are required to comply with Government Code Chapter 2257, Collateral for Public Funds. Eligible collateral as defined in Chapter 2257 shall be deposited with a third party custodian, as applicable, prior to the deposit of any City funds. The pledged collateral must be maintained at all times during the term of the Depository contract

at the levels required in this section. In order to perfect the City's security interest in the pledged collateral under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), it is required that a collateral agreement between the City and Depository, be signed by both parties prior to the deposit of City funds. The collateral agreement must be approved by the Board of Directors or Designated Committee of the Depository as reflected in certified minutes given to the City. The signed collateral agreement, Board or Committee resolution, and minutes certifying approval of the collateral agreement must be presented to the City prior to the deposit of City funds.

B. **Securities and Insurance Approved for Collateral:**

1. United States Treasury notes, bills or bonds or obligations fully and unconditionally guaranteed as to principal and interest by the full faith and credit of the United States;

2. Obligations of an agency or instrumentality of the United States, including direct-issue mortgage-backed securities eligible as collateral as per the Government Code Chapter 2257;

3. Letter of Credit issued to the City by an agency or instrumentality of the United States,

4. Surety bond approved by the Investment Committee, and

5. FDIC insurance coverage.

City deposits shall be collateralized at 102% of market value, for all non-mortgage backed securities with a remaining maturity of three (3) years or less, and at 105% of market value for all other listed securities.

The City reserves the right to accept or reject any form of collateral or enhancement at its sole discretion

C. **Collateral Substitution.** Substitutions may be made after obtaining permission from the City. Depositories or repurchase agreement sellers may also request release of collateral whenever the total amount pledged is in excess of City requirements.

D. **Custodian of Collateral.** Securities pledged as collateral must be retained by an independent third party custodian. The custodian must be approved by the City and be either:

1. A state or national bank that has its main office or branch office in Texas that is eligible to serve as custodian as per the Government Code Chapter 2257,

2. A Federal Home Loan Bank, or

3. A Federal Reserve Bank or branch of a Federal Reserve Bank.

The City shall be provided the original safekeeping receipt on each pledged security.

E. **Monthly Collateral Report.** The Custodian shall provide to the City on a timely basis a monthly report of pledged securities. The report should give the following information:

1. Security type and description including CUSIP, coupon, maturity and call dates (if callable);

2. Original Par Value and Current Par Value; and

3. Market Value at month end.

X SAFEKEEPING, CUSTODY AND MARKET PRICING

A. All investment securities, including repurchase agreements, shall be purchased using the delivery versus. payment procedure. The securities shall be delivered to the City's safekeeping bank and held on behalf of the City. Safekeeping receipts shall be delivered to the City. The safekeeping bank records will be reviewed monthly to assure the notation of the City's ownership of such securities.

B. Securities owned by the City shall be repriced monthly by one of the following methods:

1. Interface with a professional repricing service

2. Market levels from a real-time investment service

3. Prior day quotes from the Wall Street Journal, or

4. Other source deemed reliable by the Investment Committee.

Pursuant to GASB marked to market requirements, unrealized gains or losses at fiscal year-end shall be reserved in fund balance.

Staff Report

City Participation, 16-Inch Water Line for the Kroger-Sublett Addition, Project No. WUOP15010	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION
Approve a resolution authorizing participation in the cost of a 16-inch water line with Kroger Texas LP, of Irving, Texas, in an amount not to exceed $186,064.20.

PRIOR BOARD OR COUNCIL ACTION
None

ANALYSIS
The participation request is related to the construction of 2,292 linear feet of 16-inch water line along US Highway 287 north of Sublett Road in lieu of the minimum 12-inch water line required. The Water Distribution Master Plan recommends the 16-inch water line to allow for the expansion of the West Pressure Plane. The pressure plane expansion will increase water pressure, improve water system operation and eliminate the Ridge Point Booster Pump Station.

The Arlington Water Utilities department received a request for City participation from the consulting firm Winklemann & Associates, of Dallas, Texas, on behalf of Kroger Texas LP, of Irving, Texas and recommends reimbursement to the developer for the following:

- Oversize Water Line – 100 percent of the oversized water line construction cost from a 12-inch to 16-inch along 1,339 linear feet of the Kroger-Sublett Addition. The oversize participation is for an amount not to exceed $51,413.10.

- Offsite Water Line – 100 percent of the offsite water line construction cost of a 16-inch along 953 linear feet of US Highway 287 connecting to the existing 16-inch water line. The offsite participation is for an amount not to exceed $134,651.10.

This project meets the requirement of the Texas Local Government Code which limits the participation in the construction of public improvements, excluding oversize participation to less than 30 percent of the total contract price.

FINANCIAL IMPACT
The total estimated cost for the City's participation is $186,064.20. Funds for this participation are available in Water Renewal Fund Account No. 678501-20140205-68252.

FY 2016	FY 2017	FY 2018
$186,064.20	$0	$0

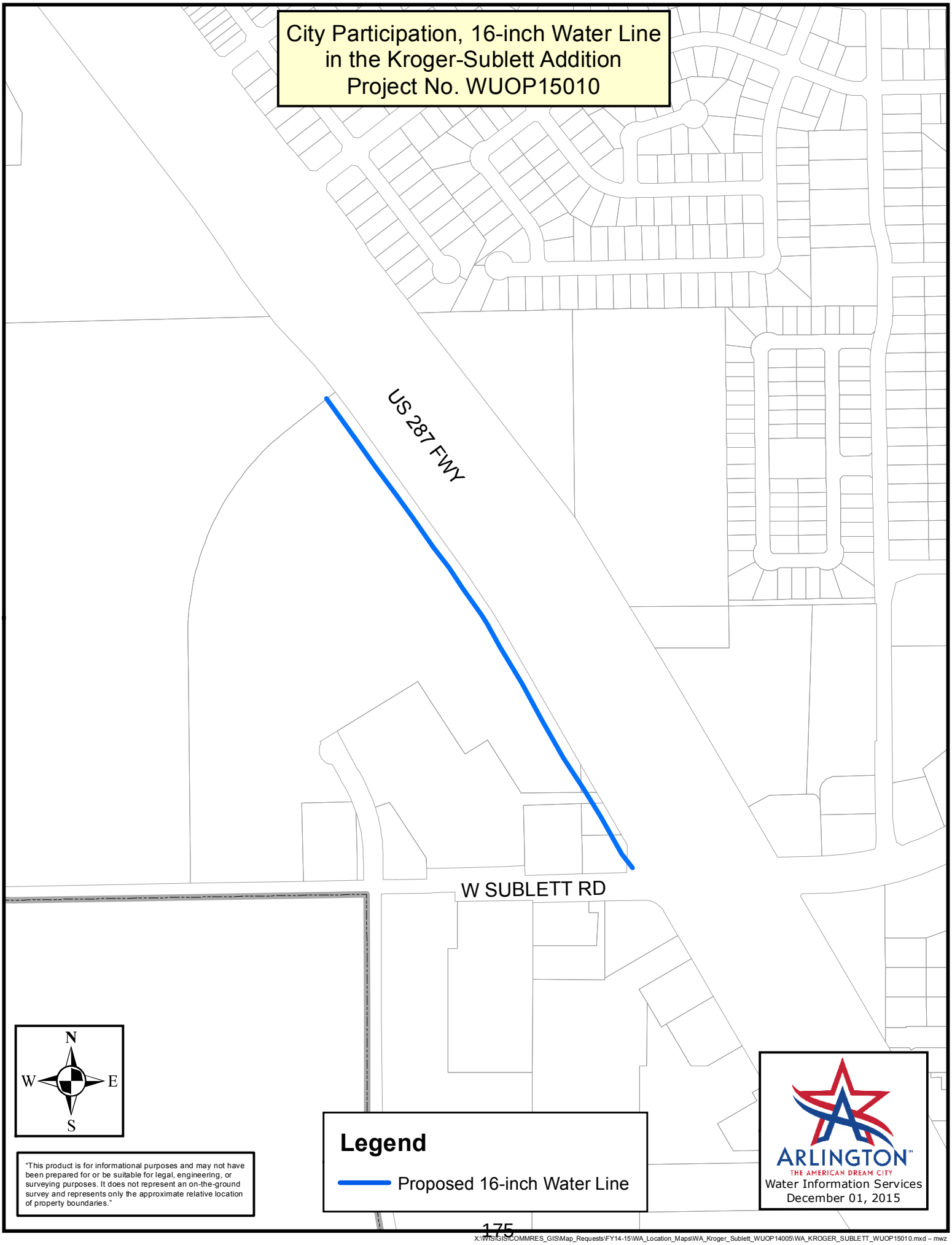
ADDITIONAL INFORMATION

Attached:	Resolution Location Map
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACT(S)

Walter J. Pishkur
Director of Water Utilities
817-459-6603
Buzz.Pishkur@arlingtontx.gov

Brad Franklin, P.E.
Assistant Director of Water Utilities
817-459-6632
Brad.Franklin@arlingtontx.gov



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Resolution No. _____

A resolution authorizing City participation with Kroger Texas LP, of Irving, Texas, in the cost of a 16-inch water line along US Highway 287 north of Sublett Road for an amount not to exceed $186,064.20

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That City participation is hereby authorized with Kroger Texas LP, of Irving, Texas**,** for the cost of constructing 2,292 linear feet of 16-inch water line along US Highway 287 north of Sublett Road. The participation will provide reimbursement for the cost difference between the minimum requirement of a 12-inch water line and a 16-inch water line along 1,339 linear feet of the Kroger-Sublett Addition, for an amount not to exceed $51,413.10; and the offsite water line construction cost of a 16-inch water line along 953 linear feet of US Highway 287 connecting to the existing 16-inch water line, for an amount not to exceed $134,651.10. The total estimated cost for the City's participation is $186,064.20 and shall not exceed 30 percent of the total contract price. Funds are available in Water Renewal Fund Account 678501-20140205-68252.

II.

The City Manager, or his designee, is hereby authorized to administer to all matters and execute all necessary agreements relating to such project and to direct payment of said funds to Kroger Texas LP.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY Eddie Martin

Staff Report

Salary Adjustments for Council Appointees	
City Council Meeting Date: 12/15/2015	Document Being Considered: Resolution

RECOMMENDATION

Approve two resolutions authorizing salary increases for the City Auditor and Municipal Court Judges of the City of Arlington.

PRIOR BOARD OR COUNCIL ACTION

None

ANALYSIS

Two resolutions are on the agenda to set the salaries for the City Auditor and the Municipal Court Judges for fiscal year 2016. Consideration for increases is consistent with the process applied to civilian employees and includes range adjustments to evaluate external equity, including a comparison of the same jobs in the marketplace.

The two resolutions establish salary adjustments as follows:

	Salary Adjustment
Lori Brooks City Auditor	$124,572.60
Kathleen Weisskopf Municipal Court Judge	$109,365.35
Teresa Evans Municipal Court Judge	$107,512.70
Erin Jackson Municipal Court Judge	$96,255.00

The salary adjustments will be effective to the pay period beginning January 4, 2016.

FINANCIAL IMPACT

The decisions for salary adjustments outlined in the two resolutions pertain only to FY2016, and therefore do not impact future years.

ADDITIONAL INFORMATION

Attached: Resolution – City Auditor salary increase
Resolution – Municipal Court Judges salary increases

Under Separate Cover: None

Available in City Secretary's Office: None

STAFF CONTACT(S)

Kari Jo Zika
Director Human Resources
817-575-8987
Kari.Zika@arlingtontx.gov

Resolution No. _____

A resolution adjusting the annual salary for the City Auditor of the City of Arlington

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the annual salary of Lori Brooks, City Auditor for the City of Arlington, Texas, shall be adjusted to $124,572.60, effective with the pay period beginning January 4, 2016.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY Teris Solis

Resolution No. _____

A resolution adjusting the annual salaries for the Municipal Court Judges of the City of Arlington

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the annual salary of Kathleen Weisskopf, Municipal Court Judge for the City of Arlington, Texas, shall be adjusted to $109,365.35, effective with the pay period beginning January 4, 2016.

II.

That the annual salary of Teresa Evans, Municipal Court Judge for the City of Arlington, Texas, shall be adjusted to $107,512.70, effective with the pay period beginning January 4, 2016.

III.

That the annual salary of Erin Jackson, Municipal Court Judge for the City of Arlington, Texas, shall be adjusted to $96,255, effective with the pay period beginning January 4, 2016.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY Teris Solis

Staff Report

Reimbursement Agreement with Kroger Texas, L.P.	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION

Consider a resolution authorizing the execution of a Chapter 380 Program Agreement between Kroger Texas, LP, and the City of Arlington, Texas relative to the cost of developing the property located at the northwest corner of Sublett Road and U.S. Highway 287, specifically, the construction of Sublett Road to a four lane roadway with related improvements west of U.S. Highway 287 in Arlington, Texas.

ANALYSIS

Kroger Texas LP (Kroger) intends to develop and construct a 123,000 square foot store at the northwest corner of US Hwy 287 and Sublett Road in 2016. In order to develop the property, Kroger is required to make certain improvements to Sublett Road from the US 287 frontage road to approximately 300 feet from their west property line, specifically, three (3) deceleration lanes, drive approaches, two (2) left turn lanes and traffic signal at the main entrance to the development. The section of Sublett Road fronting the proposed development is currently improved with a two lane asphalt roadway. Sublett Road is scheduled in the future to be improved with a four lane divided roadway west of US 287, with funding provided from impact fees.

Kroger has agreed to construct the entire four lane roadway with their project, the cost of which is estimated to be $2,665,442. The City's portion of the roadway cost is estimated to be $2,220,419. Kroger will be responsible for roadway improvement costs related to their development, estimated to be $445,023. The execution of the Chapter 380 Agreement will allow the City to reimburse Kroger for the costs associated with the construction of the entire four lane roadway section of Sublett Road, save and except, the cost of roadway improvements Kroger is obligated to pay for in order to develop their site.

FINANCIAL IMPACT

Kroger will continue to be responsible for the roadway costs directly associated with their development. All other costs associated the construction of the four lane divided roadway will be reimbursed to Kroger from impact fees, estimated to be $2,220,419.

ADDITIONAL INFORMATION

Attached:	Resolution with Chapter 380 Program Agreement
Under Separate Cover:	None
Available in the City Secretary's office:	None

STAFF CONTACTS

Roger Venables	James F. Parajon, AICP
Assistant Director	Director
Community Development and Planning	Community Development and Planning
817-459-6613	817-459-6527
Roger.Venables@arlingtontx.gov	Jim.Parajon@arlingtontx.gov

Resolution No. _____

A resolution authorizing the execution of a Chapter 380 Program Agreement by and between Kroger Texas, L.P., and the City of Arlington, Texas, relative to the cost of developing the property located at the northwest corner of Sublett Road and U.S. Highway 287, specifically the construction of Sublett Road to a four lane roadway with related improvements west of U.S. Highway 287 in Arlington, Texas

WHEREAS, CITY has found that providing a program consisting of grant payments and other incentives to Kroger Texas, L.P., (hereinafter referred to as "OWNER") in exchange for OWNER's completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity within the City of Arlington (hereinafter referred to as "PROGRAM"); and

WHEREAS, Chapter 380 of the Texas Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and

WHEREAS, CITY has determined that the PROGRAM will directly establish public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contains controls likely to ensure that the public purpose is accomplished; and

WHEREAS, OWNER has requested assistance from the CITY to offset costs of developing the property, specifically, the construction of Sublett Road to a four lane roadway with related improvements west of U.S. Highway 287; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is hereby authorized to execute a Chapter 380 Program Agreement for Economic Development Incentives with OWNER to provide

certain economic incentives associated with the development of the OWNER's property located at the northwest corner of Sublett Road and U.S. Highway 287, City of Arlington, Tarrant County, Texas

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101. 0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Chapter 380 Program Agreement for Economic Development Incentives is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Exhibit "A"

THE STATE OF TEXAS	§	**CHAPTER 380 PROGRAM AGREEMENT**
	§	**FOR ECONOMIC DEVELOPMENT**
COUNTY OF TARRANT	§	**INCENTIVES**

THIS AGREEMENT is executed by and between **KROGER TEXAS, L.P.**, an entity authorized to do business in Texas (hereafter referred to as "OWNER"), its address being 1331 E. Airport Freeway, Irving, Texas, and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as "CITY").

W I T N E S S E T H:

WHEREAS, OWNER has entered into a contract to purchase vacant land generally located at the northwest corner of Sublett Road and US Highway 287, Arlington, Texas, and intends to develop the site as a retail development; and

WHEREAS, OWNER has requested assistance from the CITY to offset costs of developing the site, specifically the construction of a four lane roadway; and

WHEREAS, CITY has found that providing a program consisting of grant payments and other incentives to OWNER in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

The CITY and OWNER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

I.
Definitions

A. "Added Taxable Value" is defined as the taxable value of the Improved Premises above the Base Year Value, as determined by the Tarrant Appraisal District, on January 1 of the applicable tax year.

B. "Base Year Value" is defined as the taxable value of the Premises on January 1 of 2015, as determined by the Tarrant Appraisal District. The parties agree that the Base Year Value shall be seven hundred and eight thousand, eight hundred and sixty-eight dollars ($708,868) for purposes of this Agreement.

C. "Improved Premises" are defined as the real property (land and improvements) located at Lot 1, Block 1, as defined by the Preliminary Plat of the KROGER-SUBLETT ADDITION, City of Arlington, Texas, after construction of the Project is complete.

D. "Premises" are defined as the real property as described in **Exhibit "A."**

E. "Project" is defined as OWNER'S construction of an approximately 123,000 square foot retail store.

F. "Roadway Improvements" are defined as construction of approximately 1,300 linear feet of a typical four lane divided concrete roadway at Sublett Road from US 287 to the west and transition with 300 feet of asphalt pavement to the west property line of the Kroger-Sublett Addition plat. The roadway shall include a four feet median and a six feet wide bike lane all constructed to City specifications, as generally depicted on the attached **Exhibit "B"**.

II.
Term

This Agreement shall be effective as of the date of execution by all parties (the "Effective Date"). This Agreement will terminate on the complete performance of all obligations and conditions precedent by the parties, unless sooner terminated in accordance with this Agreement.

III.
General Provisions

A. The Premises are not in an improvement project financed by tax increment bonds.

B. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.

IV.
Project Conditions and Requirements

The payment of the incentives described in Section V below are subject to the following conditions:

A. OWNER shall complete the Roadway Improvements and Project by obtaining a certificate of occupancy for the Project by no later than December 31, 2017; provided that such date may be extended upon mutual written agreement of both parties.

B. OWNER shall advance all costs of the Roadway Improvements and construction thereof shall occur pursuant to a construction contract between OWNER and a qualified contractor (the "OWNER's Contractor"). OWNER shall ensure that the OWNER's Contractor acquires the necessary permits and enters into the necessary three party contracts for public improvements that shall govern the construction of the Roadway Improvements in accordance with City Ordinance and policies.

C. OWNER's completion of the Project must result in Added Taxable Value of at least eight million dollars ($8,000,000) for the tax year beginning January 1, 2018.

D. OWNER shall not fail to render for taxation any business personal property owned by OWNER and located within the City of Arlington.

E. OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

F. OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with section 2265.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.D. Section 1324a(f), OWNER shall repay to the CITY the full amount of the incentives provided under Section V of this Agreement, plus 10% per annum from the date the incentive payment(s) was made. Repayment shall be paid within 120 days after the date OWNER receives notice of violation from the CITY.

V.
Incentives

In exchange for OWNER's completion and compliance with the Project Conditions and Requirements set forth in Section IV above, CITY shall do the following:

CITY agrees to pay to OWNER one or more grant payments not to exceed in total Two Million Two Hundred and Twenty Thousand Four Hundred and Nineteen Dollars ($2,220,419) for real and substantiated costs associated with the construction of the Roadway Improvements. Construction costs incurred by OWNER that qualify for grant payment reimbursement include the costs listed on the Engineers' Opinion of Probable Construction Costs attached as **Exhibit "C",** other than the costs listed for "Kroger Decel Lanes and Drive Approaches" and "Kroger Left Turn Lanes." OWNER may satisfy its obligation to substantiate costs qualifying for grant payment reimbursements by submitting to CITY detailed periodic and final billings, no more frequently than monthly, received from its general contractor together with proof that OWNER has paid such billings.

A. Commencing after the Effective Date, OWNER may submit to CITY after the close of each calendar quarter a request for a grant payment equal to the amount of any qualifying and substantiated construction costs incurred and not previously reimbursed by CITY. Subject to CITY's review and verification of the grant payment request, CITY shall make the requested grant payment to OWNER within thirty days after CITY's receipt of the grant payment request. OWNER shall submit a reconciling and substantiated request for any final grant payment due after the Roadway Improvements have been completed and finally accepted by CITY.

B. Such incentives shall be subject to annual appropriation by the City Council of the CITY in the annual budget and the CITY's obligations under this Agreement shall not constitute general obligations of the CITY or indebtedness under the constitution or laws of the State of Texas.

VI.
Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses

In performing this Agreement, OWNER agrees to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price. As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least 51% of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons or organizations proposed for work on this Agreement, the OWNER agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

VII.
Default and Termination

A. OWNER is considered to be in default under this Agreement if OWNER fails to fulfill its obligations under Section IV of this Agreement. The CITY is considered to be in default under this Agreement if CITY fails to fulfill its obligations under Section V of this Agreement. If either OWNER or CITY defaults (a "Default"), the defaulting party shall cure such Default within 30 days after the delivery of written notice of such Default from the other party, or if such failure cannot be cured within such 30-day period in the exercise of all due diligence, then if defaulting party commences an attempt to cure within such 30-day period, such longer period as the party thereafter continues diligently to prosecute the cure of such Default. Notice of a Default shall be in writing and shall be delivered by personal delivery or certified mail to the defaulting party at its address provided in Section X of this Agreement.

B. If OWNER does not cure a Default of Sections IV in the time period allowed by this Agreement the CITY may terminate this Agreement and may seek repayment by OWNER of incentives paid. It shall be the duty of the CITY to determine whether to require repayment of incentives paid and demand payment by OWNER of such. Repayment of incentives paid shall become due 60 days following receipt of such demand. The CITY's right to require repayment and demand payment of incentives paid and OWNER's obligation to repay such shall survive the termination of this Agreement.

VIII.
Effect of Sale or Lease of Property

The incentives authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Premises, unless such assignment is approved in writing by CITY. OWNER may at any time assign, transfer, or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without approval of CITY so long as the Affiliate executes an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of OWNER under this Agreement. "Affiliate" for purposes of this section means all entities, incorporated or otherwise, under common control with, controlled by or controlling OWNER, where "control" means fifty percent (50%) or more of ownership determined by either value or vote.

IX.
Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER: Kroger Texas, L.P.
Attn: Real Estate Manager
1331 E. Airport Freeway
Irving, Texas 75062

CITY: City of Arlington
City Manager's Office
Attn: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

X.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XI.
Severability

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

XII.
No Third-Party Beneficiaries

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) the Agreement only affects matters/disputes between the parties to this Agreement (other than as specifically set forth herein with respect to assignment of this Agreement by OWNER to an affiliate of OWNER), and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or OWNER or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or OWNER.

XIII.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by

either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

XIV.
Estoppel Certificate

From time to time upon written request of the OWNER the CITY will execute a written estoppel certificate, in a form acceptable to the City Manager or his designee, identifying any obligations of the OWNER under this Agreement that are in default, or with the giving of notice or the passage of time, would be in default; and stating, to the extent true, that to the best of knowledge and belief of the CITY, the OWNER is in compliance with its duties and obligations under this Agreement.

XV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVI.
Indemnification

It is understood and agreed between the parties that OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any claims, damages, verdicts or judgments arising out of actions or omissions by OWNER or caused by OWNER in breach of this Agreement. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and OWNER assumes no responsibility or liability to third parties in connection therewith, and CITY agrees to the extent allowed by law to indemnify and hold harmless OWNER from any such responsibility or liability.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the obligations of this Agreement is delayed by reason of war, Act of God, fire or other casualty of a similar nature.

XVIII.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement.

No successor, executor, administrator or assign is valid in the place of the parties to this Agreement without the written consent of CITY.

XXI.
Execution of Agreement

This Agreement must be executed within 60 days after the date this Agreement is authorized by the City of Arlington City Council and presented to OWNER for signature. This Agreement has been authorized by City Council on _____, 2015.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2015.

KROGER TEXAS, L.P.

BY_____
JOSEPH W. BRADLEY
Vice President and Assistant Treasurer

WITNESS:

_____

CITY OF ARLINGTON, TEXAS

BY_____
JIM PARAJON
Deputy City Manager

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

KROGER TEXAS, L.P.
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JOSEPH W. BRADLEY** who is known to me or who was proved to me on the oath of _____ (*name of person identifying the acknowledging person*) or who was proved to me through _____ (*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **KROGER TEXAS, L.P.,** and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2015.

_____
Notary Public in and for
The State of Texas

_____
My Commission Expires

_____
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON** who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2015.

_____
Notary Public in and for
The State of Texas

_____
My Commission Expires

_____
Notary's Printed Name

Exhibit "A"

Premises

Being all of Lot 1, Block 1 of the KROGER-SUBLETT ADDITION, out of the J.C. Houston Survey, Abstract No. 720, City of Arlington, Tarrant County, Texas

Exhibit "B"

Depiction of Roadway Improvements

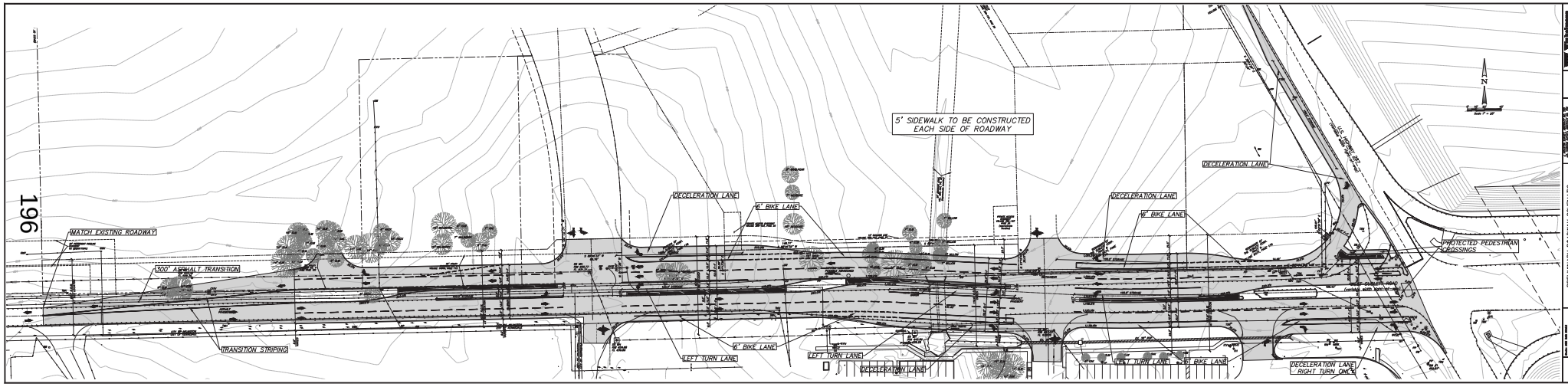
MATCH EXISTING ROADWAY
300' ASPHALT TRANSITION
TRANSITION STRIPING
DECELERATION LANE
6' BIKE LANE
LEFT TURN LANE
5' SIDEWALK TO BE CONSTRUCTED
EACH SIDE OF ROADWAY
DECELERATION LANE
RIGHT TURN ONLY
PROTECTED PEDESTRIAN
CROSSINGS
PRELIMINARY ROADWAY SCHEMATIC
WEST SUBLETT RD.
ARLINGTON, TEXAS

Exhibit "C"

Engineers' Opinion of Probable Construction Costs

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
WEST SUBLETT ROAD ~ ARLINGTON, TX

August 26, 2014

Update December 15, 2014, Revised December 30, 2014, Revised May 20, 2015, Updated June 17, 2015, Updated June 26, 2015, Updated July 15, 2015, Updated July 24, 2015, Updates July 27, 2015

For construction of US287 Right Turn Lane, Traffic Signal work, 4 lanes to west property line, plus bike lanes to Joplin Rd.

QUANTITY	UNIT	ITEM	UNIT PRICE	TOTAL
MAIN ROADWAY LESS KROGER ITEMS BELOW (CITY PORTION NORTH OF CENTER LINE)				
1.0	LS	MOBILIZATION	$ 10,000.00	$ 10,000.00
1.0	LS	DEMOLITION	$ 50,000.00	$ 50,000.00
5,000.0	CY	EXCAVATION	$ 20.00	$ 100,000.00
4,430.0	SY	9" CONCRETE PAVEMENT	$ 45.00	$ 199,350.00
4,784.0	SY	12" LIME STABILIZED BASE	$ 4.50	$ 21,528.00
88.8	TN	LIME	$ 160.00	$ 14,208.00
1,385.0	SY	TRANSITION ASPH PAVM'T	$ 28.00	$ 38,780.00
1,786.0	SF	MEDIAN PAVERS	$ 7.50	$ 13,395.00
3.0	EA	MONOLITHIC NOSE	$ 1,000.00	$ 3,000.00
6.0	EA	BARRIER FREE RAMPS	$ 1,000.00	$ 6,000.00
6,225.0	SF	5 ft. CONCRETE SIDEWALK (SOUTH SIDE)	$ 4.50	$ 28,012.50
3,500.0	SY	4" TOP SOIL	$ 10.00	$ 35,000.00
1.0	LS	SEEDING	$ 7,500.00	$ 7,500.00
1.0	LS	EROSION CONTROL	$ 7,500.00	$ 7,500.00
3,273.0	LF	PVM'T MARKING	$ 10.00	$ 32,730.00
1.0	LS	TRAFFIC CONTROL	$ 25,000.00	$ 25,000.00
1.0	LS	SIGNAL ADJUSTMENT @ 287	$ 60,000.00	$ 60,000.00
100.0	FT	21" RCP	$ 40.00	$ 4,000.00
100.0	FT	24" RCP	$ 50.00	$ 5,000.00
175.0	FT	30" RCP	$ 65.00	$ 11,375.00
100.0	FT	36" RCP	$ 80.00	$ 8,000.00
3.0	EA	10' INLETS	$ 4,000.00	$ 12,000.00
70.0	LF	2- 8'X4' CULVERT	$ 650.00	$ 45,500.00
5.0	EA	FIRE HYDRANTS	$ 3,000.00	$ 15,000.00
1.0	LS	UTILITY ADJUSTMENTS	$ 15,000.00	$ 15,000.00
4.0	EA	STREET LIGHTS	$ 4,500.00	$ 18,000.00
800.0	LF	CONDUIT	$ 12.00	$ 9,600.00
800.0	LF	WIRE	$ 8.00	$ 6,400.00
			Sub-Total	**$ 801,878.50**
			10% Contingencies	**$ 80,187.85**
			Sub-Total Construction Cost	**$ 882,066.35**
			8% Design	**$ 70,565.31**
			2% Staking	**$ 17,641.33**
			Construction Services	**$ 6,350.00**
			TOTAL	**$ 976,622.99**
MAIN ROADWAY LESS KROGER ITEMS BELOW (CITY PORTION SOUTH OF CENTER LINE)				
1.0	LS	MOBILIZATION	$ 10,000.00	$ 10,000.00
1.0	LS	DEMOLITION	$ 50,000.00	$ 50,000.00
5,000.0	CY	EXCAVATION	$ 20.00	$ 100,000.00
6,370.0	SY	9" CONCRETE PAVEMENT	$ 45.00	$ 286,650.00
6,880.0	SY	12" LIME STABILIZED BASE	$ 4.50	$ 30,960.00
127.0	TN	LIME	$ 160.00	$ 20,320.00
1,750.0	SF	MEDIAN PAVERS	$ 7.50	$ 13,125.00
2.0	EA	MONOLITHIC NOSE	$ 1,000.00	$ 2,000.00
500.0	SY	4" TOP SOIL	$ 10.00	$ 5,000.00
1.0	LS	SEEDING	$ 7,500.00	$ 7,500.00
1.0	LS	EROSION CONTROL	$ 7,500.00	$ 7,500.00
3,000.0	LF	PVM'T MARKING	$ 10.00	$ 30,000.00
1.0	LS	TRAFFIC CONTROL	$ 25,000.00	$ 25,000.00
100.0	FT	21" RCP	$ 40.00	$ 4,000.00

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100.0	FT	24" RCP	$ 50.00	$	5,000.00
175.0	FT	30" RCP	$ 65.00	$	11,375.00
100.0	FT	36" RCP	$ 80.00	$	8,000.00
2.0	EA	STORM MANHOLES	$ 5,000.00	$	10,000.00
3.0	EA	10' INLETS	$ 4,000.00	$	12,000.00
70.0	LF	2- 8'X4' CULVERT	$ 650.00	$	45,500.00
20.0	LF	10'X4' BOX CULVERT	$ 10,000.00	$	200,000.00
1.0	EA	JUNCTION BOX	$ 50,000.00	$	50,000.00
5.0	EA	FIRE HYDRANTS	$ 3,000.00	$	15,000.00
2.0	EA	WATER MAIN LOWERING	$ 15,000.00	$	30,000.00
1.0	LS	UTILITY ADJUSTMENTS	$ 10,000.00	$	10,000.00
4.0	EA	STREET LIGHTS	$ 4,500.00	$	18,000.00
800.0	LF	CONDUIT	$ 12.00	$	9,600.00
800.0	LF	WIRE	$ 8.00	$	6,400.00
			Sub-Total	**$**	**1,022,930.00**
			10% Contingencies	**$**	**102,293.00**
			Sub-Total Construction Cost	**$**	**1,125,223.00**
			8% Design	**$**	**90,017.84**
			2% Staking	**$**	**22,504.46**
			Construction Services	**$**	**6,050.00**
			TOTAL	**$**	**1,243,795.30**
KROGER DECEL LANES AND DRIVE APPROACHES					
708.0	SY	9" CONCRETE PAVEMENT	$ 45.00	$	31,860.00
765.0	SY	12" LIME STABILIZED BASE	$ 4.50	$	3,442.50
15.0	TN	LIME	$ 160.00	$	2,400.00
1.0	EA	TRAFFIC SIGNAL @ MAIN ENTRY	$ 200,000.00	$	200,000.00
1.0	LS	US287 RIGHT TURN LANE AT SUBLET RD	$ 100,000.00	$	100,000.00
			Sub-Total	**$**	**337,702.50**
			10% Contingencies	**$**	**33,770.25**
			Sub-Total Construction Cost	**$**	**371,472.75**
			8% Design	**$**	**29,717.82**
			2% Staking	**$**	**7,429.46**
			Construction Services	**$**	**2,300.00**
			TOTAL	**$**	**410,920.03**
KROGER LEFT TURN LANES					
525.0	SY	9" CONCRETE PAVEMENT	$ 45.00	$	23,625.00
567.0	SY	12" LIME STABILIZED BASE	$ 4.50	$	2,551.50
11.0	TN	LIME	$ 160.00	$	1,760.00
			Sub-Total	**$**	**27,936.50**
			10% Contingencies	**$**	**2,793.65**
			Sub-Total Construction Cost	**$**	**30,730.15**
			8% Design	**$**	**2,458.41**
			2% Staking	**$**	**614.60**
			Construction Services	**$**	**300.00**
			TOTAL	**$**	**34,103.17**
			GRAND TOTAL	**$**	**2,665,441.48**

NOTES:

1 Since there is no control over the cost of labor, materials, and equipment or over contractor's method of determining prices, or over competitor's bidding or market conditions, this Opinion of Probable Construction Cost is made on the basis of our professional experience and represents our best judgment as a firm familiar with the construction industry. We cannot and do not guarantee proposals or bids on the project costs stated will not vary from the above estimate.

2 Inspection and testing to be provided by the City of Arlington. No fees for these items are included in the above estimates.

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Staff Report

Assignment of Rights and Obligations of Tax Abatement and Chapter 380 Grant Agreement with Exeter 4900 Sherry, L.P. (Arlington Commerce Center Bldg. C)	
City Council Meeting: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the assignment of all the rights and obligations accruing to Exeter 4900 Sherry L.P. under Tax Abatement and a Chapter 380 Agreement with the City of Arlington, Texas.

PRIOR BOARD OR COUNCIL ACTION

On June 18, 2013, City Council approved Resolution No. 13-158 authorizing a Tax Abatement and a Chapter 380 Agreement for Economic Development Incentives with Exeter 4900 Sherry, LP relative to a new building (Bldg. C) to be located at Arlington Commerce Center.

On May 21, 2013, City Council approved Ordinance No. 13-018, designating Reinvestment Zone Number Thirty-Six (RIZ #36) at 4900 Sherry Street (Arlington Commerce Center).

On May 7, 2013, City Council held a public hearing and approved the first reading of the ordinance designating RIZ #36 on the subject site.

ANALYSIS

The agreement between Exeter 4900 Sherry L.P. provides for a seven year, 75% real property tax abatement on minimum added value of $15 million and a one-time grant in the amount of $187,000 to assist in offsetting assessed impact fees for an 821,000 sq. ft. industrial building (Bldg. C). Bldg. C was completed in January 2015 and presently houses Williams Sonoma Direct, Inc.

Per the existing Tax Abatement and Chapter 380 Agreement, no assignment of the agreement is valid without the written consent of the City. The new entity to which the agreement is to be assigned is Big Box Property Owner C, LLC, a Delaware limited liability company. Exeter intends to remain a partial owner and will continue to manage the property. Therefore, under the proposed Resolution, Big Box Property Owner C, LLC will be bound to all obligations and requirements under the existing agreement.

FINANCIAL IMPACT

None

ADDITIONAL INFORMATION

Attached:	Resolution Consent to Assignment
Under separate cover:	None
Available in the City Manager's office:	None

STAFF CONTACT

Bruce Payne
Economic Development Manager
817-459-6114
Bruce.Payne@arlingtontx.gov

Resolution No. _____

A resolution approving the assignment of all the rights and obligations accruing to Exeter 4900 Sherry, L.P. under that certain Tax Abatement and Chapter 380 Grant Agreement by and between Exeter 4900 Sherry, L.P. and the City of Arlington, Texas, previously approved by City Council Resolution No. 13-158

WHEREAS, on June 18, 2013, by Resolution No. 13-158, City Council authorized the execution of a Tax Abatement and Chapter 380 Grant Agreement ("Agreement") with Exeter 4900 Sherry, L.P. ("EXETER") relating to the project at 4900 Sherry Street, Arlington, Texas; and

WHEREAS, EXETER has sold the property to Big Box Property Owner C, LLC ("BIG BOX"); and

WHEREAS, EXETER desires to assign all of its rights and obligations under the Agreement to BIG BOX; and

WHEREAS, EXETER has requested that the City Council approve an assignment of EXETER's rights and obligations under the Agreement to BIG BOX; and

WHEREAS, as of the date hereof, to the knowledge of the City, no factual circumstances or conditions exist which, with notice or the lapse of time, or both, would give rise to any obligation of any party to the Agreement which, if not satisfied, will constitute a default on the part of either party to the Agreement, or constitute the basis for a claim or cause of action against EXETER; and

WHEREAS, the Agreement provides that the Agreement can be assigned with approval of the City Council, which approval shall not be unreasonably withheld; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Council hereby approves an assignment of all of EXETER's rights and obligations under the Agreement authorized by Resolution 13-158 to BIG BOX.

III.

That the City Manager or his designee is authorized to execute a Consent and Estoppel establishing the conditions of the City's approval of the assignment of the Agreement. A substantial copy of the Consent and Estoppel for the Tax Abatement and Chapter 380 Grant Agreement is attached.

IV.

In approving assignment of the referenced Agreement, the City of Arlington, Texas, through its City Council, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

THE STATE OF TEXAS §
§ **CONSENT AND ESTOPPEL**
COUNTY OF TARRANT §

THIS CONSENT AND ESTOPPEL (this "Consent") dated as of the _____ day of _____, 2015, is made by and between the **CITY OF ARLINGTON, TEXAS** (the "CITY"), a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, **EXETER 4900 SHERRY, L.P.** ("EXETER"), an entity duly authorized to do business in the State of Texas, and **BIG BOX PROPERTY OWNER C, LLC** ("BIG BOX"), a Delaware limited liability company.

W I T N E S S E T H :

WHEREAS, the CITY and EXETER are parties to that certain Tax Abatement and Chapter 380 Grant Agreement (the "Agreement") authorized by Resolution No. 13-158 passed by City Council on June 18, 2013, relating to certain premises located at 4900 Sherry Street, Arlington, Texas (the "Premises"); and

WHEREAS, EXETER recently sold the property (the "Transfer") to BIG BOX; and

WHEREAS, in connection with the Transfer, EXETER, as Owner under the Agreement, desires to assign all of EXETER's rights and obligations under the Agreement to BIG BOX (the "Assignment"); NOW, THEREFORE,

In consideration of the mutual covenants and agreement set forth in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY hereby agrees as follows:

1. The CITY hereby consents to the Assignment.

2. The Agreement is in full force and effect and has not been modified, supplemented or amended in any way except as set forth herein.

3. All conditions under the Agreement to be performed by the Owner which are prerequisite to the full effectiveness of the Agreement have been satisfied as of the date hereof.

4. As of the date hereof, to the knowledge of CITY, there exist no factual circumstances or conditions which, with notice or the lapse of time, or both, would give rise to any obligation of any party to the Agreement which, if not satisfied, will constitute a default on the part of either party to the Agreement, or constitute the basis for a claim or cause of action against EXETER.

5. The CITY hereby agrees that BIG BOX shall be entitled to rely upon the statements made herein and shall be a third party beneficiary hereof.

6. This Consent may not be modified orally, but only by written instrument, and constitutes the entire agreement between the parties with respect to the subject matter hereof.

7. The Agreement and all of the terms, covenants and conditions thereof remain in full force and effect and BIG BOX agrees to be bound thereby.

8. All notices which are required or desired to be sent to the BIG BOX under the Agreement shall be delivered, pursuant to the terms of the Agreement, to the following:

Big Box Property Owner C, LLC
c/o Exeter Property Group
140 West Germantown Pike, Suite 150
Plymouth Meeting, Pennsylvania 19462

9. This Consent may be executed in one or more facsimile counterparts, each of which shall be deemed an original but, when taken together, shall constitute one Consent.

10. Notwithstanding anything to the contrary, nothing contained herein shall relieve EXETER or its successors or assigns from the CITY's right of recapture pursuant to Paragraph VII.C. of the Agreement.

IN WITNESS WHEREOF, the CITY has caused this Consent to be executed the day and year first above written.

EXETER 4900 SHERRY, L.P., a Texas limited partnership

By: Exeter 4900 Sherry, LLC, a Delaware limited liability company,
its sole general partner

By: Exeter Operating Partnership II, L.P.,
a Delaware limited partnership,
its sole member

By: Exeter Operating Partnership II GP LLC,
a Delaware limited liability company,
its sole general partner

By: Exeter Industrial REIT II,
a Maryland statutory trust,
its sole member

By:_____
Name: Timothy J. Weber
Title: Secretary/Treasurer

_____
Date

WITNESS:

_____

BIG BOX PROPERTY OWNER C, LLC

BY_____
TIMOTHY J. WEBER
Authorized Signatory

_____
Date

WITNESS:

_____

CITY OF ARLINGTON, TEXAS

BY_____
JIM PARAJON
Deputy City Manager

_____
Date

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____

COMMONWEALTH OF PENNSYLVANIA)
)ss.:
COUNTY OF DELAWARE)

On this the _____ day of December, 2015, before me, the undersigned officer, personally appeared Timothy J. Weber who acknowledged himself to be the Secretary/Treasurer of Exeter Industrial REIT II, a Maryland statutory trust, which is the sole member of Exeter Operating Partnership II GP LLC, a Delaware limited liability company, which is the sole general partner of Exeter Operating Partnership II, L.P., a Delaware limited partnership, which is the sole member of Exeter 4900 Sherry, LLC, a Delaware limited liability company, which is the general partner of Exeter 4900 Sherry, L.P., a Texas limited partnership, and that, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public
My commission expires:

COMMONWEALTH OF PENNSYLVANIA)
)ss.:
COUNTY OF DELAWARE)

On this the _____ day of December, 2015, before me, the undersigned officer, personally appeared Timothy J. Weber who acknowledged himself to be the Authorized Signatory of Bix Box Property Owner C, LLC, a Delaware limited liability company, and that, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public
My commission expires:

THE STATE OF TEXAS §
§ **CITY OF ARLINGTON, TEXAS**
COUNTY OF TARRANT § **Acknowledgment**

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a Texas municipal corporation, and as **Deputy City Manager** thereof, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2015.

[Seal]

_____
Notary Public, State of Texas

_____
Notary's Printed Name

Staff Report

Alternate Sign Plan Z06-40R1/B06-40R1-ASP (Glorypark)	
City Council Meeting Date: 12-15-15	Document Being Considered: Ordinance

RECOMMENDATION
Following the public hearing, consider adopting an ordinance approving Alternate Sign Plan Z06-40R1/B06-40R1-ASP for a certain portion of the Glorypark Planned Development.

PRIOR BOARD OR COUNCIL ACTION
On December 13, 2006, the Planning and Zoning Commission recommended approval of Zoning Case Z06-40/B06-40, a 257.82-acre Glorypark Planned Development (PD), by a vote of 9-0-0.

On June 5, 2007, City Council approved Zoning Case Z06-40/B06-40 by a vote of 9-0-0.

On June 3, 2009, the Planning and Zoning Commission recommended approval of Zoning Case Z06-40R1/B06-40R1, a revision to the Glorypark PD to add 18.90 acres, by a vote of 7-0-0.

On June 23, 2009, City Council approved Zoning Case Z06-40R1/B06-40R1 by a vote of 9-0-0.

REQUEST
The applicant is requesting approval of an Alternate Sign Plan for a portion of the Glorypark PD bound by Stadium Drive on the east, Cowboys Way on the south, Johnson Creek on the west and East Randol Mill Road on the north. The site is zoned Planned Development (PD) for mixed uses including major sports complex; certain agricultural, animal related; auto related; commercial; institutional; office; recreation, entertainment; residential lodging; retail, personal service; temporary accessory; utility, communication, transportation; wholesale, distribution, storage; and gas drilling and production uses.

ANALYSIS
The subject site is located south of East Randol Mill Road and west of Stadium Drive. The site is currently developed as a parking lot; however, a chapter 380 program agreement is being separately considered with a developer to build an entertainment complex on the site. The complex will be a large, pedestrian-friendly entertainment complex with retail and restaurant uses.

Per the approved Glorypark PD Ordinance No. 09-035, City Council may approve an alternate sign plan applicable to all or a portion of the PD district. The Planning and Zoning Commission is not required to review or make a recommendation on a proposal for an alternate sign plan.

The attached Alternate Sign Plan outlines the intent, maximum number, size, and height restrictions for each of the different sign types that are proposed to be installed within the Entertainment complex. The emergency first and final reading of this ordinance is requested in order to facilitate construction of the project.

FINANCIAL IMPACT
None

ADDITIONAL INFORMATION

Attached:	Ordinance with Exhibits A & B
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACT(S)

James F. Parajon, FAICP
Deputy City Manager
817.459.6103
Jim.Parajon@arlingtontx.gov

Ordinance No._____

An ordinance adopting Alternate Sign Plan, Z06-40R1/B06-40R1-ASP, for a certain portion of property known as the "First Phase Property" located in an area zoned Glorypark PD (a "PD for mixed uses including major sports complex; certain agricultural, animal related; auto related; commercial; institutional; office; recreation, entertainment; residential lodging; retail, personal service; temporary accessory; utility, communication, transportation; wholesale, distribution, storage; and gas drilling and production uses"); authorizing the building official to issue permits upon the effective date; providing for a fine of up to $2,000.00 for each violation; providing this ordinance be cumulative; and providing for repeal of conflicting ordinances, severability, governmental immunity, injunctions, declaring an emergency and establishing an effective date.

WHEREAS, Ordinance No. 09-035, approved on the 23rd day of June, 2009 (the "PD Ordinance"), established certain sign standards for the land more fully described therein (the "Property") that is located in the vicinity of the major league professional baseball stadium now known as Globe Life Park in Arlington (the "Ballpark");

WHEREAS, Section X.C of the PD Ordinance provides that the Council may approve an alternative sign package applicable to all or a portion of the Property;

WHEREAS, that portion of the Property bound by Stadium Drive on the east, Cowboys Way on the south, Johnson Creek on the west and East Randol Mill Road on the north (the "First Phase Property") is now under the direct or indirect control of the City of Arlington (the 'City") and the owners of the Texas Rangers Baseball Club (the "Club"), a member club of the American League of Professional Baseball Clubs;

WHEREAS, the First Phase Property is intended to be developed as a premiere dining and entertainment venue generally similar to the first phase of the St. Louis Cardinals' Ballpark Village in St. Louis, Missouri (the "Entertainment Complex") and, at the election of the developer of the Entertainment Complex, as a hotel and convention center facility owned by the City and leased to the developer (the "Hotel"), all as part of a larger development project envisioned for the First Phase Property (collectively, the "Project");

WHEREAS, signage will be an important aspect of the Project, as the intent is to create a vibrant high-traffic entertainment destination incorporating innovative art graphic technologies that will bring a distinctive character to the area, which is located in close proximity to two major sports venues;

WHEREAS, the City has found that providing a grant of funds to the developer of the Project to pay costs of construction will promote local economic development and stimulate business and commercial activity and create jobs within the City;

WHEREAS, it is the intent of one or more owners of the Club to participate financially, through one or more intermediaries, in development of the Project;

WHEREAS, the developer of the Project has submitted to the Council the proposed sign package (the "Alternate Sign Plan"), attached hereto as Exhibit "B", and incorporated herein all purposes, for the Entertainment Complex and Hotel, as an alternative to the sign regulations set forth in the PD Ordinance; and

WHEREAS, the City Council has determined that the Alternate Sign Plan will: complement or be compatible with the surrounding uses and facilities; contribute to, enhance or promote the welfare of the area of the Glorypark PD and adjacent properties; not be detrimental to the public health, safety or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens that the alternate sign plan be approved. NOW, THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

An alternate sign plan is hereby granted for the "First Phase Property", as shown in Exhibit "A", of the commonly known Glorypark Planned Development. The overall context of the proposed signage shall be in compliance with this ordinance, and the attached alternate sign plan, shown as Exhibit "B".

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

This is an ordinance for the immediate preservation of the public peace, property, health and safety, and is an emergency measure within the meaning of Article VII, Sections 11 and 12, of the City Charter; and the City Council, by the affirmative vote of all of its members present and voting, hereby declares that this ordinance is an emergency measure, and the requirement that it be read at two (2) meetings, as specified in Section 11, is hereby waived.

8.

This ordinance shall become effective upon passage and signature by the Mayor.

PRESENTED, FINALLY PASSED AND APPROVED, AND EFFECTIVE on this the 15th day of December, 2015 by a vote of __ ayes and __ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

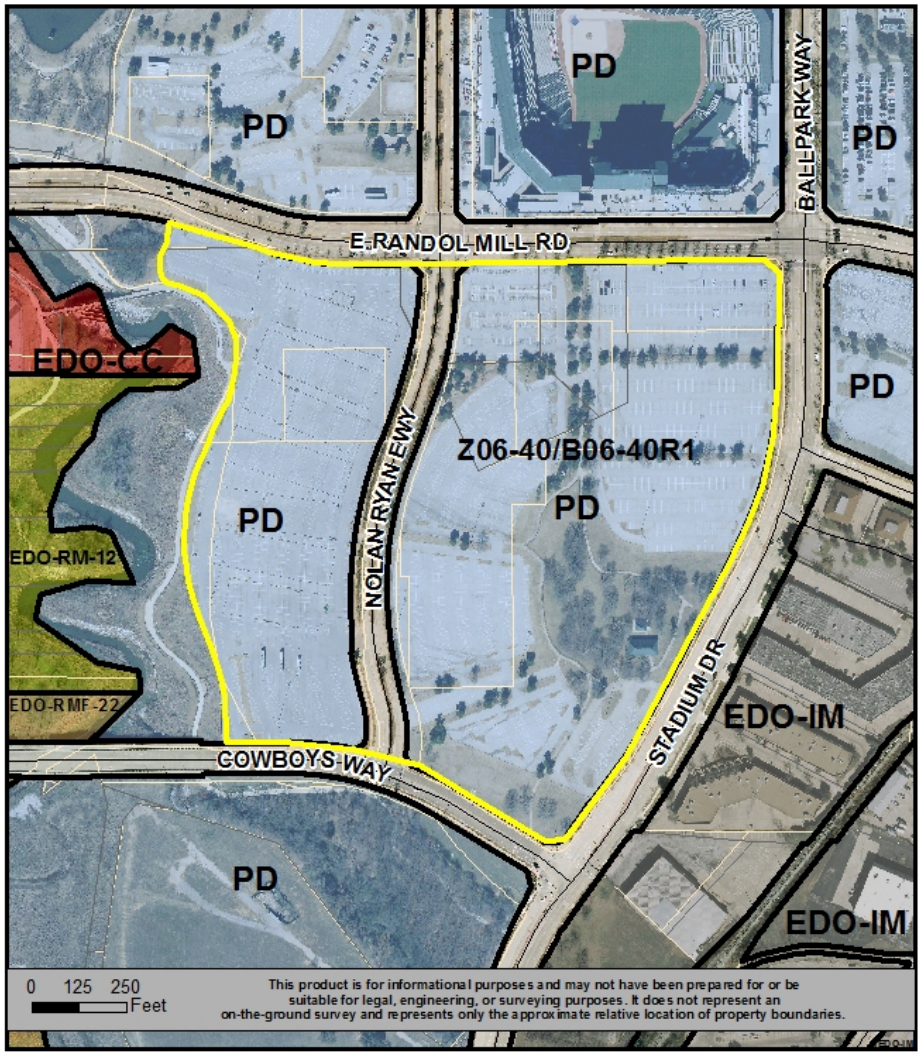
APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Z06-40R1/B06-40R1-ASP

EXHIBIT "A"

Being that property outlined in yellow below and being located between the public right-of-ways Stadium Drive on the East, E. Randol Mill Road on the North, Cowboys Way on the South, and by Johnson Creek on the West.



LOCATION MAP
Z06-40R1/B06-40R1-ASP

"FIRST PHASE PROPERTY" BOUNDARY

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W E
S

Prepared: 12-10-2015

EXHIBIT "B"

A. **SCOPE**

1. This Alternate Sign Plan is intended to benefit the Entertainment Complex and Hotel constructed on the First Phase Property. If improvements are constructed on the First Phase Property in addition to the Entertainment Complex and Hotel, it is contemplated that additional signage rights will be granted to benefit those additional improvements.

2. The provisions of this Alternate Sign Plan apply only to the First Phase Property.

B. **CONFLICTS**

1. In the event of a conflict between the provisions of the Unified Development Code (the "UDC"), the provisions of the PD Ordinance, or the provisions of any other zoning ordinance applicable to the First Phase Property, and the provisions of this Alternate Sign Plan, the provisions of this Alternate Sign Plan shall control.

2. Signage authorized by the Major Sports Complex Sign Standards (Ordinance 15-019) for a major sports complex shall continue to apply to portions of the First Phase Property that constitute a major sports complex.

3. Section X.E (Signs – Miscellaneous Provisions), Section X.F (Signs – Additional Permitted Signs) of the PD Ordinance shall not apply to the First Phase Property.

C. **CERTAIN DEFINITIONS**

1. General. Terms used herein without definition that are defined in the PD Ordinance or in the recitals of the ordinance adopting this Alternate Sign Plan, shall have the meaning given to such terms in the PD Ordinance or such recitals, as applicable.

2. Club. Texas Rangers Baseball Club, a member club of the American League of Professional Baseball Clubs.

3. Detached Sign. A freestanding sign that is not attached to, applied on, or supported by any part of a building or outdoor entertainment

and advertising structure.

4. Developer. Arlington Ballpark District Entertainment Block, LLC, a Delaware limited liability company, or a successor owner of the Entertainment Complex or Hotel.

5. Directional Sign. A sign commonly associated with and limited to information and directions relating to the conforming use on the premises on which the sign is located.

6. Entertainment Display. An electronic device capable of displaying moving pictures or changeable messages. Examples include, but are not limited to, video screen signs, marquee signs, reader boards, electronic message displays, flashing signs, and LED displays. Entertainment displays may use, among other things, full-motion video technology or computer animation.

7. LED Display. A flat panel display, which includes an array of light-emitting diodes as pixels for a video display.

8. Media Tower. An outdoor entertainment and advertising structure that contains one or more public street signs, and a sign identifying the City of Arlington by name or logo.

9. Outdoor Entertainment and Advertising Structure. A structure situated outdoors supported by poles, uprights or braces extending from the ground that contains an entertainment display and may contain one or more signs.

10. Outdoor Entertainment and Advertising Sign. A sign located in, on or attached to an outdoor entertainment and advertising structure.

D. **PERMITTED SIGNS**

The signs and devices described in this **Section (D)** are permitted, and are restricted only as noted in this **Section (D)**. For instance, if Article VII of the UDC has a maximum percentage for attached signs on a facade or limits the number of such signs, such provisions do not apply to signs permitted by this **Section (D)**. No sign or device permitted by this **Section (D)** shall be erected until a building permit has been issued to construct a building on the First Phase Property.

1. Attached signs, detached signs, roof signs, banners, changeable message signs, kiosks, project identification signs, projected image signs, temporary promotional signs, valet signs, directional signs, outdoor entertainment and advertising signs, and entertainment displays are all permitted, subject only to the restrictions contained

in this Alternate Sign Plan; provided that such signs and devices may only display premise messages, except as follows:

a. signs and devices attached to the Entertainment Complex (including roof, window and wall signs) may use LED displays or other full-motion technology to display television broadcasts and other transmissions, even though such transmissions include off-premise messages;

b. a maximum of ten percent (10%) of the total content displayed each year on signs or devices attached to the Entertainment Complex that are not using LED displays or other full-motion technology to display television broadcasts or other transmissions may consist of off-premise messages; and

c. outdoor entertainment and advertising signs may display off-premise messages if one of the following applies:

(i) the off-premise messages refer to persons or entities, or the products or services of persons or entities, who have sponsorship agreements or similar business relationships with Developer or its affiliate, under which such persons or entities conduct sales, marketing, promotional or other business activities within the First Phase Property), or

(ii) the off-premise messages refer to persons or entities who have sponsorship agreements or similar business relationships with the owners of the Club or their affiliate, under which such persons or entities conduct sales, marketing, promotional or other business activities in the Ballpark or elsewhere in the Property, or

(iii) the outdoor entertainment and advertising structure on which such sign is placed also contains a directional sign or a sign that identifies, by name or logo, the location of the Project as being in the City of Arlington or in the Entertainment District.

2. A facade banner that is a maximum of 60 feet in width and 40 feet

in height is allowed. The facade banner may display off-premise messages related to a special event within the boundaries of the First Phase Property or an event at a main facility. The text on such a banner is limited to 50% of the total area of the banner. If the banner displays off-premise messages, it may not be erected more than 90 days before the start of the event it advertises and must be removed within seven days after the end of the event it advertises.

3. A maximum of 25 kiosks are allowed at any given time on the First Phase Property. A maximum of 50% of the text and graphic display area of a public street sign kiosk may display off-premise messages, and the remainder of such display area may display premise messages or messages that inform the public of events and activities taking place in the city, wayfinding information, and other similar public information.

4. Projected image signs are allowed on the First Phase Property without limitation as to number or size.

5. Temporary promotional signs are allowed without limitation as to number or size on the First Phase Property. Temporary promotional signs may be any sign type, including, but not limited to, banners and inflatable signs. A temporary promotional sign may be erected for a maximum of 60 days.

6. Gateway project ID signs are allowed. Gateway project ID signs may be located above a street, and may be connected to freestanding supports or buildings located on each side of the street. The combined area of all text on a gateway project ID sign face may be a maximum of 500 square feet. Gateway project ID signs may have more than one sign face.

7. A maximum of 25 premise roof signs are allowed on the Entertainment Complex. A maximum of four premise roof signs are permitted on the Hotel. Each premise roof sign on the Entertainment Complex or Hotel may have a maximum sign face of 1,000 square feet and a maximum height of 30 feet. A maximum of four roof signs for each 80 linear feet of sign frontage are allowed at any time given on buildings having a roof line.

8. Banners on light poles, or freestanding structures (including outdoor entertainment and advertising structures) are allowed. A maximum of two double-sided banners are permitted per pole or structure. A banner may be a maximum of twenty feet in height and three feet in width.

9. A maximum of six overhead banners are allowed at any given time. An overhead banner may be a maximum of five feet in height.

10. A maximum of 50 banners may be attached to the outside of the Entertainment Complex or Hotel at any given time. A banner may be a maximum of 300 square feet in surface area.

11. Valet signs are allowed within the First Phase Property without limitation as to number.

12. A maximum of 50 detached signs associated with the Entertainment Complex and Hotel shall be allowed at any given time.

13. A maximum of 10 light sconces containing signs are allowed at any given time for each 80 linear feet of sign frontage, not to exceed 25 square feet in sign face area per light sconce.

14. A maximum of six Media Towers and seven other outdoor entertainment and advertising structures are allowed within the First Phase Property at any given time, to support the Entertainment Complex and Hotel.

15. An unlimited number of directional signs are allowed at any given time.

E. **MISCELLANEOUS PROVISIONS**

1. Unless otherwise noted, all the provisions in this **Section (E)** apply to all signs and devices permitted by this Alternate Sign Plan.

2. All signs may be illuminated by internal or external light sources.

3. Signs may be located in or project over the public right-of-way, including, but not limited to, sidewalks, subject to the terms stated in this Alternate Sign Plan or as otherwise permitted by the City. A maximum of four projecting attached signs are allowed at any given time for each 80 linear feet of sign frontage.

4. An entertainment display may be substituted for any type of sign permitted by this Alternate Sign Plan; provided that the aggregate display area of all entertainment displays in operation at any given time outside the Entertainment Complex does not constitute more than 50% of the total display area of all signs and devices in operation outside the Entertainment Complex at that time.

5. After completion of the Entertainment Complex and once the

Media Towers are operational, the Zoning Administrator, acting reasonably and with good cause, shall have the ability to restrict the timing of the full motion content of public street signs on designated Media Towers, to static slides that change no more frequently than once every six seconds. Before implementing restrictions, the Zoning Administrator must provide notification of concern.

6. Sign height for all detached signs shall be measured from ground level at the base of a sign, unless a lower standard applies under the UDC.

7. Signs must have the following minimum vertical clearances: (a) projecting attached signs shall have a minimum clearance of seven feet, six inches (7'6") above any sidewalk or other paved surface intended for pedestrian use; and (b) all signs shall have a minimum clearance of 15' feet above any driveway, fire lane, or street.

8. Any sign that is allowed to display off-premise messages may display premise messages. Any sign that may display commercial messages is allowed to display non-commercial messages.

9. For purposes of applying the Federal and Texas Highway Beautification Acts, the First Phase Property is considered to be a commercial zoning district.

10. A sign permit is not required to display projected image signs, temporary promotional signs, banners, or valet signs, nor is a sign permit required to change the display on any changeable message or any sign permitted to display off-premise messages.

11. An entertainment display shall not be considered a sign and shall be permitted as part of an outdoor entertainment and advertising structure so long as such device broadcasts live or recorded Major League Baseball games, National Football League games, television programs, documentary programs, commercial motion pictures, public events, or similar events, and such broadcasts may contain any information or advertising so long as such broadcasts comply with all applicable Federal Communications Commission guidelines and do not contain any programming that is lewd, obscene, indecent, profane or otherwise inappropriate for family audiences. Any entertainment display or other device situated inside a building or under a retractable roof may contain any information or advertising.

12. Where a kiosk or projected image sign is located adjacent to both a private street and a public street, it shall not be considered a public

street sign.

13. The City will have the right from time to time, upon giving reasonable notice in advance, to display content on the signs and devices in the Entertainment Complex that display content using LED displays or other full-motion video technology, for public service announcements and other public purposes, subject to availability as determined by the Developer.

14. Outdoor entertainment and advertising signs, and entertainment displays, are permitted to cover not more than 50% of the total surface area of any outdoor entertainment and advertising structure (including any Media Tower), at any given time.

15. **Placement and Location within the First Phase Property**:

    a. Wall and Window Signs. Set back from the boundary lines of the premises on which it is located, the same distance as a structure containing a conforming use; provided that wall signs and roof signs may project into the required setback space the permitted depth of the sign.

    b. Detached Signs. Any location.

    c. Projecting Signs. Any location.

    d. Outdoor Entertainment and Advertising Signs. Any location on an outdoor entertainment and advertising structure.

    e. Directional Signs. Any location.

    f. Kiosks. Any location.

16. **Maximum Sign Area per Sign**:

    a. Wall and Window Signs. 1,200 square feet for attached signs where the roof line is more than 60 feet above grade and where such signs are located within the top 30 feet of the building just below the roof line, and 1,000 square feet for all other attached signs, including window signs.

    b. Detached Signs. 500 square feet

    c. Roof Signs. 1,000 square feet.

    d. Projecting Signs. 500 square feet.

    e. Outdoor Entertainment and Advertising Signs. 1,500

square feet.

f. Directional Signs. 100 square feet

g. Kiosks. Areas on a kiosk that display text and graphics may be a maximum 600 square feet, except that the text and graphics display on a public street sign kiosk shall not exceed 100 square feet.

17. **Maximum Height**:

a. Wall and Window Signs. 30 feet above highest roof line (or highest parapet wall if it is higher than the highest roof line) of the Entertainment Complex.

b. Detached Signs. The highest roofline (or highest parapet wall if it is higher than the highest roof line) of the Entertainment Complex.

c. Roof Signs. Including the supporting structures, 30 feet above the highest roof line, or highest parapet wall if it is higher than the highest roof line, of the building in the Entertainment Complex.

d. Outdoor Entertainment and Advertising Structures. The highest roofline (or highest parapet wall if it is higher than the highest roofline), of the Entertainment Complex.

e. Directional Signs. 20 feet above grade.

f. Kiosks. 20 feet above grade.

18. **Maximum Number of Wall and Window Signs**.

a. A maximum of four wall signs, each having a sign face between 901 and 1,200 square feet in area, are permitted at any given time on each side of any building having a height in excess of 30 feet above grade, subject to **Section D(18)(f)** below.

b. A maximum of four wall or window signs, each having a sign face between 600 and 900 square feet in area, are permitted at any given time per 80 linear feet of sign frontage, subject to **Section D(18)(f)** below.

c. A maximum of six wall or window signs, each having a sign face between 100 and 599 square feet in area, are permitted at any given time for each 80 linear feet of sign

frontage, subject to **Section D(18)(f)** below.

d. A maximum of ten wall or window signs, each having a sign face between 100 and 249 square feet in area, are permitted at any given time for each 80 linear feet of sign frontage, subject to **Section D(18)(f)** below.

e. A maximum of twenty wall or window signs, each having a sign face less than 100 square feet in area, are permitted at any given time for each 80 linear feet of sign frontage, subject to **Section D(18)(f)** below.

f. Notwithstanding the foregoing, the total area in square feet of all wall or window sign faces shall not exceed fifty percent (50%) of the building area along such sign frontage.

19. **Minor Amendments**

The Zoning Administrator may authorize changes to the dimensions of a sign or device permitted by this Alternate Sign Plan, so long as the total area of the sign or device does not change by more than 10%.

Staff Report

Request for Variance to the Alcohol Distance Requirements of the "Occupation Taxes" Chapter – AV15-1	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION

Following the public hearing, consider a resolution authorizing a variance to the distance requirements of the "Occupation Taxes and Licenses" Chapter of the Code of the City of Arlington, relative to allowing the sale of alcoholic beverages for off-premise consumption within three hundred feet (300') of a public school.

PRIOR BOARD OR COUNCIL ACTION

On December 1, 2015, the City Council continued SUP15-6 by a vote of 9-0-0.

ANALYSIS

The "Occupation Taxes and Licenses" Chapter requires that sale of alcoholic beverages shall not be within 300' of a church, public or private school, and public hospital. It also allows a variance process if the application has been denied on the context of not meeting this minimum distance requirement.

The subject site, addressed at 1606 West Randol Mill Road, is located approximately eighty-five feet (85') from Wimbish Elementary School. Per the ordinance, the measurement of the distance between the place of business where alcoholic beverages are sold and a public school shall be in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections.

The City of Arlington denied a recent request by Hawk's Pantry Convenience Store #8 for an alcohol license, because the site does not meet the minimum distance requirement from a public school. On October 9, 2015, Hawk's Pantry submitted an application requesting City Council to grant a variance to the minimum distance requirement.

Following is the background history of the subject site, related to alcohol license permits:

- Since July 25, 1986, Exxon operated a gasoline sales service station and a convenience store at this site.
- On September 13, 2011, 7-Eleven Convenience Store #35423 applied for an alcohol license and the City approved it stating it met the pre-qualification criteria. At that time, the City's Code required a minimum distance of one hundred feet (100') from a public school. However, recent field verification suggests approximately 85-feet of distance from the subject site's property line to the property line of Wimbish Elementary school. The license was issued by Texas Alcoholic Beverage Commission (TABC) on January 17, 2012.
- On November 11, 2013, Hawk's Pantry #8 took over the business and applied for an Alcoholic Beverage License for the sale of wine and beer for off-premise consumption. The license was issued by TABC on October 29, 2013.
- On January 21, 2014, City Council approved an amendment to, the Occupation Taxes and License Chapter of the Code of Ordinances such that the 100' minimum distance requirement was increased to 300'.

- A new application was triggered due to a name change in corporate entity/change in ownership from Hawk's Food Management Service, Inc. to Hawk's Pantry Inc. City staff measured the distance from school property and found that it does not meet the 300' minimum required distance.

The subject site is currently zoned Community Commercial (CC). A package liquor store is not allowed in this zoning classification. The applicant, Mr. Haque, is requesting consideration for a reduction in the distance requirements of beer and wine sales for off-premise consumption. Approval by the Texas Alcohol Beverage Commission will be required prior to any sale of alcohol.

On November 19, 2015, property owners within 300 feet of the proposed Hawk's Pantry were notified of the public hearing, via regular United States mail. The City has not received any comments from adjacent property owners or Wimbish Elementary School at this time.

Per Section 1.04.F of the "Occupation Taxes" Chapter, the Council may allow a variance if it determines that the enforcement of the regulation in a particular instance is not in the best interests of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, or is not effective or necessary, or that a previous permit was issued for the premises in error and enforcement of the regulation would be inequitable, or for any other reason the City Council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

FINANCIAL IMPACT
None

ADDITIONAL INFORMATION

Attached:	Resolution Location Map Application
Under separate cover:	None
Available in the City Manager's Office:	None

STAFF CONTACTS

Gincy Thoppil, AICP
Development Planning Manager
Community Development and Planning
817-459-6662
Gincy.Thoppil@arlingtontx.gov

Kevin Charles
Senior Planner
Community Development and Planning
817-459-6515
Kevin.Charles@arlingtontx.gov

Resolution No.

A resolution authorizing a variance to the distance requirements for the sale of alcohol for off-premise consumption at Hawk's Pantry, located at 1606 West Randol Mill Road, Arlington, Texas, pursuant to Section 1.04 of the Occupation Taxes Chapter of the Code of the City of Arlington

WHEREAS, the owner of Hawks Pantry, located at 1606 West Randol Mill Road, requested a variance to the distance requirements for the sale of alcoholic beverages for off-premise consumption at that location; and

WHEREAS, a public hearing has been held for which notice has been given to owners of property within three hundred feet of the business. The notice was sent via regular United States mail not less than ten days before the date of the hearing to all such owners who have rendered their property for City taxes as the ownership appears on the last approved City tax roll; and

WHEREAS, the Arlington City Council has determined after consideration of the health, safety and welfare of the public and the equities of the situation that the variance is in the best interest of the community; and

WHEREAS, the Arlington City Council has determined that the enforcement of the regulation in this particular instance is not in the best interests of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, or is not effective or necessary, or that a previous permit was issued for the premises in error and enforcement of the regulation would be inequitable; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City of Arlington hereby authorizes a variance to the alcohol distance rules of the Occupation Taxes Chapter of the Code of the City of Arlington for Hawks Pantry, located at 1606 West Randol Mill Road, said property is now authorized to be permitted for the sale of alcoholic beverages for off-premise consumption within three hundred feet of a church, public school, public hospital, or a private school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and which has more than 100 students enrolled and attending courses at the location in question.

PRESENTED AND PASSED on this the ___ day of **December, 2015**, by a vote of _____ **ayes** and _____ **nays** at a regular meeting of the City Council of the City of Arlington, Texas.

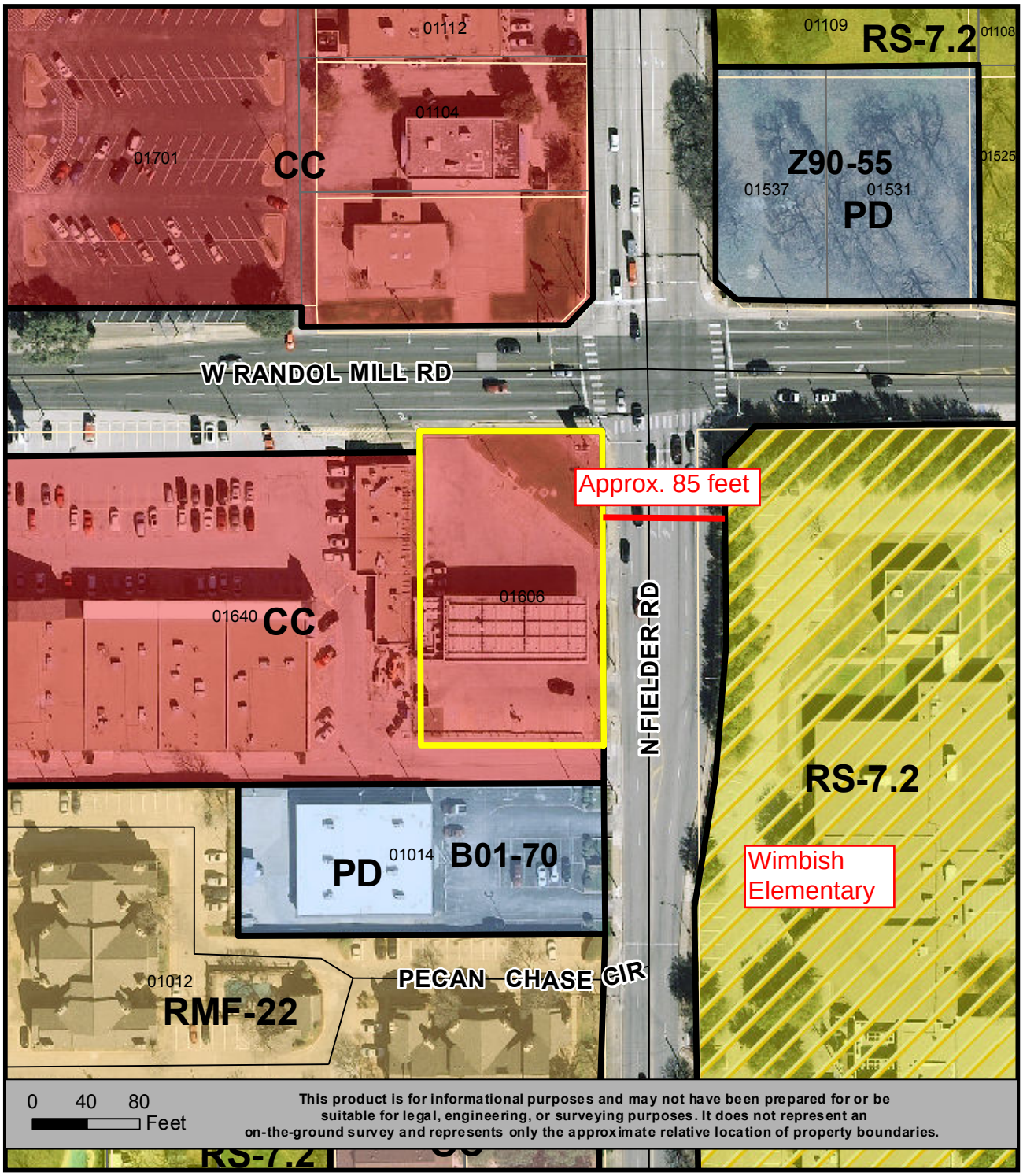
_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____



LOCATION MAP
AV15-1

ALCOHOL DISTANCE VARIANCE REQUEST

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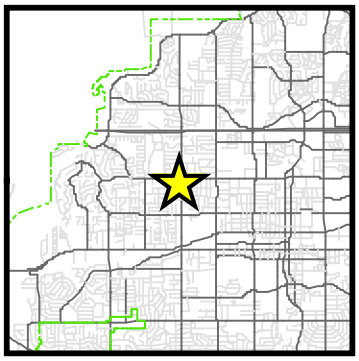


Prepared: 11-16-2015 iii-1 KC

Staff Report

Resolutions to Amend the Grant Agreement with the Arlington Tomorrow Foundation, Amend the Arlington Tomorrow Foundation Program and to Authorize Future Contributions to the Arlington Tomorrow Foundation	
City Council Meeting Date: 12-15-15	Documents Being Considered: Resolutions

RECOMMENDATIONS

Consider a resolution authorizing the amendment of the Arlington Tomorrow Foundation Program relative to the funding.

Consider a resolution authorizing the execution of the First Amendment to the Second Amended and Restated Grant Agreement entered into by and between the City and the Arlington Tomorrow Foundation.

Consider a resolution amending Resolution No. 15-008 relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City and the Arlington Tomorrow Foundation.

PRIOR BOARD OR COUNCIL ACTION

On November 14, 2006, by Resolution No. 06-559, the City Council adopted the Arlington Tomorrow Foundation Program ("Program").

On September 16, 2014, by Resolution No. 14-236, the City Council authorized the execution of the Second Amended and Restated Grant Agreement with the Arlington Tomorrow Foundation.

On January 13, 2015, by Resolution No. 15-008, the City Council authorized the City Manager or his designee to grant to the Foundation 90 percent of all gas lease bonus money and 50 percent of any and all royalty payments that may be received until such time as the Foundation's total corpus reached $100,000,000 and provided that once the Foundation's corpus reaches $100,000,000 there shall be no future contributions from the City to the Foundation.

ANALYSIS

To facilitate the development of a 100,000 square foot entertainment complex near Globe Life Park, the staff recommends utilizing $50,000,000 from the Arlington Tomorrow Foundation. The $50,000,000 will be used to fund a series of grant payments to the Project developer in exchange for the developer's completion of the Project. Under the current Program and Resolution No. 15-008 once the Arlington Tomorrow Foundation corpus reached $100,000,000 the City stopped payment of gas lease bonus and royalty revenues to the Arlington Tomorrow Foundation. As a result of lowering the fund's corpus by $50,000,000 the City intends to consider future contributions, from lawfully available funds, to the Arlington Tomorrow Foundation on an annual basis as part of the budget process until the $100,000,000 corpus is restored.

FINANCIAL IMPACT

FY2016	FY2017	FY2018

$1,125,000*	$4,200,000*	$4,200,000*

*All future contributions to the Arlington Tomorrow Foundation will be considered as part of the annual budget process.

ADDITIONAL INFORMATION

Attached:	Resolution Amending Arlington Tomorrow Foundation Grant Agreement Resolution Amending Arlington Tomorrow Foundation Program Resolution Allowing Future Contributions to the Arlington Tomorrow Foundation
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACTS

Jennifer Wichmann	Molly Shortall
Management Resources Director	Assistant City Attorney
(817) 459-6408	(817) 459-6878
Jennifer.Wichmann@arlingtontx.gov	Molly.Shortall@arlingtontx.gov

Resolution No. _____

A resolution authorizing the amendment of the Arlington Tomorrow Foundation Program relative to the funding

WHEREAS, on November 14, 2006, by Resolution No. 06-559, the City Council adopted the Arlington Tomorrow Foundation Program ("Program") for public charitable, literary and educational programs; and

WHEREAS, on August 14, 2007, by Resolution No. 07-482, the City Council amended the Program to remove the provision for an Innovation and Venture Capital Fund; and

WHEREAS, on May 6, 2008, by Resolution No. 08-143, the City Council amended the Program to include an additional special fund for the use of revenues from City owned historic pioneer cemeteries in which land is leased for mineral rights; and

WHEREAS, on October 15, 2013, by Resolution No. 13-267, the City Council amended the Program relative to the structure of the Board of Directors and funding of grants from the Foundation; and

WHEREAS, on September 16, 2014, by Resolution No. 14-235, the City Council amended the program to eliminate the Arlington Tomorrow Foundation's previous giving categories except for Parks and Recreation, Airport, and Cemetery, and to provide for the automatic transfer of Parks and Recreation funds; and

WHEREAS, the City Council intends to amend the program relative to funding; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Council hereby amends the Arlington Tomorrow Foundation Program relative to funding.

II.

A substantial copy of the Arlington Tomorrow Foundation Program, as amended, is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Arlington Tomorrow Foundation Program

Presented to Council October 2006 Approved by Council November 2006
Updated and Amended by Council August 2007 Amended by Council May 2008
Amended by Council October 2013 Amended by Council September 2014
Amended by Council December 2015

I. Overview

The Arlington City Council approved the formation of a charitable fund established with gas well revenues through the creation of a 501(c)3 non-profit foundation. The foundation, officially named Arlington Tomorrow Foundation, Inc., a Texas non-profit corporation, is separate from the City. However the Foundation and the City are closely linked, and the work of the Foundation will be consistent with the City's budget priorities and, therefore, the City Council's priorities. The Foundation's charitable fund will be an endowment, invested and managed by the Foundation, and the income generated will be used by the Foundation to keep the corpus up with inflation, cover operating expenses and/or award grants in specific areas established by the City Council through approval of a City to Foundation grant contract. This will ensure that the finite income from gas well leases on public property will continue to benefit the Arlington community long after the leases have ceased producing revenue.

II. Mission and Purpose

Arlington Tomorrow Foundation, Inc. is established to bring together a variety of resources for responsible investment and effective grant-making designed to have a positive impact on:

- quality, culture, leisure and learning opportunities
- safe and healthy neighborhoods
- municipal workforce investment
- aviation and development

Arlington Tomorrow Foundation, Inc. serves indirectly to promote the quality of life, create lasting enhancements and address community needs in the City of and for the residents of Arlington, Texas.

Arlington Tomorrow Foundation, Inc. is a vehicle for enhancing the City of Arlington's budget priorities. This very explicit purpose will be accomplished though numerous functions, including:

- investment and reinvestment of public funds into the community
- leveraging private funds for community services and capital improvements
- working closely with individual donors to connect their charitable goals with real community needs, while taking advantage of optimal tax benefits (tax deductible donations)
- providing opportunities for creative and flexible responses to unique community needs

- handling the administrative and investment related responsibilities of fund contributions
- providing financial support for vital non-profit organizations
- promoting collaborative solutions among local organizations
- empowering grassroots involvement in meeting community needs
- encouraging philanthropy in all forms
- ensuring that resources acquired today will remain relevant in the future

III. Structure

Through formal adoption by the City Council of articles of incorporation and by-laws, the Foundation has been established and has received 501(c)(3) status from the Internal Revenue Service. A super majority, ¾ vote of the City Council, is required to institute changes to the governance of the Foundation. The Foundation's activities will be overseen by a nine member Board of Directors consisting of the Mayor and eight members of City Council. The City Manager serves as an Ex-Officio board member. Details on the Board of Directors regarding how officers are chosen, resignation and removal, quorum, voting and procedures and other Board related items are addressed in the Board's Bylaws. The Foundation will be staffed by a City employee serving as the Foundation's executive director. The executive director will be responsible for overseeing the administrative work of the Foundation, investment of Foundation funds and supporting the activities of the Foundation's Board of Directors. The position will be funded entirely by the Foundation, and a job function will include bringing additional outside funding into the Foundation. The Board also has access to subject matter experts on the City staff for advice on an as needed basis and the City provides the Foundation with administrative support through a formal management agreement approved by the Foundation Board and City Council.

IV. Funding

A. Arlington Tomorrow Foundation, Inc.

The Foundation's charitable fund was initially established with gas well revenues received by the City. Additional contributions from the City to the Foundation will be at the discretion of the City Council and subject to the Grant Agreement between the Foundation and the City. The interest income earned annually may be used by the Foundation to fund grants, to grow the corpus and/or to cover operating expenses. The Foundation shall make grants from interest earnings on the endowment to support the public purposes described herein. 50% of the revenue generated from gas leases on park property will be spent directly on the park system regardless of whether the revenue remains with the City or is granted to the Foundation. One-time grants from park money have already been made in FY 2007 in the amount of $1,000,000 to the River Legacy Foundation, Inc., $100,000 for Heroes Park, and from non-parks money $455,135 allocated for the Animal Services Center.

Special funds are established with the Foundation, including: parks and recreation, municipal workforce investment, aviation and development at the City's airport, and maintenance of City owned cemetery property. The principal for the Municipal Workforce Investment Fund will be one-time, lease bonus only money of

$500,000. The Foundation will grant the City interest earned for activities that further the development of the municipal workforce. Aviation and development initiatives will be supported by revenue generated on airport property. On an annual basis, the Foundation will grant the City interest earned for the City's expenditure on the City owned airport property in compliance with FAA regulations. Parks and recreation initiatives will be supported by revenue generated on park property. On an annual basis the Foundation will grant the City interest earned in the parks and recreation fund for expenditures on the park system. City owned cemetery maintenance will be supported by revenue generated on City owned cemetery property. The Foundation will grant the City interest earned for the City's expenditure on City owned cemetery property. Proposed uses for all special fund interest (municipal workforce investment, aviation and development, parks and recreation, and cemetery maintenance) will be appropriated as part of the annual budget in future years. See attached **Exhibit A**, for uses of all money granted from the City to the Foundation.

The original proposal presented to Council also included an Innovation and Venture Capital Fund of one-time lease bonus only money, in the amount $2,000,000, used to support the economic development endeavors of the City of Arlington. Due to the Internal Revenue Service definition of "charitable purposes" for 501(c)3 organizations such as the Foundation, and the City's desire to use this resource for economic development activities, the Innovation and Venture Capital Fund will remain part of the City of Arlington portfolio, in a segregated revolving account, where both the interest and principal will be available for expenditure and any return on investment (such as the purchase of land for land banking then the eventual sale of the banked land) will be returned to the fund.

As mentioned before, the Foundation will be capable of, and expected to engage in, accepting other sources of funding, both public and private. Individual donations can be made to the Foundation, with the generated interest to be dispersed at the discretion of the Board or with designation by the donor for a specific area of interest already established as a Foundation objective. The Foundation can also serve in the capacity of fiscal agent for other charitable organizations, investing their endowment funds with the Foundation's funds to create a greater yield for both, but allowing the other organization to retain responsibility for how their fund's interest income is distributed.

B. City of Arlington "Gas Fund"

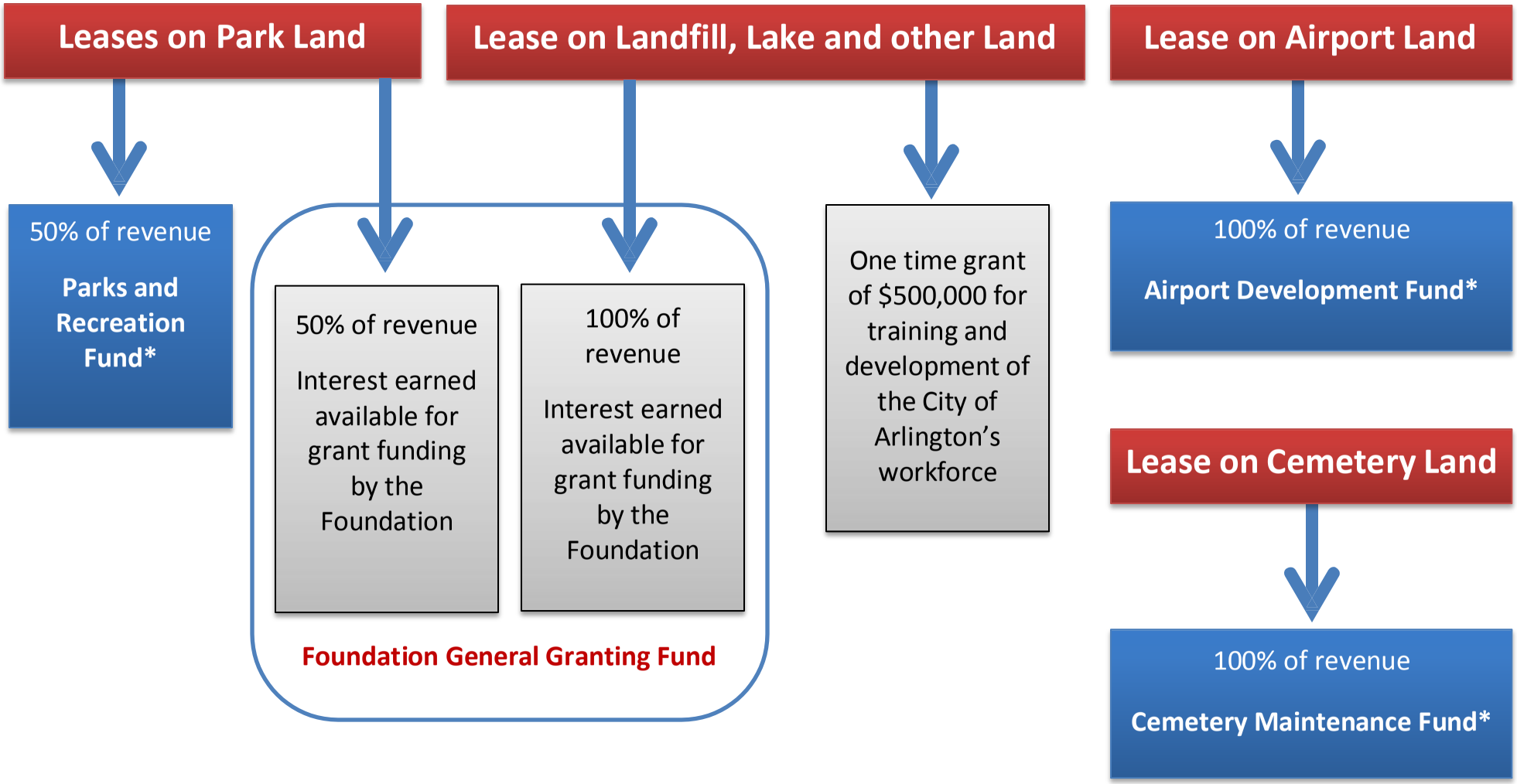
Gas revenue retained by the City shall be designated in three individual accounts as the "park gas lease fund" for revenue derived from park land, the "airport gas lease fund" for revenues derived from the airport, and the "general gas lease fund" for revenue derived from all other property, rather than simply being incorporated without distinction into the City's General Fund. This money, and the interest it generates, shall be appropriated annually as part of the annual budget proposal, in congruence with overall budget priorities.

V. Activities

The Foundation Board will meet at least quarterly to receive financial information, and at least semi-annually to review and award grant requests. An invitation only grant procedure is being established. The process will be implemented by allowing open submission of letters that briefly outline proposals for grant funding. Based on those letters,

invitations to submit full proposals will be extended by the Board to those whose objectives match the Foundation's mission and funding priorities. This saves grant requestors the time and expense of preparing a detailed proposal, and saves the Board the time required to review lengthy proposals that do not match the Foundation's objectives. Invitation to submit a full proposal is not indicative of actually receiving a grant. Requests will be funded only to tax-exempt non-profit or government organizations for proposals that serve a clear public purpose. An equivalent value match with the amount requested is required in some areas of the charitable fund, and preferred for all. Grants can be conditional on achievement of total fund goal or other events, and can be canceled if the grantee does not satisfy the grant conditions. The Foundation Board shall determine the time or times of the year that letters and proposals will be reviewed and grants awarded. Arlington Tomorrow Foundation, Inc., having public charity status rather than private foundation status from the IRS, in addition to being recognized as a 501(c)3, must disperse money annually to fulfill its charitable purposes. However, other than zero, there is no minimum spending requirement.

Exhibit A- ARLINGTON TOMORROW FOUNDATION- FUNDS (Amended 9-16-14)



* On an annual basis the Foundation will grant to the City of Arlington all interest earned in these funds

Resolution No. _____

A resolution authorizing the execution of the First Amendment to the Second Modified and Restated Grant Agreement entered into by and between the City of Arlington, a Texas home-rule municipal corporation, and the Arlington Tomorrow Foundation, Inc., a Texas non-profit corporation

WHEREAS, on November 14, 2006, by resolution No. 06-559, the City Council authorized creation of a non-profit corporation known as the Arlington Tomorrow Foundation ("Foundation") for public charitable, literary and educational programs; and

WHEREAS, the City Council authorized the creation of the Foundation in order to promote the quality of life, create lasting enhancements and address community needs in the City and for the residents of the City, as is detailed in the Foundation's Certificate of Formation and Bylaws; and

WHEREAS, on August 14, 2007, by resolution No. 07-483, the City Council authorized the execution of the Grant Agreement between the City and the Foundation; and

WHEREAS, on October 15, 2013, by Resolution No. 13-268, the City Council authorized the execution of the Modified and Restated Grant Agreement between the City and the Foundation; and

WHEREAS, on September 16, 2014, by Resolution No. 14-236, the City Council authorized the execution of the Second Modified and Restated Grant Agreement with the Arlington Tomorrow Foundation; and

WHEREAS, on September 23, 2014, by Resolution No. ATF-14-001, the Arlington Tomorrow Foundation authorized the execution of the Second Modified and Restated Grant Agreement with the City of Arlington; and

WHEREAS, the grant contributions authorized to the Foundation as described in the First Amendment to the Second Modified and Restated Grant Agreement will allow the Foundation to further the objectives authorized by the City; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Manager, or his designee, is hereby authorized to execute the First Amendment to the Second Modified and Restated Grant Agreement with the City of Arlington.

II.

A substantial copy of the First Amendment to the Second Modified and Restated Grant Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

STATE OF TEXAS	§	**FIRST AMENDMENT TO THE**
	§	**SECOND MODIFIED AND RESTATED**
COUNTY OF TARRANT	§	**GRANT AGREEMENT**

THIS FIRST AMENDMENT TO THE SECOND MODIFIED AND RESTATED GRANT AGREEMENT is entered into by and between the CITY OF ARLINGTON, TEXAS, a home-rule municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereafter referred to as "City"), and ARLINGTON TOMORROW FOUNDATION, INC. (hereafter referred to as "Foundation") a Texas non-profit corporation.

W I T N E S S E T H :

WHEREAS, on December 2, 2014, City and Foundation entered into a Second Modified and Restated Grant Agreement ("Grant Agreement"); and

WHEREAS, City and Foundation now desire to amend the Grant Agreement as specified below; NOW THEREFORE;

In consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Grant Agreement as follows:

I.

Section 1. shall read as follows:

> 1. Grants by the City to the Foundation shall be held as a segregated, permanent endowment fund; only interest and income earned thereon, and other spendable amounts identified by the City, shall be distributed or allocated by the Foundation no less often than annually for purposes of payment of operating expenses, awarding of grants and/or growing the permanent endowment fund. Grants from the Foundation shall be based on the funds and percentages provided in **Exhibit "A"**, attached hereto and incorporated herein. Operating expenses shall be allocated proportionally among the funds based on the then current fund balance. Each fund shall be accounted for under generally accepted accounting principles for nonprofit organizations applied on a consistent basis. The Foundation shall not discriminate in any of its operations and grant-making on the basis of race, gender, national origin or color of skin.

II.

Subsection 1.a. shall be added to the Grant Agreement and read as follows:

1.a. On or before January 1, 2016, the Foundation shall repay the City Fifty Million Dollars ($50,000,000) from the permanent endowment General Gas Lease Fund.

II.

An amended "Exhibit A" is attached hereto.

EXECUTED THIS _____ day of December, 2015.

ARLINGTON TOMORROW FOUNDATION, INC.

By:_____

Name:_____

Title: President of the Board of Directors

CITY OF ARLINGTON, TEXAS

By:_____

Name:_____

Title:_____

WITNESS:

_____
Secretary to the Board

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

_____

Exhibit A

Arlington Tomorrow Foundation Program

Presented to Council October 2006 Approved by Council November 2006
Updated and Amended by Council August 2007 Amended by Council May 2008
Amended by Council October 2013 Amended by Council September 2014
Amended by Council December 2015

I. Overview

The Arlington City Council approved the formation of a charitable fund established with gas well revenues through the creation of a 501(c)3 non-profit foundation. The foundation, officially named Arlington Tomorrow Foundation, Inc., a Texas non-profit corporation, is separate from the City. However the Foundation and the City are closely linked, and the work of the Foundation will be consistent with the City's budget priorities and, therefore, the City Council's priorities. The Foundation's charitable fund will be an endowment, invested and managed by the Foundation, and the income generated will be used by the Foundation to keep the corpus up with inflation, cover operating expenses and/or award grants in specific areas established by the City Council through approval of a City to Foundation grant contract. This will ensure that the finite income from gas well leases on public property will continue to benefit the Arlington community long after the leases have ceased producing revenue.

II. Mission and Purpose

Arlington Tomorrow Foundation, Inc. is established to bring together a variety of resources for responsible investment and effective grant-making designed to have a positive impact on:

- quality, culture, leisure and learning opportunities
- safe and healthy neighborhoods
- municipal workforce investment
- aviation and development

Arlington Tomorrow Foundation, Inc. serves indirectly to promote the quality of life, create lasting enhancements and address community needs in the City of and for the residents of Arlington, Texas.

Arlington Tomorrow Foundation, Inc. is a vehicle for enhancing the City of Arlington's budget priorities. This very explicit purpose will be accomplished though numerous functions, including:

- investment and reinvestment of public funds into the community
- leveraging private funds for community services and capital improvements
- working closely with individual donors to connect their charitable goals with real community needs, while taking advantage of optimal tax benefits (tax deductible donations)
- providing opportunities for creative and flexible responses to unique community needs

- handling the administrative and investment related responsibilities of fund contributions
- providing financial support for vital non-profit organizations
- promoting collaborative solutions among local organizations
- empowering grassroots involvement in meeting community needs
- encouraging philanthropy in all forms
- ensuring that resources acquired today will remain relevant in the future

III. Structure

Through formal adoption by the City Council of articles of incorporation and by-laws, the Foundation has been established and has received 501(c)(3) status from the Internal Revenue Service. A super majority, ¾ vote of the City Council, is required to institute changes to the governance of the Foundation. The Foundation's activities will be overseen by a nine member Board of Directors consisting of the Mayor and eight members of City Council. The City Manager serves as an Ex-Officio board member. Details on the Board of Directors regarding how officers are chosen, resignation and removal, quorum, voting and procedures and other Board related items are addressed in the Board's Bylaws. The Foundation will be staffed by a City employee serving as the Foundation's executive director. The executive director will be responsible for overseeing the administrative work of the Foundation, investment of Foundation funds and supporting the activities of the Foundation's Board of Directors. The position will be funded entirely by the Foundation, and a job function will include bringing additional outside funding into the Foundation. The Board also has access to subject matter experts on the City staff for advice on an as needed basis and the City provides the Foundation with administrative support through a formal management agreement approved by the Foundation Board and City Council.

IV. Funding

A. Arlington Tomorrow Foundation, Inc.

The Foundation's charitable fund was initially established with gas well revenues received by the City. Additional contributions from the City to the Foundation will be at the discretion of the City Council and subject to the Grant Agreement between the Foundation and the City. The interest income earned annually may be used by the Foundation to fund grants, to grow the corpus and/or to cover operating expenses. The Foundation shall make grants from interest earnings on the endowment to support the public purposes described herein. 50% of the revenue generated from gas leases on park property will be spent directly on the park system regardless of whether the revenue remains with the City or is granted to the Foundation. One-time grants from park money have already been made in FY 2007 in the amount of $1,000,000 to the River Legacy Foundation, Inc., $100,000 for Heroes Park, and from non-parks money $455,135 allocated for the Animal Services Center.

Special funds are established with the Foundation, including: parks and recreation, municipal workforce investment, aviation and development at the City's airport, and maintenance of City owned cemetery property. The principal for the Municipal Workforce Investment Fund will be one-time, lease bonus only money of

$500,000. The Foundation will grant the City interest earned for activities that further the development of the municipal workforce. Aviation and development initiatives will be supported by revenue generated on airport property. On an annual basis, the Foundation will grant the City interest earned for the City's expenditure on the City owned airport property in compliance with FAA regulations. Parks and recreation initiatives will be supported by revenue generated on park property. On an annual basis the Foundation will grant the City interest earned in the parks and recreation fund for expenditures on the park system. City owned cemetery maintenance will be supported by revenue generated on City owned cemetery property. The Foundation will grant the City interest earned for the City's expenditure on City owned cemetery property. Proposed uses for all special fund interest (municipal workforce investment, aviation and development, parks and recreation, and cemetery maintenance) will be appropriated as part of the annual budget in future years. See attached **Exhibit A**, for uses of all money granted from the City to the Foundation.

The original proposal presented to Council also included an Innovation and Venture Capital Fund of one-time lease bonus only money, in the amount $2,000,000, used to support the economic development endeavors of the City of Arlington. Due to the Internal Revenue Service definition of "charitable purposes" for 501(c)3 organizations such as the Foundation, and the City's desire to use this resource for economic development activities, the Innovation and Venture Capital Fund will remain part of the City of Arlington portfolio, in a segregated revolving account, where both the interest and principal will be available for expenditure and any return on investment (such as the purchase of land for land banking then the eventual sale of the banked land) will be returned to the fund.

As mentioned before, the Foundation will be capable of, and expected to engage in, accepting other sources of funding, both public and private. Individual donations can be made to the Foundation, with the generated interest to be dispersed at the discretion of the Board or with designation by the donor for a specific area of interest already established as a Foundation objective. The Foundation can also serve in the capacity of fiscal agent for other charitable organizations, investing their endowment funds with the Foundation's funds to create a greater yield for both, but allowing the other organization to retain responsibility for how their fund's interest income is distributed.

B. City of Arlington "Gas Fund"

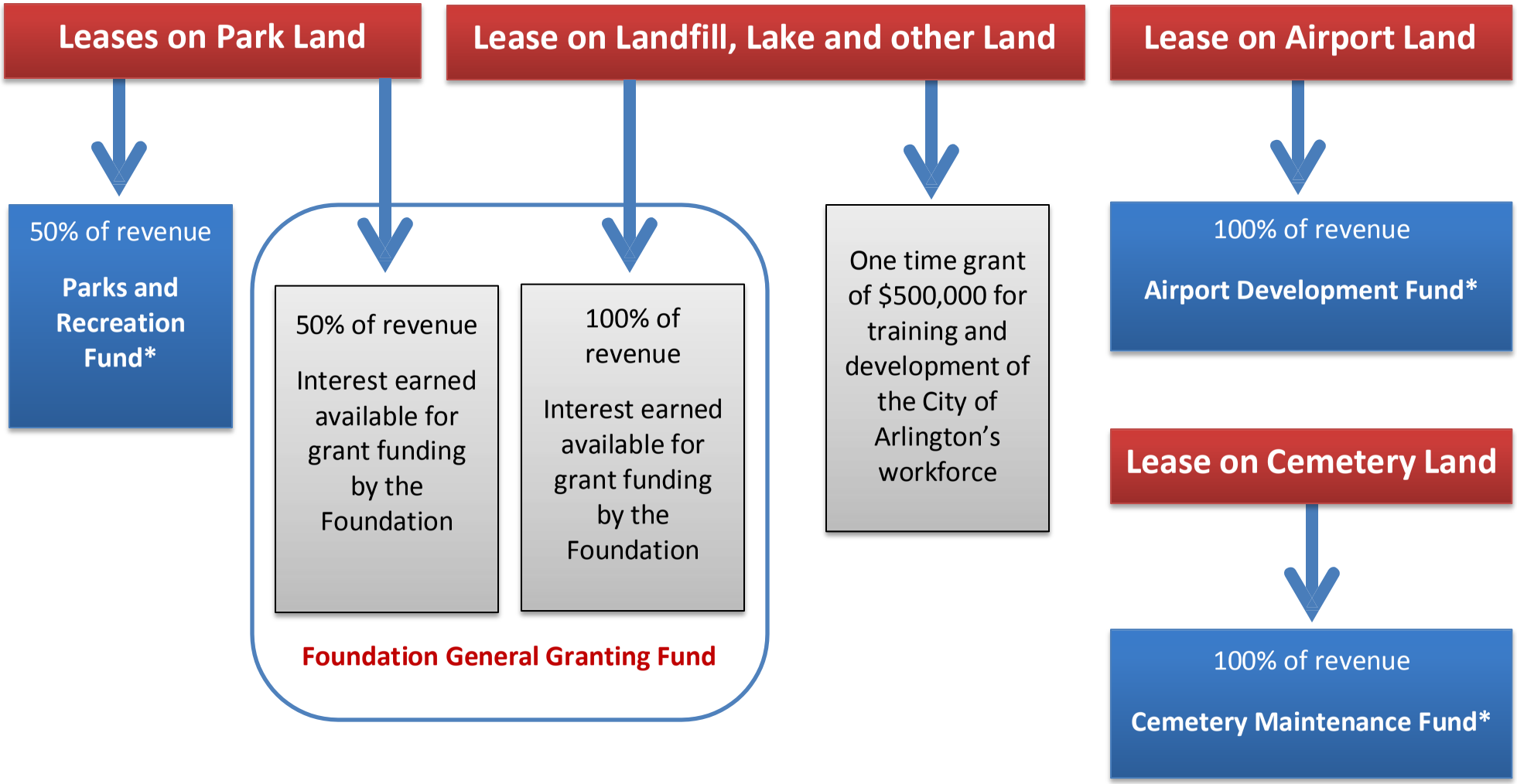
Gas revenue retained by the City shall be designated in three individual accounts as the "park gas lease fund" for revenue derived from park land, the "airport gas lease fund" for revenues derived from the airport, and the "general gas lease fund" for revenue derived from all other property, rather than simply being incorporated without distinction into the City's General Fund. This money, and the interest it generates, shall be appropriated annually as part of the annual budget proposal, in congruence with overall budget priorities.

V. Activities

The Foundation Board will meet at least quarterly to receive financial information, and at least semi-annually to review and award grant requests. An invitation only grant procedure is being established. The process will be implemented by allowing open submission of letters that briefly outline proposals for grant funding. Based on those letters,

invitations to submit full proposals will be extended by the Board to those whose objectives match the Foundation's mission and funding priorities. This saves grant requestors the time and expense of preparing a detailed proposal, and saves the Board the time required to review lengthy proposals that do not match the Foundation's objectives. Invitation to submit a full proposal is not indicative of actually receiving a grant. Requests will be funded only to tax-exempt non-profit or government organizations for proposals that serve a clear public purpose. An equivalent value match with the amount requested is required in some areas of the charitable fund, and preferred for all. Grants can be conditional on achievement of total fund goal or other events, and can be canceled if the grantee does not satisfy the grant conditions. The Foundation Board shall determine the time or times of the year that letters and proposals will be reviewed and grants awarded. Arlington Tomorrow Foundation, Inc., having public charity status rather than private foundation status from the IRS, in addition to being recognized as a 501(c)3, must disperse money annually to fulfill its charitable purposes. However, other than zero, there is no minimum spending requirement.

Exhibit A- ARLINGTON TOMORROW FOUNDATION- FUNDS (Amended 9-16-14)



* On an annual basis the Foundation will grant to the City of Arlington all interest earned in these funds

Resolution No. _____

A resolution amending Resolution No. 15-008 relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City of Arlington and the Arlington Tomorrow Foundation

WHEREAS, on November 14, 2006, by Resolution No. 06-559, the City Council authorized creation of a non-profit corporation known as Arlington Tomorrow Foundation ("Foundation") for public charitable, literary, and educational programs; and

WHEREAS, on November 14, 2006, by Resolution No. 06-559, the City Council adopted the Arlington Tomorrow Foundation Program ("Program") for public charitable, literary and education programs, providing for 90% of gas lease bonus money and 50% of subsequent royalties be granted to the Foundation's charitable fund; and

WHEREAS, on August 14, 2007, by Resolution No. 07-482, the City Council amended the Program to create special funds for municipal workforce investment and aviation and development initiatives; and

WHEREAS, on August 14, 2007, by Resolution No. 07-483, the City Council authorized the grant of $25,766,530 to the Foundation and execution of the Grant Agreement between the City and Foundation; and

WHEREAS, on May 6, 2008, by Resolution No. 08-144, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the City Council directed otherwise; and

WHEREAS, on October 15, 2013, by Resolution No. 13-269, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the Foundation's total corpus reached $100,000,000 and provided that future contributions to the Foundation in subsequent years would be at the City Council's discretion; and

WHEREAS, on January 13, 2015, by Resolution No. 15-008, the City Council authorized the City Manager or his designee to grant to the Foundation 90% of all gas lease bonus money and 50% of any and all royalty payments that may be received until such time as the Foundation's total corpus reached $100,000,000 or until September 30, 2014, whichever

occurs first, and provided that once the Foundation's corpus reaches $100,000,000 there shall be no future contributions from the City to the Foundation; and

WHEREAS, the Grant Agreement, as amended, applies to all grants from the City to the Foundation, NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City Council hereby approves amendment of Resolution No. 15-008 at Article II relative to authorizing contributions to the Arlington Tomorrow Foundation in accordance with the Arlington Tomorrow Foundation Program and Grant Agreement between the City of Arlington and the Arlington Tomorrow Foundation so that Article II shall be and read as follows:

"II.

That the City Manager or his designee is hereby authorized to contribute to the Foundation, from lawfully available sources, and in accordance with the Program, as amended, and Grant Agreement, as amended, amounts appropriated annually by the City Council in the annual budget."

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Staff Report

Phase I Capital Improvement Plan for the Arlington Convention Center Facilities	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION

Consider a resolution adopting a Phase I Capital Improvement Plan for the Arlington Convention Center Facilities.

PRIOR BOARD OR COUNCIL ACTION

None

ANALYSIS

Arlington's Entertainment District is home to regionally and nationally significant recreational and tourism amenities such as Globe Life Park, AT&T Stadium, Six Flags over Texas, and Hurricane Harbor. To leverage these assets and encourage continued development in the area, the City is planning to expand the availability of city-owned convention facilities within the Entertainment District. Expansion of convention and meeting space will help attract more visitors and events to the City.

Currently, there is more than 310,000 square feet of convention, meeting, and event space available to meeting planners at the Arlington Convention Center, Globe Life Park, and AT&T Stadium. In this initial phase, the City desires to expand the existing Convention Center by the construction of an additional 103,000 square feet of convention center facilities, an entertainment complex and two hotel projects ("Project A" and "Project B" on the Phase I Capital Improvement Plan Site Map).

Project A will consist of a minimum 300-room convention hotel; more than 35,000 square feet of convention and event space; and 100,000 square feet of restaurant, retail, and entertainment space. Project B will consist of an approximately 750-room convention hotel and more than 68,000 square feet of additional convention center facilities.

Adoption of a Phase I Capital Improvement Plan for these facilities demonstrates the City's intent to add to the complement of first-rate meeting facilities available to visitors. The Phase I Capital Improvement Plan aligns with the policy objective to add convention space contained in the 2014 Economic Development Strategic Plan, to leverage district assets and encourage continued development in the 2015 Comprehensive Plan, and furthers the City Council's priority to invest in Arlington's economy.

FINANCIAL IMPACT

None

ADDITIONAL INFORMATION

Attached:	Resolution adopting a Phase I Capital Improvement Plan for the Arlington Convention Center Phase I Capital Improvement Plan Site Map
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACTS

Mark Wisness
Convention Center Director
817-459-5011
Mark.Wisness@arlingtontx.gov

James F. Parajon, FAICP
Deputy City Manager
817-459-6103
Jim.Parajon@arlingtontx.gov

Resolution No. _____

A resolution adopting a Phase I Capital Improvement Plan for the Arlington Convention Center

WHEREAS, the Arlington Convention Center ("Convention Center") has been designed to attract more than 200,000 conventioneers and visitors annually and is existing as a multi-purpose facility containing approximately 100,000 square feet, consisting of a 50,000 square foot exhibit hall, a conference center with 8,500 square feet of meeting rooms, and a 30,000 square foot main ballroom with pre-function breakout areas; and

WHEREAS, the City has a decennial census population of 365,930, is located in Tarrant County, which has a decennial census population of 1,809,034, and, upon the adoption of this Resolution, has approved a capital improvement plan for the expansion of existing convention center facilities, and is therefore an eligible central municipality; and

WHEREAS, visitors to the City of Arlington have access to a variety of publicly owned meeting and convention spaces throughout Arlington's Entertainment District, including meeting and convention spaces at the Convention Center, Globe Life Ballpark, and AT&T Stadium; and

WHEREAS, the City desires to expand the existing Convention Center by the construction of additional convention center facilities, an entertainment complex and two hotel projects ("Project A" and "Project B"); and

WHEREAS, Project A will include, among other things, a hotel with approximately 300 guest rooms; an expansion of the Convention Center to include more than 35,000 square feet of additional convention center facilities (the "Convention Center Annex"); and, 100,000 square feet of retail, restaurant, and entertainment space; and

WHEREAS, Project B will include, among other things, a hotel with approximately 750 guest rooms and an expansion to the existing Convention Center to include more than 68,000 square feet of additional convention center facilities; and

WHEREAS, the existing Convention Center and the land upon which Project A and Project B will be constructed will be owned by the City, or the Arlington Convention Center Development Corporation, a non-profit local government corporation acting on behalf of the City (the "ACCDC"), and the two expansions of convention center facilities will be owned by the City as components of the Convention Center with the primary purpose of hosting conventions and meetings; and

WHEREAS, the hotel and related improvements for Project A will be adjacent to and incorporated into the Convention Center Annex, and therefore within 1,000 feet of the Convention Center Annex, an expansion of the Convention Center; and

WHEREAS, the hotel and related improvements for Project B will be adjacent to and incorporated into the existing Convention Center, and therefore within 1,000 feet of the Convention Center; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That the City council hereby adopts the attached capital improvement plan (the "Plan") for the expansion of the Arlington Convention Center, described generally as:

> Expansion of the Convention Center to construct additional convention center facilities, as well as an entertainment complex and two hotels, on approximately twenty-five acres of City property, immediately adjacent to and incorporated into the existing or expanded Convention Center and therefore within 1,000 feet of the Convention Center.

II.

That the City Manager and City Attorney or designees are authorized and directed to send a copy of this resolution to the State Comptroller of Public Accounts (the "Comptroller"), together with other information as may be requested by the Comptroller, and take such other steps as are reasonable and necessary to assist the Comptroller to perform his role pursuant to the Texas Tax Code, Texas Government Code, and any applicable laws related to the financing of the planned expansions of the Convention Center facility.

III.

That this resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Capital Improvement Plan

ARLINGTON
THE AMERICAN DREAM CITY

Phase One Capital Improvement Plan

Feet
0 500 1,000 2,000

N

Staff Report

Arlington Ballpark District Entertainment Block, LLC - Chapter 380 Agreement for Economic Development Incentives	
City Council Meeting Date: 12-15-15	Document Being Considered: Resolution

RECOMMENDATION

Consider a resolution authorizing the execution of a Chapter 380 Program Agreement for economic development incentives by and between Arlington Ballpark District Entertainment Block, LLC and its partner, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas relative to the development of property located at the southwest corner of East Randol Mill Road and Nolan Ryan Expressway as an Entertainment Complex, Hotel, and Convention Center Annex.

PRIOR BOARD OR COUNCIL ACTION

On August 5, 2008, the Arlington Convention Center Development Corporation approved a contract with HVS, Inc. for a convention center feasibility study.

On September 16, 2014, by Resolution No. 14-248, City Council adopted the 2014 Economic Development Strategic Plan.

On March 17, 2015, by Ordinance No. 15-014, City Council adopted the 2015 Comprehensive Plan.

On November 3, November 17, and December 1, 2015, City Council was briefed on the proposed development of an entertainment complex, hotel, and convention center annex.

ANALYSIS

In a public-private partnership with the Texas Rangers, the City of Arlington seeks to continue to build on its economic momentum and leverage assets in its Entertainment District through the development of a 100,000 square-foot entertainment complex near Globe Life Park. The complex will have a variety of restaurants, retail spaces, entertainment venues, and a signature event space. If approved, the agreement also contemplates development of a hotel with a minimum of 300 rooms and 35,000 square feet of meeting and conference space.

The total project cost is an estimated $200 million. The developer is requesting the City provide development incentives of $50 million for the entertainment complex, and should the hotel project proceed, up to thirty years of grant payments equivalent to the amount of taxes generated by the hotel project in the following areas: hotel occupancy tax, property tax, sales tax, and mixed beverage tax.

The development of the entertainment complex and hotel aligns with the 2014 Economic Development Strategic Plan policy objective to implement blue-ribbon public-private partnerships that catalyze development in the district and bring essential elements to the district, such as a full-service hotel, more convention space, and dining and shopping destinations. In addition, the project aligns with the objective to leverage district assets and encourage continued development in the 2015 Comprehensive Plan, and furthers the City Council's priority to invest in Arlington's economy.

FINANCIAL IMPACT

The entertainment complex will be provided grant payments totaling no more than $50 million. Funds for such grants will be available in account number 3098-910401 as of January 1, 2016.

The Hotel Project, should it proceed, will be provided up to thirty years of grant payments equivalent to the amount of taxes generated by the Hotel Project in the following areas: hotel occupancy tax, sales tax, mixed-beverage tax and property tax.

ADDITIONAL INFORMATION

Attached:	Resolution
Under separate cover:	None
Available in the City Secretary's office:	None

STAFF CONTACTS

Trey Yelverton	James F. Parajon, FAICP
City Manager	Deputy City Manager
817-459-6101	817-459-6103
Trey.Yelverton@arlingtontx.gov	Jim.Parajon@arlingtontx.gov

Resolution No. _____

A resolution authorizing the City Manager or his designee to execute an Economic Development Incentive Agreement by and among Arlington Ballpark District Entertainment Block, LLC, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas, relative to development of the southwest corner of the intersection of East Randol Mill Road and Nolan Ryan Expressway

WHEREAS, CITY has found that providing a program consisting of a grant of funds to Arlington Ballpark District Entertainment Block, LLC and Arlington Ballpark District Entertainment Block, Inc. (hereinafter referred to as "DEVELOPERS") in exchange for DEVELOPERS' completion of the Project proposed by DEVELOPERS will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; and,

WHEREAS, the CITY has determined that DEVELOPERS' Project is not the new development contemplated in the Tax Increment Reinvestment Zone Number Five - Entertainment District Project and Financing Plan for purpose of contribution of sales tax increment; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute an Economic Development Incentive Agreement by and among Arlington Ballpark District Entertainment Block, LLC, Arlington Ballpark District Entertainment Block, Inc., Arlington Convention Center Development Corporation, and the City of Arlington, Texas, on behalf of the City, and to administer all matters and execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by the Economic Development Incentive Agreement, provided such documents do not materially alter the relationship of the parties.

III.

The City hereby consents to the Arlington Convention Center Development Corporation's execution of the Economic Development Incentive Agreement and any and all other documents necessary or appropriate to effectuate the transactions contemplated by the Economic Development Incentive Agreement, provided such documents do not materially alter the relationship of the parties.

IV.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

V.

A substantial copy of the Economic Development Incentive Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2015, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
W. JEFF WILLIAMS, Mayor

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

Exhibit "A"

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "**Agreement**") by and among the **CITY OF ARLINGTON, TEXAS** a home-rule city and municipal corporation of Tarrant County, Texas (the "**City**"), **ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION,** a Texas non-profit local government corporation ("**ACCDC**"), **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC**, a Delaware limited liability company ("**Developer**"), and **ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, INC**., a Maryland corporation ("**ABDEB**"), is executed as of this ____ day of _____, 2015 (the "**Execution Date**").

W I T N E S S E T H:

WHEREAS, the City is a municipality with a population of 365,930, which is more than 140,000 but less than 1.5 million, is located in Tarrant County, a county with a population of one million or more, and has adopted a capital improvement plan for the expansion of an existing convention center facility, and thus is an eligible central municipality per Section 351.001(7)(A) of the Texas Tax Code: and

WHEREAS, Developer has the right to acquire (via a contribution by one of its members) a portion of Parking Lot A, containing approximately seven (7) acres of land, which land is located at the southwest intersection of East Randol Mill Road and Nolan Ryan Expressway, in the City of Arlington, Texas (the "**Property**"), which property is described on **Exhibit "A"** hereto; and

WHEREAS, ABDEB is a member of Developer; and

WHEREAS, Developer, subject to the terms of this Agreement, desires to develop, construct and operate on a portion of the Property the Entertainment Complex (as that term is hereinafter defined) and the City desires that Developer do so; and

WHEREAS, Project Tenant (as that term is hereinafter defined), a subsidiary of Developer, will be leasing all or a substantial portion of the Entertainment Complex Project (as that term is hereinafter defined); and

WHEREAS, the City has found that providing a grant of funds to ABDEB, which in turn will contribute same to Developer in exchange for Developer's completion of the Entertainment Complex Project, will promote local economic development and stimulate business and commercial activity and create jobs within the City and that providing a grant of funds to Developer in exchange for Developer's completion of the Hotel Project will also promote local economic development and stimulate business and commercial activity and create jobs within the City (the "**Program**"); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

WHEREAS, but for the Program and the payment of the Grant to ABDEB, Developer would not develop the Entertainment Complex Project as same would not likely be economically viable; and

WHEREAS, Developer, subject to the terms of this Agreement, including Section 7 hereof, may elect to develop, construct and operate on a portion of the Property the Hotel Project (as that term is hereinafter defined), which would consist of an expansion of the Arlington Convention Center (the "**Convention Center Annex**") and a minimum 300 room hotel; and

WHEREAS, in the event that Developer proceeds with the development of the Hotel Project, Developer, in accordance with the terms of this Agreement, will cause fee simple title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel (as that term is hereinafter defined) to be transferred to the ACCDC and will cause fee simple title to the portion of the Property that will contain the Convention Center Annex to be transferred to the City; and

WHEREAS, in the event that fee simple title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel is transferred to the ACCDC, the ACCDC intends to ground lease such property to Developer in accordance with the terms of this Agreement pursuant to two ground leases, the Entertainment Complex Ground Lease and the Hotel Ground Lease (as those terms are hereinafter defined); and

WHEREAS, in the event that fee simple title to the portion of the Property that will contain the Convention Center Annex is transferred to the City, the City intends to ground lease such property to Developer in accordance with the terms of this Agreement pursuant to the Convention Center Annex Ground Lease (as that term is hereinafter defined); and

WHEREAS, if Developer proceeds with the development of the Hotel Project, the Hotel Project will be located on land, a portion of the Property, that will be owned by the ACCDC, a Texas non-profit local government corporation acting on behalf of the City, and that is located within 1,000 feet of the Convention Center Annex, an expansion of the Arlington Convention Center and a convention center facility owned by the City, which Convention Center Annex will be owned by the City; and

WHEREAS, pursuant to section 351.102(c) of Texas Tax Code, the City, as an eligible central municipality, is entitled to receive all funds from the Hotel Project that an owner of a qualified hotel project may receive under Section

151.429(h) of the Texas Tax Code and Section 2303.5055 of the Texas Government Code, and such funds will consist of refunds to the City of the State of Texas's share of hotel occupancy taxes and the State of Texas's share of sales and use taxes generated by the Hotel Project for a period of ten (10) years after the date of initial occupancy; and

WHEREAS, the construction and operation of the Hotel Project will generate new City hotel occupancy taxes, City sales and use taxes, City mixed beverage taxes, and City ad valorem taxes; and

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City, in order to induce Developer to develop the Hotel Project, is willing to provide ABDEB or its designee with the Hotel Grants (as that term is hereinafter defined) pursuant to the terms of this Agreement and but for the payment of such Hotel Grants to ABDEB, Developer would not be willing to develop the Hotel Project as same would not likely be economically viable; **NOW THEREFORE,**

In consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**.

"**Alternative Hotel Developer**" means a Person (and/or a direct or indirect affiliate of such Person) that: (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars ($50,000,000).

"**Arbitration**" is defined in Section 13(l) of this Agreement.

"**Arbitration Notice**" is defined in Section 13(l) of this Agreement.

"**Arbitration Procedures**" is defined in Section 13(l) of this Agreement.

"**Arbitrator**" is defined in Section H.1 of the Arbitration Procedures.

"**Area Reports**" means reports from the Comptroller to the City as provided in Section 321.3022 of the Texas Tax Code that identify amounts paid from the Comptroller to the City, by period, of City Sales Taxes and City Mixed Beverage Taxes. If during the Term due to a change in law or policy the Comptroller

ceases providing such reports with respect to either or both City Sales Taxes and City Mixed Beverage Taxes, "Area Report" means alternative documentation that is acceptable to the City, Developer and Developer's lenders that establishes the amounts of City Sales Taxes or City Mixed Beverage Taxes received by the City for Grant Periods.

"**Base City Property Tax**" means the total amount of ad valorem tax, if any, levied and collected by the City on the Property based on the total taxable appraised value of the Property as of January 1, 2015.

"**Business Day**" means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

"**City HOT**" means the City's seven percent (7%) municipal hotel occupancy tax received by the City pursuant to Chapter 351 of the Texas Tax Code that is generated by the Hotel Project. From and after the date hereof, the City shall not pledge or assign the City HOT except, at the request of Developer, to Developer or its Mortgagee or other lender.

"**City Chapter 351 HOT Grant**" means the economic development incentive grant described in Section 6(d) of this Agreement.

"**City HOT Returns**" means City of Arlington Hotel/Motel Occupancy Tax Reports on which Developer or other Persons report and remit City of Arlington hotel occupancy taxes imposed under Chapter 351 of Texas Tax Code on amounts paid for rooms in the Hotel Project.

"**City Manager**" means the City Manager of the City.

"**City Mixed Beverage Tax**" means payments or allocations to the City from the Comptroller of mixed beverage taxes imposed by Chapter 183 of the Texas Tax Code, paid by any mixed beverage permittee, and attributable to mixed beverages sold at the Entertainment Complex Project and/or the Hotel Project.

"**City Property Tax**" means (i) the total amount of City ad valorem taxes levied and collected by the City on Property and all improvements thereon in a given year minus (ii) the Base City Property Tax.

"**City Property Tax Appropriated Grant**" means the economic development incentive grant described in Section 6(a)(5) of this Agreement.

"**City Representative**" is defined in Section 13(t) of this Agreement.

"**City Sales/Beverage Tax Appropriated Grant**" means the economic development incentive grant described in Section 6(a)(3) of this Agreement.

"**City Sales/Beverage Tax Chapter 351 Grant**" means the economic development incentive grant described in Section 6(a)(2) of this Agreement.

"**City Sales Taxes**" means City 1% general municipal sales and use taxes imposed pursuant to Section 321.103(a) of the Texas Tax Code arising (i) from any Person's collection of City Sales Taxes as a result of sales of Taxable Items consummated at the Hotel Project and/or the Entertainment Complex Project during a Grant Computation Period, (ii) from any Person's payments to vendors or directly to the Comptroller of City Sales Taxes on purchases of Taxable Items consummated at the Hotel Project and/or the Entertainment Complex Project during a Grant Computation Period, and (iii) from City Sales Taxes paid by any Person in connection with the construction or equipping of the Hotel Project and/or the Entertainment Complex Project.

"**City Total Property Tax Rate**" means in a given year the total City ad valorem tax rate adopted by ordinance and imposed pursuant to Section 26.05 of Texas Tax Code.

"**Comparable Districts**" Patriot Place in Foxborough, Massachusetts; Gaslamp Quarter, San Diego, California; The Power and Light District, in Kansas City, Missouri; Ballpark Village in St. Louis, Missouri; and L.A. Live, in Los Angeles, California.

"**Comptroller**" means the Office of the Texas Comptroller of Public Accounts or any successor governmental agency that administers functions relevant to this Agreement.

"**Consummated**" shall have the meaning assigned by Section 321.203 of Texas Tax Code, or its successor, including after a change of law the applicable principles for determining the incidence of local sales and use taxes.

"Construction" means labor, materials, and essential related services provided by a general contractor and/or construction manager to complete real property improvements, including clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, and site work.

"**Convention Center Annex**" has the meaning assigned in the Recitals to this Agreement.

"**Convention Center Annex Ground Lease**" means a lease substantially in the form of **Exhibit "G-1"**, as same may be modified by Developer in accordance with the terms of this Agreement.

"**Dedicated Fund**" means a separate and segregated fund maintained by the City into which the City shall deposit on the Execution Date $50,000,000 to be used solely to pay the Grant installments as provided in this Agreement.

"**Default**" has the meaning assigned in Section 9 of this Agreement.

"**Disallowed Amount**" has the meaning assigned in Section 3(e) of this Agreement.

"**Disposition**" shall mean a sale, lease, assignment, or other transaction by which all or a part of Developer's interest in the Entertainment Complex Project and/or the Hotel Project is passed on to another Person; but such term shall not include Operation Agreements, Leases, Mortgages or transfers resulting from a foreclosure or deed in lieu of foreclosure of a Mortgage.

"**Dispute or Controversy**" is defined in Section 13(l) of this Agreement.

"**Entertainment Complex Project**" means the improvements to be constructed on a portion of the Property, consisting of a building containing a minimum of approximately 100,000 square feet of space containing restaurants, food and beverage establishments, entertainment venues and/or ancillary retail stores. The Entertainment Complex Project will be generally similar to the first phase of the St. Louis Cardinal's Ballpark Village in St. Louis, Missouri. The Entertainment Complex Project may contain parking areas, landscape, sidewalks and other related and ancillary facilities.

"**Entertainment Complex Project Ground Lease**" means a lease substantially in the form of **Exhibit "G-2"**, as same may be modified by Developer in accordance with the terms of this Agreement.

"Event Trust Fund" means trust fund program managed by the Office of the Texas Governor used to help pay costs related to preparing for or conducting certain events which are competitively bid and which communities are competing with cities outside of Texas to host.

"**Grant(s)**" means any or all of the grants for the Entertainment Complex Project provided for in Section 4 of this Agreement.

"**Hotel**" means the Hotel Project, excluding the Convention Center Annex.

"**Hotel Grant(s)**" means any or all of the State Refund Grant, City Sales/Beverage Tax Chapter 351 Grant, City Sales/Beverage Tax Appropriated Grant, City Chapter 351 HOT Grant and City Property Tax Appropriated Grant.

"**Hotel Grant Computation Period**" has the meaning assigned in Section 6(b)(8) of this Agreement.

"**Hotel Grant Period**" means the total period during which tax receipts are used to compute Grant payment amounts due. Solely by way of example, the City Sales/Beverage Tax Chapter 351 Grant is for a Grant Period of ten (10) years following Initial Occupancy and is computed with reference to City Sales Taxes and City Mixed Beverage Taxes. The total City Sales/Beverage Tax Chapter 351 Grant will be an amount equal to all City Sales Taxes plus all City Mixed Beverage Taxes reported on all tax returns for tax periods occurring during the

period that commences with the date of Initial Occupancy and that ends with the date that is the tenth anniversary of the Initial Occupancy date. Tax amounts reported for tax reporting periods that are partially in and partially out of a Grant Period may be prorated for purposes of computing Grant amounts due, based on the number of days in the tax reporting period that fall within a Grant Computation Period divided by the total number of days in the tax reporting period.

"**Hotel Project**" means the improvements to real property and any related personal property located on a portion of the Property, consisting of a minimum of three hundred (300) room hotel and convention center facility (i.e., the Convention Center Annex) that contains a minimum thirty-five thousand (35,000) square foot of front of the house and back of the house space and other related and ancillary facilities. The Convention Center Annex will have a maximum capacity of approximately 1,500. The hotel portion of the Hotel Project will be designed and constructed generally comparable to or greater than the quality level of at least one of the hotels operated under one of the hotel trade names listed on the "Upper Upscale" category of the 2015 STR Chain Scales published by STR, Inc.

"**Hotel Project Dedicated Account**" is defined in Section 6(a)(1).

"**Hotel Ground Lease**" means a lease substantially in the form of **Exhibit "G-3"**, as same may be modified by Developer in accordance with the terms of this Agreement.

"**Hotel Project Property**" means, as of the date on which ad valorem tax taxable appraised value is determined for each tax year for which the City is required to make a Grant payment pursuant to Section 6 of this Agreement, (i) all "tangible personal property" as defined in Section 1.04(5) of the Texas Tax Code including but not limited to equipment, furniture and fixtures, vehicles, and inventory that is located in or on the Hotel Project and that is used in connection with operation of the Hotel Project, and (ii) all "real property" as defined in Section 1.04(2) of the Texas Tax Code that is part of the Hotel Project. Hotel Project Property includes tangible personal property and real property described in this Definition that is owned by any Person.

"**Initial Occupancy**" means the first night a person pays for the use or possession of or for the right to the use or possession of a room or space at the Hotel Project.

"**Lease**" means a lease, license or other occupancy agreement for all or part of the Property.

"**Major Special Event**" means events that qualify as an event for purposes of the State of Texas' Special Events Trust Fund, Events Trust Fund, or Major Events Trust Fund, including but not limited to: NFL Super Bowl, NCAA Final Four Tournament, NBA All-Star Game, American Country Music Award Show, and national political conventions.

"**Mortgage**" is defined in Section 12 of this Agreement.

"**Mortgagee**" is defined in Section 12 of this Agreement.

"**Operation Agreements**" means an operation or management agreement between Developer and a hotel operator for operation of all or part of the Hotel Project.

"**Party**" or "**Parties**" means Developer, ABDEB, ACCDC, and the City.

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, unincorporated organization or other entity or any government or any agency or political subdivision thereof.

"**Project Costs**" means the following costs and expenses incurred or paid by ABDEB, Developer and/or each Tenant in connection with the due diligence, planning, developing, constructing, equipping, fixturing, tenanting and opening of the Entertainment Complex Project: all broker commissions, leasing commissions, tenant allowances paid by ABDEB and/or Developer to a Tenant, tenant improvement costs incurred by ABDEB and/or Developer to a Tenant, leasing and tenant procurement costs and expenses, hard and soft costs incurred by a Tenant in connection with the build out, fixturing and equipping of its space in the Entertainment Complex Project, costs associated with closing of the construction loan, construction interest, environmental study costs and fees, surveyor costs and fees, civil engineering expenses, title insurance premiums, costs and expenses, legal fees and expenses, a development fee equal to five percent (5%) of the total Project Costs payable or deemed payable to Developer, the salaries and cost of benefits of all employees of Developer and/or its Affiliates that are working on the Project and whose principal place of employment is located in the City, land and/or easement acquisition costs of Developer or its owners or affiliates, public works and/or public improvement costs and expenses, utility infrastructure costs and expenses, geotechnical costs and fees, architectural, interior design, consulting and engineering costs, fees and expenses, general contractor and/or construction manager fees and expenses, general condition expenses, labor and material costs and expenses, subcontractor costs and expenses, costs and expenses of Developer's personnel located in the City for purposes of developing the Project, site work costs and expenses, landscape costs and expenses, hardscape costs and expenses, furniture, fixtures and equipment costs and expenses, audio and visual equipment expenses and pre-opening costs and expenses. Project Costs include Qualified Project Costs.

"**Project Tenant**" means Arlington Ballpark District Entertainment Block Operating Tenant, LLC, a Texas limited liability company, a subsidiary of Developer, and its successors and assigns.

"**Property**" is defined in the Recitals. Developer reserves the right, at any time during the Term, to modify the Property, including modifying the property line and adding and/or deleting land area from the Property. In the event the Hotel Project is not being developed, the Property will consist of approximately five (5) acres of land area, as determined by Developer.

"**Property Tax Data**" means information regarding ad valorem tax disbursements that the Tarrant County Tax Assessor-Collector provides or makes available to the City that establishes the amounts of City Property Taxes, or to the extent such information is unavailable or inadequate, documentation provided by Developer such as ad valorem tax bills and proof of payment that reasonably establishes the amounts of City Property Taxes.

"**Qualified Project Costs**" means costs, fees and expenses of the general contractor, subcontractors, architects, engineers, surveyors, consultants and similar Persons incurred after the Execution Date of this Agreement by Developer, ABDEB and/or each Tenant in connection with the planning, design, engineering, construction, equipping and furnishing of the Entertainment Complex Project and the cost and fees associated with the obtaining of all permits and approvals associated with the development and construction of the Entertainment Complex Project. Qualified Project Costs shall also include: (i) amounts paid by Developer to each Tenant of the Entertainment Complex Project as a "tenant allowance" to pay for all or part of the costs incurred by Tenant in connection with the planning, design, engineering, construction, equipping and furnishing of such Tenant's premises at the Entertainment Complex Project; and (ii) the salaries and cost of benefits of each employee of Developer and/or its Affiliates that is working on the Project, pro rata based on the amount of time or number of days such employee is working on the Entertainment Complex Project.

"**State HOT**" means hotel occupancy taxes received by the Comptroller pursuant to Chapter 156 of the Texas Tax Code attributable to amounts paid for rooms in the Hotel Project.

"**State Refund Grant**" means the economic development incentive grant described in Section 6(a)(1) of this Agreement.

"**State Sales Taxes**" means limited sales and use taxes imposed pursuant to Chapter 151 of the Texas Tax Code and arising (i) from any Person's collection of State Sales Tax as a result of sales of Taxable Items Consummated at the Hotel Project and the Entertainment Complex Project, (ii) from any Person's payments to vendors or directly to the Comptroller of State Sales Tax on purchases of Taxable Items Consummated at the Hotel Project and/or the Entertainment Complex Project, and (iii) from State Sales Tax paid by any Person in connection with the construction of the Hotel Project and/or the Entertainment Complex Project.

"**Substantial Completion**" means that the Entertainment Complex Project has been initially opened for business to the public with a minimum of seventy percent (70%) of the interior space of the Entertainment Complex Project (including back of the house space) open and operational. Substantial Completion shall be deemed achieved even though punch list items and landscaping of the Work are substantially, but not fully, completed.

"**Substantial Completion of the Hotel Project**" means Initial Occupancy has occurred and the Convention Center Annex is available for use for its intended purpose. Substantial Completion shall be deemed achieved even though punch list items and landscaping are substantially, but not fully, completed.

"**Taxable Items**" has the meaning assigned by Section 151.010 of the Texas Tax Code.

"**TIRZ**" means the Tax Increment Reinvestment Zone No. 5 – Entertainment District, that was established in 2006 by the City and that includes the Property.

"**Tenant**" means any tenant, licensee or other occupant of the Entertainment Complex Project. Tenant includes the Project Tenant and any and all Third Party Tenants.

"**Tenant Improvements**" means any tenant improvements, buyer selections or other work done by or on behalf of a Tenant to prepare space in the Entertainment Complex Project for such Tenant's use or occupancy.

"**Term**" means the term of this Agreement as specified in Section 2 of this Agreement.

"**Third Party Tenant**" means a Tenant that is not an affiliate or subsidiary of Developer.

"**Third Party Tenant Improvements**" means Tenant Improvements done by or on behalf of a Third Party Tenant.

"**Work**" means all work to be performed with respect to the Entertainment Complex Project by Developer and Tenants, necessary to prepare the Entertainment Complex Property and to construct or cause the construction and Substantial Completion of the Entertainment Complex Project, including, but not limited to: (a) demolition and removal of all existing buildings, structures and other improvements on the Entertainment Complex Property; (b) site preparation, including clearing and grading of the Property; (c) construction of the buildings and structures, parking structures, and screening and site landscaping that comprise the Entertainment Complex Project; (d) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation surrounding roads, sidewalks, utilities and installation of lighting; (e) environmental remediation; and (f) all other

Construction reasonably necessary to effectuate the intent of this Agreement; provided, however, Third Party Tenant Improvements shall not be deemed part of the Work.

2. **Term**.

This Agreement shall be effective as of the date of execution by all parties hereto and shall remain in full force and effect until all Hotel Grants have been paid to Developer; provided, however, in the event that only the Entertainment Complex Project is developed, this Agreement shall expire on the fifteenth (15th) anniversary of Substantial Completion.

3. **Developer's Obligations for the Entertainment Complex Project**.

In consideration of the City entering into this Agreement and provided that the City complies with its obligations hereunder concerning the Grants provided for in Section 4 of this Agreement and such Grants are timely disbursed in accordance with the terms hereof, Developer agrees to:

(a) Design and construct or cause to be designed and constructed the Entertainment Complex Project (exclusive of Third Party Tenant Improvements) and cause Substantial Completion to occur. Developer intends to initially develop the Entertainment Complex Project in a manner that is generally consistent with the concept plans that are attached hereto as **Exhibit "C"**. Developer reserves the right to modify such concept plans, provided that the Entertainment Complex Project meets the definition of "Entertainment Complex Project" contained in this Agreement. Developer, if requested, shall provide the City with the opportunity to provide Developer with input on the schematic plans for the Entertainment Complex Project. Subject to delays caused by Force Majeure and the City complying with its obligations hereunder concerning the Grants, Developer shall apply for the necessary permits and approvals to commence the Work within twelve (12) months of the Execution Date. Developer and the Tenants may "fast track" the construction of the Work by obtaining permits and approvals for discrete portions of the Work, such as a permit for the grading of the Entertainment Complex Project, the construction of the foundation of the Entertainment Complex Project and a building permit for the Entertainment Complex Project (exclusive of Tenant Improvements). If Developer so elects to "fast track" the permitting of the Work, Developer shall diligently pursue the issuance of all necessary permits and approvals for the Work. Subject to delays caused by Force Majeure, issuance of necessary governmental permits and approvals, the City complying with its material obligations hereunder and the timely disbursement of the Grants in accordance with the terms hereof, Developer shall achieve Substantial Completion within twenty-four (24) months after the issuance of a final building permit (as opposed to the grading permit or foundation permit) for the Work. Subject to the

provisions of this Agreement, the date by which Developer must cause Substantial Completion to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Work to be completed within a reasonable time.

(b) It is the intent of Developer to operate the Entertainment Complex Project in a manner similar to the operation of Comparable Districts for a period of fifteen (15) years, commencing on the date the Entertainment Complex Project initially opens for business to the public.

(c) Prior to drawing down any amount of the Grant, provide a completion guaranty to the City guaranteeing Substantial Completion from the Person or Persons that has provided the completion guaranty to the Mortgagee that has provided Developer with a construction loan to finance the development and construction of the Work in fulfillment of the obligation of Arlington Ballpark District Entertainment Block Investors, LLC to Rangers Baseball Development, LLC under the Limited Liability Company Agreement of Developer. Such completion guaranty shall be conditioned upon the City complying with its material obligations hereunder, including the timely disbursement of the Grants in accordance with the terms hereof.

(d) Provide documentation to City that all permits and approvals necessary for commencement of the Work have been secured as well as all closings on all real estate transactions and all financial transactions necessary to fund the development of the Work pursuant to Developer's budget that was provided to its lender have occurred prior to Developer's request for disbursement of any Grants from City under Section 4 of this Agreement.

(e) In the event that the Hotel Project is not being developed, spend, with Tenants and ABDEB, an amount equal to or greater than the amount of the Grants actually distributed to ABDEB by the City under Section 4 of this Agreement, on Qualified Project Costs. Within one hundred eighty (180) days of Substantial Completion of the Entertainment Complex Project, Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant confirming or denying that all Grant disbursements provided by the City under Section 4 have been utilized by Developer, Tenants and ABDEB to pay Qualified Project Costs. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditure on Qualified Project Costs; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. In the event that such statement establishes that

any portion of any Grant disbursement was utilized by Developer and Tenants to pay for items other than Qualified Project Costs (the "**Disallowed Amount**") then Developer shall deposit into a separate, segregated bank account of Developer an amount equal to the Disallowed Amount and shall use such funds during the Term to pay for Qualified Project Costs, the design, permitting and construction of capital improvements to the Entertainment Complex Project and the payment of tenant allowances to Third Party Tenants. As long as funds remain in such account, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant certifying the amount then contained in such account and the amount that has been expended over the previous year for Qualified Project Costs, the design, permitting and construction of capital improvements to the Entertainment Complex Project and the payment of tenant allowances to Third Party Tenants. If any amount remains in such account at the end of the Term, Developer shall cause such amount to be paid to the City.

(f) In the event that the Hotel Project is developed, within one hundred eighty (180) days of the Substantial Completion of the Hotel Project, Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant confirming or denying that the amounts expended by Developer, Tenants and ABDEB on Qualified Project Costs related to the construction of the Hotel Project and the Entertainment Complex Project exceed all Grant disbursements provided by the City under Section 4. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures and shall not have to account for every expenditure once such accountable expenditures exceed the amount of such Grant disbursements; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. For purposes of this Section 3(f), the term "Entertainment Complex Project" as used in definition of Qualified Project Costs shall mean the Entertainment Complex Project and the Hotel Project.

(g) In the event that the Hotel Project is not being developed, spend, with Tenants and ABDEB, a minimum of Ninety Million Dollars ($90,000,000), inclusive of Grants provided by the City under Section 4 of this Agreement, on Project Costs. Within one hundred eighty (180) days of Substantial Completion of the Entertainment Complex Project Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant confirming or denying the expenditure by Developer, Tenants and ABDEB of at least Ninety Million Dollars ($90,000,000) on Projects Costs. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditure on Project Costs; and (ii) to rely on written statements made by Third Party Tenants of the Project Costs incurred by such Third Party Tenant. In the event that such

statement establishes that less than One Hundred Million Dollars ($100,000,000) has been expended on Project Costs, Developer shall reserve the shortfall amount (less the Disallowed Amount, which shall be governed by Section 3(e)) and utilize same in connection with the Entertainment Complex Project during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from a certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Project. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.

(h) During the Construction of the Work, Developer agrees to use diligent efforts and to cause the Project Tenant to use diligent efforts, to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality and price. Developer will require its contractors and the Project Tenant's contractors to provide a "Contractor's Certificate of Target Arlington Compliance," attached hereto as **Exhibit "D"**.

City also encourages the use, if applicable, by Developer and the Project Tenant, during the Construction of the Work of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women ("MWBE Companies"). Developer agrees to work with the City to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer and Project Tenant of qualified MWBE Companies for the Construction of the Work, which policy shall contain reasonable exclusions.

(i) During the Term of this Agreement Developer shall not allow the ad valorem taxes owed to City on the Property or the Entertainment Complex Project to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any personal property owned by Developer and located within the Entertainment Complex Project. In the event that the Hotel Project is developed, the term "**Property**" as used in this Section 3(i) shall mean the portion of the Property upon which the Entertainment Complex Project is located (which may consist of a condominium unit).

(j) It is Developer's intention that the Entertainment Complex Project will not only serve as a premiere restaurant and entertainment venue but also serve to host numerous community and family oriented events, including art festivals, live performances, watch parties, holiday celebrations and family friendly events. It is Developer's intention that many of these events will

be free to the community or involve admittance that would be shared with local charitable organizations. On and after the grand opening of the Entertainment Complex Project, on a quarterly basis Developer will provide City with a listing of events scheduled to occur at the Entertainment Complex Project.

(k) During the Term of this Agreement Developer agrees to participate with the City on all bids for Major Special Events, including providing all or portions of the Entertainment Complex Project to the Major Special Event host at the then current market rate for temporary rental of such facilities.

(l) In the event of damage to or destruction of the Entertainment Complex Project during the fifteen (15) year period that commences on the date the Entertainment Complex Project initially opens for business to the public, Developer shall cause the full repair or restoration of the Entertainment Complex Project (exclusive of Third Party Tenant Improvements), as same existed at the time of such damage or destruction (as same may be modified by Developer or the Project Tenant at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of such fifteen (15) year period, in the event of damage to or destruction of the Entertainment Complex Project, Developer and the Project Tenant shall have the right to determine whether, and to what extent the Entertainment Complex Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any Person that acquires title to the Entertainment Complex Project as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 3(l).

(m) Whenever marketing and promotional materials of the Entertainment Complex Project for Developer or the Project Tenant contain the location of the Entertainment Complex Project, the Entertainment Complex Project will be depicted as being geographically located in “Arlington” or “City of Arlington” rather than any other proper geographic name.

(n) The design and construction of the Work shall comply with all ordinances of the City applicable to the Entertainment Complex Project. In addition Developer and the Project Tenant, as applicable, at its expense, shall obtain all permits, licenses, and inspections by City, State or federal agencies necessary for the construction of its portion of the Work.

(o) Developer agrees to work with City to provide space on electronic message boards located within the Entertainment Complex Project for advertisement of City related messages and events when such boards are not in use by Developer or any Tenant (which use may include the display of messages and advertising for third parties).

(p) Developer agrees that it will implement the following Developer's Community Benefits Plan to provide meaningful community benefits and appropriate opportunities for local residents, minorities and women in all aspects of its operations; including contracting, consulting and supply of goods and services. Developer's Community Benefits Plan will focus on promoting, assisting and ensuring diverse, local participation through the following policies and practices:

1. APPRENTICESHIPS: Developer will use good faith efforts to assist qualified local minority and women journeyperson workers and apprentices to enter the region's pool of skilled labor by promoting apprenticeship and journeyperson opportunities during construction.

2. LOCAL & DIVERSE WORKFORCE HIRING: Developer will use good faith efforts to implement recruitment, training and employment policies to achieve a diverse workforce at all levels of its organization, sourced to the greatest extent possible from local residents. To this end, Developer will endeavor to implement the following:

   (A) Developer will host a series of pre-opening community based job fairs to educate members of the local and minority community of job opportunities.

   (B) Developer will partner with local government and non-profit agencies to host a series of workshops to educate job prospects of the job placement process.

   (C) Developer will work in partnership with local colleges, universities and trade schools to develop job placement programs for students pursuing careers in hospitality, culinary arts and/or music.

   (D) Developer will create scholarship and internship programs targeting minority and women students.

   (E) Developer will cooperate with local workforce agencies that provide on-line job posting, job matching and customized recruitment services.

3. EVENT BOOKINGS: If requested by the University of Texas at Arlington, Developer will use good efforts to assist the City in the event booking of College Park Center at the University of Texas, at Arlington.

4. COMMUNITY ADVISORY COMMITTEE: Developer, in cooperation with the City, will establish a committee consisting of

representatives from the City, appropriate community and civic organizations, non-profit organizations and colleges/universities, which will meet regularly, for the purposes of providing advice and assistance with respect to the successful implementation of the above Developer's Community Benefits plan.

(q) Covenant and certify that Developer does not and will not, during the term of this Agreement, knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of the Grant made under Section 4 of this Agreement, plus ten percent (10%) interest per annum from the date the Grant was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation from the City, which notice shall not be given by the City until after such conviction has become final and non-appealable. Notwithstanding anything to the contrary contained in this Section 3(q), Developer shall not be in breach of this Section 3(q) and shall not be obligated to make such repayment of the Grant in the event that a subsidiary or affiliate of Developer, such as a the Project Tenant, a Tenant or property manager that is an affiliate or subsidiary of Developer or a direct or indirect equity owner of Developer, or a Person with whom Developer contracts, such as a general contractor or a Third Party Tenant is convicted of a violation under 8 U.S.C. Section 1324a(f).

4. **Grants by City for the Entertainment Complex Project and City Obligation concerning the Entertainment Complex Project.**

(a) In consideration for Developer agreeing to develop the Entertainment Complex Project in accordance with the terms of this Agreement, the City shall provide ABDEB with a grant in the amount of Fifty Million Dollars ($50,000,000) (the "**Grant**") to be contributed by ABDEB to Developer and to be used by Developer, ABDEB and Tenants for Qualified Project Costs. On the Execution Date, the City shall cause to be deposited into the Dedicated Fund the sum of Fifty Million Dollars ($50,000,000). The Dedicated Fund and the sums deposited therein shall only be used to pay the Grant and for no other purposes, and the City does hereby commit such Dedicated Fund and the sums deposited therein to its obligations under this Agreement to pay the installments of the Grant as set forth in this Agreement. The Grant shall be paid to ABDEB in eight (8) monthly installments of Six Million Two Hundred Fifty Thousand Dollars ($6,250,000) each. The first installment of the Grant shall be due and payable within fifteen (15) days after the date Developer provides the City Representative with the following: (i) evidence that Developer has obtained all necessary permits to commence construction of the Work; (ii) evidence that Developer has obtained a guaranteed maximum price

contract from a general contractor or construction manager for the construction of the Work (exclusive of Tenant Improvements); (iii) evidence that Developer has obtained construction financing for the development of the Entertainment Complex Project; (iv) a fully executed completion guaranty in compliance with the provisions of Section 3(b); and (v) evidence that Developer has acquired the site of the Entertainment Complex Project. Each subsequent monthly installment of the Grant shall be due and payable to ABDEB on or before the 15th of each consecutive month following the initial payment. Notwithstanding the foregoing, if the Work is suspended or abandoned for a period of at least three (3) weeks the City may cease the monthly installments to ABDEB until such time as Developer has notified the City that the Work has commenced again. In no event will the total Grant installments made from the City to ABDEB for the Entertainment Complex Project exceed Fifty Million Dollars ($50,000,000.)

(b) City will work with Developer to establish a procedure by which the City can expedite all City development approvals, including permits and inspections for the Entertainment Complex Project. At a minimum, the City agrees to act on an administratively complete building permit application within forty five (45) days after the application is filed with the City, and the City agrees to issue a certificate of occupancy within ten (10) days after receipt of a request for a final inspection if the Entertainment Complex Project complies with applicable requirements of the issuance of a certificate of occupancy. Delays resulting from the City's wrongful act or failure to act will extend the schedule for Developer's performance obligation under Section 3(a) by a like amount of days. In addition, the City will provide a dedicated staff member to assist with real time plan review and inspection.

(c) City agrees to provide space, where available, on existing City owned way-finding signs to direct visitors to the Entertainment Complex Project. In addition, City agrees to seek placement of directional signage by the State of Texas on state highways; however, all costs related to such signage are the responsibility of Developer.

(d) City will provide police and fire protection to the Entertainment Complex Project at City's costs (and not Developer's costs) for all Major Special Events at the Entertainment Complex Project so long as the Entertainment Complex Project is included as a venue for which the City is seeking reimbursement from the Event Trust Fund. The City will provide police and emergency service protection to the areas surrounding the Entertainment Complex Project as part of the routine patrol of the area. At Developer's request, the City's police department and Developer will meet periodically to discuss security and police protection in the areas surrounding the Entertainment Complex Project. If Developer and City determine a police substation in the Entertainment Complex Project is

desired both parties will use reasonable efforts to work together to address staffing such substation.

(e) Within ten (10) Business Days of the last to occur of Substantial Completion and Substantial Completion of the Hotel, the City shall execute and unconditionally deliver to Developer at least two (2) counterpart originals of that certain option agreement that is in the form attached hereto as **Exhibit "E"** (the "**Option Agreement**"). The Option Agreement shall apply to all of the land that is subject to that certain Development Option Agreement, dated June 13, 2007, between the City and Ballpark Parking Partners, LLC, as same may be amended, extended or otherwise modified from time to time and which has not been acquired by Ballpark Parking Partners, LLC, its successors or their respective designees pursuant to the terms of such agreement. Developer shall promptly countersign and deliver to the City at least one (1) counterpart original of the Option Agreement.

(f) In connection with the development and construction of the Entertainment Complex Project (and any reconstruction, remodeling or renovation of same), if requested by Developer, the City shall grant Developer an easement or license, at no cost or expense, to stage construction on the public rights of ways located adjacent to the Entertainment Complex Property.

(g) The City agrees that in connection with the operation of the Entertainment Complex Project, Developer and its designees shall have the right, at no cost or expense, to utilize the sidewalks and plazas located adjacent to the Entertainment Complex Project that are part of the public right of way for café seating and other purposes; notwithstanding the foregoing, any ordinances controlling the location of improvements in sidewalks or on public right of way shall still apply to assure that the public right of way is not unreasonably obstructed.

(h) The City shall cause the City's destination marketing organization to market and promote the Entertainment Complex Project whenever marketing any of the major attractions in the City. Such marketing and promotion shall be coordinated with Developer. In addition, the City agrees to seek an amendment to the Arlington Convention and Visitors Bureau, Inc. Bylaws to provide membership on the Board of Directors for a representative of the Entertainment Complex Project nominated by Developer.

5. **Developer's Obligations if it elects to proceed with the Hotel Project.**

In the event that Developer elects to proceed with the Development of the Hotel pursuant to Section 7, in consideration of the City entering into this Agreement providing

for the payment of funds constituting Hotel Grants to Developer under the terms and conditions set forth in Section 6 herein, Developer agrees to:

(a) Design and construct or cause to be designed and constructed the Hotel Project (exclusive of Third Party Tenant Improvements) and cause Substantial Completion of the Hotel Project to occur. Developer intends to initially develop the Hotel Project in a manner that is generally consistent with the concept plans that are attached hereto as **Exhibit "B"**. Developer reserves the right to modify such concept plans, provided that the Hotel Project meets the definition of "Hotel Project" contained in this Agreement. Developer, if requested, shall provide the City with the opportunity to provide Developer with input on the schematic plans for the Hotel Project. Subject to delays caused by Force Majeure and the City complying with its obligations hereunder concerning the Hotel Grants, Developer shall apply for the necessary permits and approvals to commence the Work within eighteen (18) months of the date that Developer has elected to proceed with the development of the Hotel Project. Developer may "fast track" the construction of the Hotel Project by obtaining permits and approvals for discrete portions of the Hotel Project, such as a permit for the grading of the Hotel Project, the construction of the foundation of the Hotel Project and a building permit for the Hotel Project (exclusive of Tenant Improvements). If Developer so elects to "fast track" the permitting of the Hotel Project, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Hotel Project. Subject to delays caused by Force Majeure, issuance of necessary governmental permits and approvals, the City complying with its material obligations hereunder and the timely disbursement of the Hotel Grants in accordance with the terms hereof, Developer shall achieve Substantial Completion of the Hotel Project within thirty-six (36) months after the issuance of a final building permit (as opposed to the grading permit or foundation permit) for the construction of the Hotel Project. Subject to the provisions of this Agreement, the date by which Developer must cause Substantial Completion of the Hotel Project to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Hotel Project, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Hotel Project to be completed within a reasonable time.

(b) During the Term of this Agreement Developer shall not allow the ad valorem taxes owed to City on the portion of the Property that contains the Hotel Project (which may consist of up to two condominium units, one for the Convention Center Annex and one for the balance of the Hotel Project) or the Hotel Project to become delinquent beyond the date when due, as

such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any personal property owned by Developer and located at the Hotel Project.

(c) During the Term of this Agreement Developer agrees to participate with the City on all bids for Major Special Events, including providing all or portions of the Hotel Project to a Major Special Event host at the then current market rate for such facilities.

(d) In the event of damage to or destruction of the Hotel Project during the Term, Developer shall cause the full repair or restoration of the Hotel Project as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equal or greater value), whether done by application of insurance proceeds or other financial means. On or after the expiration of the Term, in the event of damage to or destruction of the Hotel Project, Developer shall have the right to determine whether, and to what extent the Hotel Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any Person that acquires title to the Hotel Project as a result of a foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 5(d).

(e) Whenever marketing and promotional materials of the Hotel Project for Developer contain the location of the Hotel Project, the Hotel Project will be depicted as being geographically located in "Arlington" or "City of Arlington" rather than any other proper geographic name.

(f) The design and construction of the Hotel Project shall comply with all ordinances of the City applicable to the Hotel Project. In addition Developer at its expense, shall obtain all permits, licenses, and inspections by City, State or federal agencies necessary for the construction of the Hotel Project.

(g) Provide documentation necessary to support a claim by the City to the Comptroller under Sections 351.102(c) and 151.429(h) of Texas Tax Code for a refund of State Sales Taxes and State HOT. As of the Execution Date, the Comptroller requires for such refunds the following items that Developer shall provide:

1. Name and address of the Hotel Project and the Texas taxpayer identification number and outlet number that the operator of the Hotel Project is using to report State Sales Taxes and State HOT.

2. Name, Texas taxpayer identification, and outlet numbers for all vendors doing business in the Hotel Project.

3. Waiver of Confidentiality forms signed by an authorized office or director from each vendor operating in the Hotel Project that allow the Comptroller to release tax information to the City. The Waiver of Confidentiality forms shall be in the form attached as **Exhibit "F"** or any successor form promulgated by the Comptroller.

Developer shall provide updated and supplemental documentation as necessary to allow the City to claim refunds of State Sales Tax and State HOT for all periods during the Term for which Developer is entitled to receive State Refund Grants.

(h) The provisions of Section 3(h) and (p)(1) and (2) are hereby incorporated into this Section 5 and shall apply to the Hotel Project, mutatis mutandis.

(i) Covenant and certify that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the City the full amount of the Hotel Grant made under Section 6 of this Agreement, plus ten percent (10%) interest per annum from the date the Hotel Grant was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation from the City, which notice shall not be given by the City until after such conviction has become final and non-appealable.

(j) The Developer shall comply with the provisions of the Entertainment Complex Project Ground Lease, the Convention Center Annex Ground Lease and the Hotel Ground Lease.

(k) Prior to conveying the Property to ACCDC and the City, as provided herein, Developer shall, at the sole cost and expense of Developer, impose on and encumber the Property with a condominium regime that contains three (3) condominium units (one for the Convention Center Annex, one for the Hotel and one for the Entertainment Complex Project), common areas and limited common areas utilizing condominium declarations, by-laws and plats prepared by or for Developer. The ACCDC and the City acknowledge and agree that at the time the Property is conveyed to the ACCDC and the City, the Property will be subject to such condominium regime and will also be subjected to covenants, conditions and restrictions imposed on the Property by Developer or with the consent of Developer.

6. **Hotel Grants by City for the Hotel Project and City obligations concerning the Hotel Project.**

(a) In the event that Developer elects to develop the Hotel Project, in exchange for Developer's compliance with all terms and provisions of this

Agreement concerning the development of the Hotel Project, City shall, as an incentive, make the following Hotel Grants to ABDEB:

1. **State Refund Grant**. For a Grant Period of ten (10) years following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount equal to all refunds received by the City from the Comptroller of State Sales Taxes and State HOT. The City shall deposit such refunds into a bank account designated by Developer (the "**Hotel Project Dedicated Account**") and the Hotel Project Dedicated Account shall be pledged to ABDEB and/or Developer's designee, such as a Mortgagee pursuant to an agreement or agreements prepared by Developer, such as an account control agreement and/or a pledge agreement. At the request of Developer, the City Manager on behalf of the City, shall execute and deliver such agreement or agreements to Developer and/or its designee. ABDEB (and/or its designee) shall have the right to withdraw funds from the Hotel Project Dedicated Account. At the election of Developer, the Hotel Project Dedicated Account may contain two or more sub accounts. The City represents and warrants to Developer and ABDEB that the State Refund Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.

2. **City Sales/Beverage Tax Chapter 351 Grant**. For a Grant Period of ten (10) years following Initial Occupancy, City shall provide ABDEB an economic development incentive grant in an amount equal to all City Sales Taxes and City Mixed Beverage Taxes. The City Sales/Beverage Tax Grant shall also include an amount equal to City Sales Taxes attributable to periods prior to Initial Occupancy, if any, such as City Sales Taxes paid with regard to expansion of the Convention Center. The City represents and warrants to Developer and ABDEB that the City Sales/Beverage Tax Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority.

3. **City Sales/Beverage Tax Appropriated Grant**. For a Grant Period of twenty (20) years beginning in the eleventh year following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount of lawfully available funds equal to all City Sales Tax and City Mixed Beverage Taxes. Such grant shall be subject to annual appropriation by the City Council of the City in the annual budget and the City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

4. **City Chapter 351 HOT Grant**. For a Grant Period of thirty (30) years following Initial Occupancy, the City shall provide ABDEB an economic development incentive grant in an amount equal to the City HOT pursuant to Section 351.102(b) of Texas Tax Code. At the request of Developer, the City shall deposit such funds into the Hotel Project Dedicated Account. The City represents and warrants to Developer and ABDEB that the City Chapter 351 HOT Grant is not subject to annual appropriation of the City Council of the City or any other governmental authority. The City represents and warrants to Developer and ABDEB that on the Execution Date the City HOT has not been pledged or assigned by the City in any way.

5. **City Property Tax Appropriated Grant**. City shall provide ABDEB with consecutive annual economic development incentive grants, for each calendar year during the period that commences on the January 1st the follows the date of Initial Occupancy and that ends on December 31, 2036 (the expiration of the TIRZ) from lawfully available funds in amounts equal to 30% of the City Property Taxes for each year. The first such Grant shall be paid and computed with respect to City Property Taxes for the tax year that follows Initial Occupancy and the last such Grant shall be paid and computed with respect to City Property Taxes for tax year 2036 (the expiration of the TIRZ). Beginning in tax year 2037 and continuing for each year until ABDEB has received a total of thirty (30) annual Grant payments pursuant to this Section 6(a)(5), the City shall provide ABDEB consecutive annual economic development incentive grants from lawfully available funds in amounts equal to all City Property Taxes for each year. Such grants shall be subject to annual appropriation by the City Council of the City in the annual budget and the City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

6. ABDEB shall have the right, at any time, and from time to time, to transfer and assign its rights to receive any or all of the Hotel Grant to Developer or the designee of Developer. ABDEB shall notify the City of any such transfer and assignment.

(b) Computation and Payment of Hotel Grants.

1. **Area Reports**. No later than the date of Initial Occupancy, the City shall submit a request to the Comptroller for Area Reports. During the Term the City shall take such other actions as are necessary to cause the Comptroller to issue Area Reports throughout the Term, including but not limited to supplementing

its request for Area Reports to include any new sales tax permit holders or mixed beverage tax permittees that should be included in the Area Reports if and to the extent Developer identifies any such new sales tax permit holders or mixed beverage tax permittees and if necessary provides Waiver of Confidentiality forms.

2. **State Refund Grant**. The City shall make or cause to be made a State Refund Grant payment to ABDEB or its designee within thirty days of the City's receipt from the Comptroller of each refund of State Sales Taxes and State HOT pursuant to Sections 351.102(c) and 151.429(h) of Texas Tax Code. Each State Refund Grant payment shall be equal to the amount of the State Sales Taxes and State HOT refund received by the City. At the request of Developer, the State Refund Grant payments shall be deposited directly into the Hotel Project Dedicated Account.

3. **City Sales/Beverage Tax Chapter 351 Grant**. The City shall make quarterly payments to ABDEB of the City Sales/Beverage Tax Chapter 351 Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee equal in amount to the City Sales Taxes and the City Mixed Beverage Taxes for such calendar quarter, as identified in the Area Reports for such quarter. Developer, if necessary, may establish the amounts of City Sales Taxes attributable to periods prior to Initial Occupancy using any reasonable documentation acceptable to the City other than Area Reports. The City shall make such Grant payments within thirty (30) days after the later of (i) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter and (ii) the City's receipt of the City Sales Taxes and the City Mixed Beverage Taxes for all periods in the quarter. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.

4. **City Sales/Beverage Tax Appropriated Grant**. The City shall make quarterly payments to ABDEB or its designee of the City Sales/Beverage Tax Appropriated Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the date that is eleven years subsequent to Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee from lawfully available funds equal in amount to the City Sales Taxes and the City Mixed Beverage Taxes for such calendar quarter, as identified in the Area Reports for such quarter, following appropriation by such amounts by the City Council of the City as set forth above. The City shall make such Grant

payments within thirty (30) days after the later of (i) the City's receipt of Area Reports that identify amounts of City Sales Taxes and City Mixed Beverage Taxes for all months in a quarter, (ii) the City's receipt of the City Sales Taxes and the City Mixed Beverage Taxes for all periods in the quarter; and (iii) the City Council appropriation of the grant amounts. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.

5. **City Chapter 351 HOT Grant**. The City shall make quarterly payments to ABDEB or its designee of the City Chapter 351 HOT Grant. After the conclusion of each calendar quarter beginning with the calendar quarter that includes the Initial Occupancy date, the City shall make a Grant payment to ABDEB or its designee equal in amount to the City HOT for such calendar quarter, determined with reference to the City HOT Returns. The City shall make each such Grant payment within thirty (30) days after the later of (i) the City's receipt of the City HOT Returns for all periods in a quarter and (ii) the City's receipt of the City HOT for all periods in a quarter. At the request of Developer, such payments shall be deposited by the City into the Hotel Project Dedicated Account.

6. **City Property Tax Appropriated Grant**. Commencing with the tax year that begins on the January 1st the follows Initial Occupancy, the City shall make a City Property Tax Appropriated Grant payment to ABDEB or its designee annually after the end of the each of such tax years in accordance with the provisions of Section 6(a)(5) hereof. Each City Property Tax Appropriated Grant payment shall be from lawfully available and appropriated funds equal to 30% or 100%, as applicable, of all City Property Taxes received by the City for the applicable tax year as provided in Section 6(a)(5) hereof. The City shall make each such Grant payments within 30 days after the City's receipt of the later of (i) the Property Tax Data for the tax year, (ii) the City Property Taxes for the tax year, or (iii) the appropriation of such grant amounts by the City Council of the City as set forth above. Developer each tax year shall provide prompt written notice to the City of the payment of property taxes with respect to the Property. After receipt of such notice, the City shall download or access Property Tax Data from the Tarrant County Tax Assessor-Collector within fifteen (15) days after it becomes available with regard to a particular tax year, and shall promptly notify Developer if such Property Tax Data from the Tarrant County Tax Assessor-Collector appears inadequate to establish the amounts of taxes used to compute the City Property Tax Appropriated Grant, in which event Developer

shall provide alternative documentation, acceptable to the City, necessary to establish the amounts of such taxes.

7. **Adjustments to Hotel Grant Amounts**. If (i) the final result of an assessment, audit, refund claim or other action by a taxpayer or taxing authority results in a change in the amount of tax liability for a prior tax period of any City tax revenue that was used as the basis for the computation of any Hotel Grant payment due under this Agreement, and (ii) such change in tax liability results in a payment to or from the City of such taxes, whether by actual payment, credit, offset, or otherwise, then (iii) for the Hotel Grant type computed with reference to that type of tax, the City, after notice to Developer and ABDEB will adjust the Hotel Grant payment otherwise due for the Hotel Grant Computation Period in which the City makes or receives such payment up or down, as the case may be, to account for such prior period's tax liability adjustment and payment. If the adjustment required by this Section 6(b)(7) cannot be fully accomplished by adjusting the Hotel Grant payment for the Hotel Grant Computation Period in which the City makes or receives such payment, the Hotel Grant payment due for subsequent Hotel Grant Computation Periods shall be adjusted as necessary.

8. **Deferral of Certain City Hotel Grant Payments**. Section 6(a) and (b) of this Agreement require the City to make or cause to be made Hotel Grant payments to ABDEB or its designee after the City's receipt of State HOT, City Sales Tax, City Mixed Beverage Tax, and City HOT with respect to specified periods for computation of the Hotel Grant amounts (a "**Hotel Grant Computation Period**"). If for a Hotel Grant Computation Period the City does not receive actual payment of a net positive amount of a tax type that exceeds the City's computation of a Hotel Grant payment obligation to ABDEB with respect to that tax type for that Hotel Grant Computation Period, the City shall not be required to pay immediately to ABDEB the portion of the Hotel Grant amount equal to the excess of the Hotel Grant amount otherwise due over the net positive amount of that tax type received by the City, but instead the City shall defer and pay such portion of the Hotel Grant amount after the first subsequent Hotel Grant Computation Period or Periods for which the City receives actual payment of a net positive amount of that tax type at least equal to the Hotel Grant payment currently due for that tax type plus Hotel Grant payments for prior periods deferred as a result of the application of this Section. Notwithstanding, for the City Sales/Beverage Tax Appropriated Grant and City Property Tax Appropriated Grant such amounts shall not be paid to ABDEB until the City Council has taken action to appropriate such payments as set forth above.

The provisions of this Section shall survive the termination of this Agreement and the Term.

(c) City will work with Developer to establish a procedure by which the City can expedite all City development approvals, including permits and inspections for the Hotel Project. At a minimum, the City agrees to act on an administratively complete building permit application within forty five (45) days after the application is filed with the City, and the City agrees to issue a certificate of occupancy within ten (10) days after receipt of a request for a final inspection if the Hotel Project complies with applicable requirements of the issuance of a certificate of occupancy. Delays resulting from the City's wrongful act or failure to act will extend the schedule for Developer's performance obligation under Section 5(a) by a like amount of days. In addition, the City will provide a dedicated staff member to assist with real time plan review and inspection.

(d) City agrees to provide space, where available, on existing City owned way-finding signs to direct visitors to the Hotel Project. In addition City agrees to seek placement of directional signage by the State of Texas on state highways; however all costs related to such signage are the responsibility of Developer.

(e) City will provide police and fire protection to the Hotel Project at City's costs (and not Developer's costs) for all Major Special Events at the Hotel Project so long as the Hotel Project is included as a venue for which the City is seeking reimbursement from the Event Trust Fund. The City will provide police and emergency service protection to the areas surrounding the Hotel Project as part of the routine patrol of the area. At Developer's request, the City's police department and Developer will meet periodically to discuss security and police protection in the areas surrounding the Hotel Project. If Developer and City determine a police substation in the Hotel Project is desired both parties will use reasonable efforts to work together to address staffing such substation.

(f) In connection with the development and construction of the Hotel Project (and any reconstruction, remodeling or renovation of same), if requested by Developer, the City shall grant Developer an easement or license, at no cost or expense, to stage construction on the public rights of ways located adjacent to the Hotel Property.

(g) The City agrees that in connection with the operation of the Hotel Project, Developer and its designees shall have the right, at no cost or expense, to utilize the sidewalks and plazas located adjacent to the Hotel Project that are part of the public right of way for café seating and other purposes; notwithstanding the foregoing any ordinances controlling the location of improvements in sidewalks or on public right of way shall still apply to assure that the public right of way is not unreasonably obstructed.

(h) The City shall cause the City's destination marketing organization to market and promote the Hotel Project whenever marketing any of the major attractions in the City. Such marketing and promotion shall be coordinated with Developer. In addition, the City agrees to seek an amendment to the Arlington Convention and Visitors Bureau, Inc. Bylaws to provide membership on the Board of Directors for a representative of the Hotel Project nominated by Developer.

(i) The ACCDC shall accept title to the portion of the Property (as determined by Developer) that contains the Hotel and the Entertainment Complex Project pursuant to a deed or deeds prepared by Developer that are substantially in the form attached hereto as **Exhibit "I"** (Developer shall have the right to determine the property to be conveyed by each such deed, and such property may consist of one or more condominium units and to complete Exhibit B to each such deed) and will immediately lease the Property to Developer pursuant to the Entertainment Complex Project Ground Lease and the Hotel Ground Lease. The City shall accept title to the portion of the Property (as determined by Developer) that contains the Convention Center Annex pursuant to a deed prepared by Developer that is substantially in the form attached hereto as **Exhibit "I"** (Developer shall have the right to determine the property to be conveyed by such deed, and such property may consist of a condominium unit and toe complete Exhibit B to such deed) and will immediately lease the Property to Developer pursuant to the Convention Center Annex Ground Lease. Developer shall prepare the Entertainment Complex Project Ground Lease, the Convention Center Annex Ground Lease and the Hotel Ground Lease and shall have the right to determine the description of the property that is the subject of each such ground lease. Developer shall have the right to make reasonable modifications to the form of each such ground lease prior to execution of same, such as modifications: (i) to reflect that the property demised under such ground lease consists of one or more condominium units and granting the tenant under such ground lease the exclusive right and power to exercise all of the rights and privileges of the "owner" of the unit or units that comprise the demised premises under such ground lease; or (ii) to reflect that the such property is subject to covenants, conditions and restrictions and granting the tenant under such ground lease the exclusive right and power to exercise all of the rights and privileges of the "owner" under such covenants, conditions and restrictions as if it were the owner of the property demised under the applicable ground lease. The President of the ACCDC Board of Directors, on behalf of the ACCDC, is hereby authorized to accept title to the portion of the Property that will contain the Entertainment Complex Project and the Hotel and to execute and deliver the Hotel Ground Lease and the Entertainment Complex Project Ground Lease as well as any other documents or agreements, such as a ground lease recognition agreement that a Mortgagee may require. The City Manager, on behalf of the City, is hereby authorized to accept title to the portion of the Property that will

contain the Convention Center Annex and to execute and deliver the Convention Center Annex Ground Lease as well as any other documents or agreements, such as a ground lease recognition agreement that a Mortgagee may require. The ACCDC shall comply with the provisions of the Entertainment Complex Project Ground Lease and the Hotel Ground Lease and the City shall comply with the provisions of the Convention Center Annex Ground Lease.

7. **Developer Determination of the Economic Feasibility of the Hotel Project.**

Unless such date is extended, as provided below, on or before the earlier of: (a) the first day of the ninth (9th) full calendar month that follows the date that the City has provided the Developer with the Comptroller Letter Ruling and (b) the first (1st) anniversary of the Execution Date, Developer will determine whether the development of the Hotel Project is economically feasible and financeable on terms acceptable to Developer in its sole discretion and will notify the City of its election to proceed or not to proceed with the development of the Hotel Project. In making such determination, Developer will evaluate whether the Hotel Grants are financeable on terms and in an amounts satisfactory to Developer, in its sole discretion, and whether the Hotel Grants, as structured, may create adverse federal income tax consequences for Developer or its direct or indirect members. To assist Developer in making such determination, the City will seek to obtain a private letter ruling (the "**Comptroller Letter Ruling**"), for the benefit of Developer and its successors and assigns and potential and actual Mortgagees from the Texas Comptroller concerning the qualifications of the City, in connection with the construction of the Entertainment Complex Project and Hotel Project, to receive funds that an owner of a qualified hotel project may receive under Section 151.429(h) of Texas Tax Code and Section 2303.5055 of Texas Government Code. The request for such private letter ruling shall be in a form reasonable acceptable to Developer.

If Developer elects not to proceed with the Development of the Hotel Project, which election it may make in its sole discretion, Developer will not be obligated to proceed with the development of the Hotel Project.

The date by which Developer must make the above determination and notify the City of such determination, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests.

8. **Indemnification**.

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY AND ACCDC ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE ENTERTAINMENT COMPLEX PROPERTY OR IMPROVEMENTS. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE ACCDC, CITY, THEIR OFFICERS, AGENTS,

EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO THE ENTERTAINMENT COMPLEX PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. FOR PURPOSES OF THIS SECTION 8, THE TERM DEVELOPER INCLUDES ABDEB.

9. **Termination and Default**.

Developer is considered to be in default under this Agreement if (i) Developer fails to fulfill its obligations under Section 3 and Section 5 (if Developer has elected to proceed with the development of the Hotel Project). The City is considered to be in default under this Agreement if the City fails to fulfill its obligations under Section 4 and Section 6 (if Developer has elected to proceed with the development of the Hotel Project). The ACCDC is considered in default under this Agreement if the ACCDC fails to fulfill its obligations under Section 6 (if Developer has elected to proceed with development of the Hotel Project). If Developer, ACCDC or the City defaults (a "**Default**"), the defaulting Party shall cure such Default within forty-five (45) days after the delivery of written notice of such Default from the other Party, or if such failure cannot be cured within such forty-five (45) day period in the exercise of all due diligence, then if the defaulting Party commences an attempt to cure within such forty-five (45) day period, such longer period as the Party thereafter continues diligently to prosecute the cure of such Default.

If Developer does not cure a Default of Section 3(a) in the time period allowed by this Agreement, the City may terminate this Agreement and the City may seek repayment by Developer of Grants paid. Repayment of Grants paid shall become due 60 days following receipt of such demand. In the event that this Agreement has not been terminated prior to Substantial Completion, the City and ACCDC shall no longer have the right to terminate this Agreement pursuant to this paragraph.

If Developer does not cure a Default of Section 5(a) (if Developer has elected to proceed with the development of the Hotel Project) in the time period allowed by this Agreement, the City and ACCDC may terminate this Agreement as it relates to the Hotel Project (but not the Entertainment Complex Project) and the City may seek repayment by Developer of the Hotel Grants paid. Repayment of Hotel Grants paid shall become due 60 days following receipt of such demand. In the event that this Agreement has not been terminated prior to Substantial Completion, the City and ACCDC shall no longer have the right to terminate this Agreement as it relates to the Hotel Project pursuant to this paragraph.

The City's ability to seek repayment and Developer's obligation to repay shall survive the termination of this Agreement.

10. **Restriction against Dispositions.**

(a) Dispositions of the Entertainment Complex Project. Until the third (3rd) anniversary of Substantial Completion, Developer shall not make or create, or suffer to be made or created, any Disposition of the Entertainment Complex Project, without the prior written approval of the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Thereafter, Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Entertainment Complex Project during the Term of this Agreement, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has demonstrable experience in owning and/or operating entertainment complexes, food and beverage projects and/or retail/entertainment projects and has a net worth in excess of Fifty Million Dollars ($50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy at least one of the above, such Disposition shall require the prior written approval of the City, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary of the date Substantial Completion is achieved Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Entertainment Complex Project.

(b) Dispositions of the Hotel Project. Until the third (3rd) anniversary of Initial Occupancy, Developer shall not make or create, or suffer to be made or created, any Disposition of the Hotel Project, without the prior written approval of the City Representative, which approval shall not be unreasonably withheld and which consent shall be granted in the event the counterparty to such Disposition is an Alternative Hotel Developer. Any such approval or disapproval shall be made within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Thereafter, Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Hotel Project during the Term of this Agreement, provided that the counterparty to such Disposition (and/or a direct or indirect affiliate): (i) owns a major league baseball or football team; (ii) is an affiliate of one of the direct or indirect owners of Developer; or (iii) has

demonstrated experience in owning and/or operating on a full-service basis comparable hotel properties and has a net worth in excess of Fifty Million Dollars ($50,000,000). In the event such counterparty (and/or a direct or indirect affiliate) does not satisfy any of the above, such Disposition shall require the prior written approval of the City, acting by and through the City Representative, which approval shall not be unreasonably withheld and which approval shall be granted or withheld within thirty (30) Business Days of the City's receipt of such request, time being of the essence. Notwithstanding the above, on or any time after the first day of the fifteenth (15th) anniversary of the date Substantial Completion of the Hotel is achieved Developer may, without the need to request or obtain the consent of the City, make or create, or suffer to be made or created, a Disposition of the Hotel Project.

(c) Assumption Agreement. In connection with a Disposition made during the Term of this Agreement, the counterparty to such Disposition shall assume all obligations of Developer under this Agreement accruing from and after the Execution Date of such Disposition by a written agreement (the "**Assumption Agreement**") to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the Disposition to evidence the assignment and assumption in question. The provisions of this Section 10(b) shall not apply to Operation Agreements, Leases or Mortgages.

(d) Permitted Dispositions to Tenants. Notwithstanding anything in this Section 10 or other Sections of this Agreement to the contrary, Developer may enter into Leases or other contractual agreements with Tenants for parts (but less than all) of Developer's interest in the Entertainment Complex Project and/or the Hotel Project, at any time and from time to time from and after the Execution Date, with such Tenants and upon such terms and conditions as Developer shall, in its sole discretion, deem fit and proper. Notwithstanding anything in this Section 10(d) to the contrary, a Lease or Leases may not be used as a way to circumvent the assignment limitations or other provisions of Section 10, provided, however, Developer shall have the right, from time to time, to lease all or any part of the Entertainment Complex Project to one or more Tenants, that may or may not be an affiliate of Developer, that operate one or more businesses in the Entertainment Complex Project, such as a bar, restaurant or nightclub. Such a Tenant shall have the right to sublease or license portions of its leased premises to third parties for the operation of businesses.

(e) Liability. In the event of a Disposition of all of the interest of Developer concerning the Entertainment Complex Project and/or Hotel Project, upon Developer's delivery of an Assumption Agreement pursuant to Section 10(b) hereof, Developer shall be relieved of all further liability arising

hereunder except for monetary obligations of Developer under this Agreement that accrued before such Disposition which remain unpaid.

(f) Obligations of Tenants. Any Tenant is not a successor or assignee of Developer's obligations to the City merely by being a Tenant.

(g) Project Financing and Mortgages. The provisions of this Section 10 are not intended to modify or supersede any of the rights granted Developer, any Mortgagee and any Tenant under Sections 11 and 12 hereof. In the event that the provisions of this Section 10 conflict with or are inconsistent with the any of the other provisions of Sections 11 and/or 12 hereof, the provisions of Sections 11 and 12 hereof shall control and the provisions of this Section 10 shall be construed and interpreted accordingly.

(h) Disposition of one Project. In the event of a Disposition of the Hotel Project, but not the Entertainment Complex Project, or vice versa, Developer may cause this Development Agreement to be bifurcated pursuant to the provisions of Section 13(z)(1).

11. **Leases**.

From and after the Execution Date, Developer shall have the right, without the need to request or obtain the consent of the City or ACCDC to Lease all or any part of the Entertainment Complex Project and/or the Hotel Project at any time and from time to time to Tenants. The City and ACCDC acknowledges and agrees that Developer may enter into Leases with affiliated companies to Developer, such as the Project Tenant, and acknowledge that part of Developer's strength is this ability. Notwithstanding anything in this Section to the contrary, a Lease or Leases may not be used as a way to circumvent the assignment limitations of this Agreement.

12. **Mortgagee Rights.**

(a) Right to Mortgage. Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Property, the Hotel Project, or any portions thereof, and/or the Entertainment Complex Project, or any portion or portions thereof, and/or to this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance or refinance any portion or portions of the Entertainment Complex Project and/or the Hotel Project. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**". The City and ACCDC recognizes and acknowledges that the Hotel Project and the Entertainment Complex Project may be separately financed by Developer (or its Affiliate) and may be encumbered by separate Mortgages. The Mortgagee of the Hotel Project and the Mortgagee of the Entertainment Complex Project shall

have the benefit of the provisions of this Section 12 with regard to its Mortgage and the property and project its Mortgage encumbers.

(b) Notice of Breaches to Mortgagees. In the event the City and/or ACCDC gives notice to Developer and/or ABDEB of a breach of its obligations under this Agreement, the City and/or ACCDC shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to the City and/or ACCDC by Developer. To facilitate the operation of this Section 12(b), Developer shall at all times keep the City and ACCDC provided with an up-to-date list of Mortgages.

(c) Mortgagee May Cure Breach of Developer and/or ABDEB.

(i) In the event that Developer and/or ABDEB receives notice from the City and/or ACCDC of a breach by Developer and/or ABDEB of any of its obligations under this Agreement and such breach is not cured by Developer and/or ABDEB pursuant to the provisions of this Agreement, the City and/or ACCDC shall, in addition to the notice provided in Section 9 hereof, give notice of the failure to cure on the part of Developer and/or ABDEB to the Mortgagees at the expiration of the period within which Developer and/or ABDEB may cure as set forth in this Agreement. Any one of the Mortgagees may elect to cure such default by giving the City and/or ACCDC written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies the City and/or ACCDC of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

(ii) In the event any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Developer’s and ABDEB’s interest in and to the Entertainment Complex Project or any portion thereof and/or the Hotel Project or any portion thereof, as applicable (or after the appointment of a receiver or the obtaining of Developer’s and/or ABDEB’s interest in and to the Entertainment Complex Project or any portion thereof and/or the Hotel Project or any portion thereof, as applicable, via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

(A) elect to assume the position of Developer hereunder in which case, in the event the City and/or ACCDC has terminated this Agreement or suspended the distribution of any funds, including the Grants and/or the Hotel Grants that the City are obligated to provide to ABDEB and/or Developer pursuant to this Agreement, the City and ACCDC agrees that this Agreement shall be deemed reinstated and the City shall commence the distribution of such funds, including the Grants and/or Hotel Grants, in accordance with the provisions of this Agreement and, in which case, such Mortgagee shall cure any default by ABDEB and/or Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 12(b) hereof within the timeframes contained in this Agreement and shall cause Substantial Completion to occur; or

(B) elect not to assume the provisions of this Agreement.

The Mortgagee shall have the right so to elect (A) above of this Section 12(c)(ii) only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 12(c), the term "Mortgagee" shall include not only the "Mortgagee", as that term is defined in this Section 12 hereof, but shall also include any Person that obtains Developer's and/or ABDEB's interest in and to all or any portion of the Property as a result of a Mortgagee's exercise of its foreclosure rights or the transfer of Developer's and/or ABDEB's interest in and to all or any part of the Property, the Entertainment Complex Project and/or the Hotel Project at the direction of the Mortgagee by Developer and/or ABDEB to a Person by deed and/or assignment-in-lieu of foreclosure.

(d) Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer and/or ABDEB to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (i) its having become a Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Developer and/or ABDEB to be performed or observed under this Agreement, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 12(c)(ii)(A) of this Agreement or shall specifically elect under this Section

12(d) to assume the obligations of Developer and/or ABDEB by written notice to the City and ACCDC whereupon such Mortgagee, upon making such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Developer and/or ABDEB, as applicable, hereunder.

(e) Mortgagee's Rights Agreements. The ACCDC and the City, acting by and through the City Representative, shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 12 that apply to Mortgagees and Mortgages. Within twenty (20) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 12(e), time being of the essence, the ACCDC and City, acting through the City Representative, shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Section 12 that apply to Mortgagees and Mortgages.

13. **General Provisions.**

(a) **Representations and Warranties.** Developer and ABDEB each represents and warrants to the City and ACCDC that it has the requisite authority to enter into this Agreement. Developer and ABDEB each represents and warrants to the City and ACCDC that it will not violate any federal, state or local laws in operating the Entertainment Complex Project and Hotel Project, that all proposed improvements of the Entertainment Complex Project and Hotel Project (exclusive of Third Party Tenant Improvements) shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations. Nothing in this Section 13(a) or any other part of this Agreement, however, shall be construed to (i) limit or prevent Developer from challenging at law or in equity the applicability of any applicable law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Developer, the Project Tenant and/or ABDEB to comply with any applicable law during the period that Developer, the Project Tenant and/or ABDEB may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such applicable law (unless such law requires compliance during any such challenge). If Developer's, the Project Tenant’s and/or ABDEBC’s

challenge is successful, Developer, the Project Tenant and ABDEBC shall not be required by the provisions of this Agreement to comply with such applicable law.

(b) **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) **Attorneys' Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action, in accordance with Section 271.153 of Texas Local Government Code.

(d) **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Developer, ABDEB, the ACCDC and the City and approved by the City through its City Council.

(e) **Assignment by the City or ACCDC**. This Agreement may not be assigned by the City or ACCDC until such time as the eight (8) Grant installments under Subsection 4(a) has been made to ABDEB and, in the event the Hotel Project is being developed, Developer and its lenders are provided with assurances that all Hotel Grants will be timely paid and that the City is not being released from its obligations under Section 6 to cause such Hotel Grants to be timely paid.

(f) **Binding Agreements; Successor Tenant.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their respective permitted successors and assigns.

(g) **Notice.** All notices or statements given pursuant to or concerning this Agreement shall be in writing and sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the Business Day following the date the notice is deposited with the overnight delivery service addressed as specified below:

DEVELOPER
& ABDEB: Ballpark Parking Partners, LLC
c/o Secretary
1000 Ballpark Way, Suite 400
Arlington, Texas 76011

With a copy to:	Ballpark Parking Partners, LLC c/o General Counsel 1000 Ballpark Way, Suite 400 Arlington, Texas 76011
CITY:	City of Arlington, Texas City Manager's Office c/o City Manager 101 W. Abram Street Arlington, Texas 76004-3231
ACCDC:	Arlington Convention Center Development Corporation City Manager's Office c/o City Manager 101 W. Abram Street Arlington, Texas 76004-3231

Such addresses may be changed by giving the other Party ten (10) days' notice in writing. In addition, Developer & ABDEB may add additional notice addressees.

(h) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

(i) **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules, and, subject to the provisions of Section 13(l) hereof, venue shall lie in Tarrant County, Texas.

(j) **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable. Notwithstanding the above, Developer shall have the right to terminate this Agreement in the event that it determines that the obligation of the City to timely pay ABDEB or Developer the Grants and, if applicable, the Hotel Grants in accordance with the terms of this Agreement has been declared invalid or unenforceable. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or

equity (including arbitration proceedings). In the event that any of the provisions of this Agreement concerning the Hotel Grants and/or the Grants are challenged by any other Person as "illegal, invalid, or unenforceable under present or future laws", the parties shall reasonably cooperate with each other to defend the validity and enforceability of such provisions. The provisions of this Section 13(j) shall survive the termination of this Agreement.

(k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

(l) **Dispute Resolution.** In the event any dispute, controversy or claim between or among the parties hereto arises under this Agreement (a "**Dispute or Controversy**"), including a claim that a Party is in default of this Agreement, the parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 13(l). Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the parties representatives for such purpose, or such longer period as the parties may agree upon, then either Party may by notice to the other Party (the "**Arbitration Notice**") submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 13(l) and **Exhibit "H"** attached hereto (the "**Arbitration Procedures**"). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 13(l) and **Exhibit "H"** without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the "**Arbitration**"). This Section 13(l) and **Exhibit "H"** hereto are and hereby constitute a written agreement by the parties hereto to submit to arbitration any such Dispute or Controversy arising after the Execution Date of this Agreement within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before

the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

(m) **Force Majeure.** If either Party (for purposes of this provision, Developer and ABDEB shall be collectively deemed a "Party") shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster, a default hereunder by the other Party or other reason of a like nature not the fault of the Party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

(n) **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City, ACCDC and Developer. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City, ACCDC and Developer, nor between the City, ACCDC and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Developer.

(o) **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any Person other than the City, ACCDC and Developer and no other Person is considered a third party beneficiary to this Agreement.

(p) **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the Property that is not in conformity with the City's adopted development regulations, except as expressly otherwise contemplated herein.

(q) **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein.

(r) **Waiver**. No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

(s) **Approval by City of Arlington, Texas. This** Agreement was approved by the City Council of the City of Arlington, Texas at its meeting on December 15, 2015.

(t) **City Representative.** From and after the date hereof, the City shall designate a representative (a "**City Representative**") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Agreement on the part of the City and to receive any and all submissions from Developer under this Agreement. Developer shall be entitled to rely on, and Developer and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager (or his designee) gives written notice to Developer that the City Representative has been changed. For the purpose of this Agreement, Developer shall not be required to rely on and may refuse to accept directions, consents, approvals, waivers or other acknowledgements from any other Person, even if such Person has apparent or actual authority for the City. The City Manager, and only the City Manager, shall be entitled to change the City Representative at any time upon five (5) days written notice to Developer, provided that the City Manager shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. The initial City Representative shall be the City Manager.

(u) **Representatives Not Individually Liable**. No member, official, representative, or employee of the City or ACCDC shall be personally liable to Developer or ABDEB or any successor in interest of either of them in the event of any default or breach by the City or ACCDC for any amount which may become due to Developer, ABDEB or successor of either of them or on any obligations under the terms of the Agreement. No partner, member, representative, or employee of Developer, ABDEB or any of their respective members shall be personally liable to the City or ACCDC in the event any default or breach by Developer and/or ABDEB for any amount which may become due to the City or ACCDC or on any obligations under the terms of this Agreement.

(v) **Confidentiality**. The City acknowledges and agrees that any information provided by Developer or ABDEB to the City concerning the cost of developing the Entertainment Complex Project or Hotel Project, the terms of any financing of the Entertainment Complex Project or Hotel Project, the identity of any potential Tenant, the terms of any lease of a Tenant, the actual sales of any Tenant and the cash flow, profit and loss of the Entertainment Complex Project or Hotel Project is considered by Developer to be "confidential financial information" and may contain "trade secrets" and "confidential information".

The City shall notify Developer within five (5) Business Days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning Developer, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If Developer takes the positions that responsive information provided by or concerning Developer is information not subject to release to the public pursuant to section 552.110 of Texas Government Code, or other applicable law, then the City shall seek a written opinion from the Texas Attorney General; however, Developer must submit written comments to the Attorney General to establish reasons why the information should be withheld. The burden of establishing the applicability of exceptions to disclosure for such information resides with Developer. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This Section shall survive termination of this Agreement for any reason whatsoever.

(w) **City Representations and Warranties**. The City represents and warrants to Developer and ABDEB that the City (i) is a constitutionally chartered city validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(x) **Estoppel Certificates**. The City and Developer, at any time and from time to time, upon not less than thirty (30) days prior written notice from a Party hereto, or to a Person designated by such Party, such as a Tenant or a Mortgagee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requested Party certifying, among other matters, (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating whether or not, to the best knowledge of the signer of such certificate, the City or Developer is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (iii) any other factual matters reasonably requested in such estoppel certificate concerning this Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any Person not a Party to this Agreement (if such other Person is identified at the time such certificate was requested). The City Representative is hereby authorized to execute, acknowledge, and deliver

such certificates on behalf of the City. For purpose of this Section 13(x) the term "Developer" shall be deemed to include ABDEB.

(y) **Waiver of Immunity**. The City hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Developer or ABDEB resulting from an uncured default by the City. To effectuate such waiver, the Parties hereby agree, for purposes of this Agreement only, that this Agreement is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

(z) **Separate Agreements.**

1. In the event that Developer has elected to proceed with the development of the Hotel Project, at the request of the Developer, made at any time after such election, the City and ACCDC, acting by and through the City Representative, shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the "**Amendment**") with Developer and ABDEB (or, at the election of Developer, with a subsidiary of Developer and either ABDEB or a member of such subsidiary) that deletes all references to the Hotel Project and shall enter into a separate economic development incentive agreement for the Hotel Project with Developer and ABDEB (or at the election of Developer, an affiliate or subsidiary of Developer and either ABDEB or a member of such subsidiary, an Alternative Hotel Developer (and a member of such Alternative Hotel Developer in lieu of ABDEB) or a permitted transferee or assignee hereunder) for the Hotel Project (the "**Hotel Project Agreement**"). The Hotel Project Agreement shall contain all of the provisions of this Agreement that concern the Hotel Project (but none of the provisions that concern the Entertainment Complex Project). Developer shall prepare the Amendment and the Hotel Project Agreement. The Amendment may consist of an amendment and restatement of the Agreement in lieu of an amendment to the Agreement. The purpose of the Amendment and the Hotel Project Agreement is to satisfy a future lender's requirement that the owner of the Hotel Project and the owner of the Entertainment Complex Project are each single purpose bankruptcy remote entities. To that end this Agreement, as amended by the Amendment and the Hotel Project Agreement shall not be cross defaulted.

2. In the event that Developer has elected not to proceed with the development of the Hotel Project, at the request of the Developer, made at any time after such election, the City and ACCDC, acting by and through the City Representative, shall, within thirty (30) Business Days of such request, enter into an amendment to this

Agreement (the "**Single Project Amendment**") with Developer and ABDEB that deletes all references to the Hotel Project, including the deletion of Sections 5 and 6 of this Agreement and all references to the Hotel Grants. Developer shall prepare the Single Project Amendment. The Single Project Amendment may consist of an amendment and restatement of the Agreement in lieu of an amendment to the Agreement.

SIGNATURES ON NEXT PAGE

EXECUTED on this _____ day of _____, 2015.

CITY OF ARLINGTON, TEXAS

By:_____
TREY YELVERTON, City Manager

ATTEST:

_____
MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

By:_____

ARLINGTON CONVENTION CENTER DEVELOPMENT CORPORATION

By:_____
President of the Board of Directors

WITNESS

By:_____

EXECUTED on this _____ day of _____, 2015.

DEVELOPER:

ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, LLC, a Delaware limited liability company,

By: Arlington Ballpark District Entertainment Block Investors, LLC, its Managing Member

By: _____
Its: _____

WITNESS:

By: _____
Name:_____
Its:_____

ABDEB:

ARLINGTON BALLPARK DISTRICT ENTERTAINMENT BLOCK, INC., a Texas corporation

By:_____
Its:_____

ATTEST:

By: _____
Name:_____
Its:_____

Schedule of Exhibits

Exhibit "A":	Property description
Exhibit "B":	Hotel Project Concept Plan
Exhibit "C":	Entertainment Complex Project Concept Plan
Exhibit "D":	Contractor's Certificate of Target Arlington Compliance
Exhibit "E":	Form of Option Agreement
Exhibit "F":	Waiver of Confidentiality Forms
Exhibit "G-1":	Form of the Convention Center Annex Ground Lease
Exhibit "G-2":	Form of the Entertainment Complex Project Ground Lease
Exhibit "G-3":	Form of the Hotel Ground Lease
Exhibit "H":	Arbitration Procedure
Exhibit "I":	Form of the Deed