

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MCKINNEY, TEXAS AND THE CITY OF FRISCO, TEXAS**

(Intersection Improvements at Eldorado Parkway and Custer Road)

This Interlocal Agreement (“Agreement”) is entered into this ____ day of _____, 2022 (“Effective Date”) by and between the **CITY OF MCKINNEY, TEXAS**, a Texas home-rule municipality (“McKinney”), and the **CITY OF FRISCO, TEXAS**, a Texas home-rule municipality (“Frisco”). Frisco and McKinney are individually and collectively referred to herein, respectively, as “Party” or “Parties.”

WHEREAS, it is in the best interest of the citizens of McKinney and Frisco for local governments to cooperate, where possible, in the provision of governmental functions and services where such cooperation will result in an more efficient, higher quality and /or more cost effective provision of such functions, and services; and

WHEREAS, the Interlocal Cooperation Act (“Act”), Texas Government Code Chapter 791, specifically authorizes local governments to contract with one another to perform governmental functions and services; and

WHEREAS, McKinney plans to widen Eldorado Parkway as it approaches Custer Road from the east and intersects with the eastern side of Custer Road from four (4) lanes to six (6) lanes (the “Project”) as generally depicted on Exhibit “A,” attached hereto and incorporated herein by reference; and

WHEREAS, Frisco has identified some modifications that need to be made to Eldorado Parkway on the western side of its intersection with Custer Road which are desirable to make both the westbound half and the eastbound half of the Eldorado Parkway intersection with Custer Road mirror one another for a better traffic experience; and

WHEREAS, McKinney and Frisco have entered into this Agreement, as authorized by the Act, in conjunction with the construction of the Project and based on the direct benefit to Frisco for the construction of certain median and paving modifications, sidewalk modifications, signal modifications, and related appurtenances at and about the intersection of eastbound Eldorado Parkway and Custer Road, as depicted generally on Exhibit “B,” attached hereto and incorporated herein for all purposes (collectively “Intersection Improvements”); and

WHEREAS, McKinney has agreed to design and construct, as part of the Project, the Intersection Improvements at the locations hereinafter set forth, provided Frisco pays the reasonable and necessary construction costs of the Intersection Improvements as set forth herein; and

WHEREAS, in consideration for the design and construction of the Intersection Improvements at the locations desired by Frisco, McKinney requires Frisco to place the costs related to the construction of the Intersection Improvements (“Construction Costs”) in escrow as hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, McKinney and Frisco agree as follows:

1. Location and Construction of Intersection Improvements. In exchange for Frisco's payment of the Construction Costs to McKinney, McKinney agrees to construct the Intersection Improvements: (a) at the locations depicted on Exhibit "B," attached hereto and incorporated herein for all purposes; and (b) in accordance with Frisco's design and construction standards, as they exist, may be amended or in the future arising. The parties acknowledge and agree that McKinney is not representing or warranting a date by which the Intersection Improvements will be completed ("Date of Completion"), provided, however, that if construction of the Intersection Improvements have not started on or before the third anniversary of the Effective Date of this Agreement, McKinney shall return to Frisco all unused Escrow Funds (hereinafter defined) held in escrow as of that date and this Agreement shall automatically terminate with no further obligation or liability to McKinney or Frisco.

2. Bidding and Construction of Project.

(a) McKinney to Construct Intersection Improvements as part of Project. McKinney will design, bid and cause the Project, including the Intersection Improvements, to be constructed. McKinney has estimated the costs for the Intersection Improvements to be approximately ONE HUNDRED FIFTY EIGHT THOUSAND ONE HUNDRED TWENTY TWO and twenty six/100 DOLLARS (\$158,122.26), as more particularly described in Exhibit "C," attached hereto and incorporated herein for all purposes (the "Estimated Construction Costs"). The phrase "Cost Overruns" as used herein-below shall mean reasonable and necessary costs, which are actually incurred by McKinney in the construction of the Intersection Improvements and which are over and above the Estimated Construction Costs. Notwithstanding any statement to the contrary in this Agreement, McKinney must obtain Frisco's written approval of the final design plans and specifications for the Intersection Improvements, and any changes to such plans and specifications, before proceeding with any construction. McKinney shall consult with Frisco in connection with McKinney's final acceptance of the Intersection Improvements, and Frisco is entitled to inspect the Intersection Improvements at any time during the Project.

(b) Bidding. McKinney shall bid or cause the Project to be bid, including the Intersection Improvements, in strict accordance with the laws of the State of Texas.

(c) Indemnity. McKinney shall identify Frisco as an indemnified party or indemnitee together with and to the same extent that McKinney is identified as an indemnified party or indemnitee and shall require the selected contractor to release, hold harmless and indemnify Frisco to the same level and extent the selected contractor is required to release, hold harmless and indemnify McKinney in any and all releases, indemnification clauses and hold harmless provisions contained in any and all contracts by and between McKinney and the selected contractor regarding the Project.

(d) Performance and Payment Bonds. McKinney shall require the selected contractor to execute and deliver to the Parties a performance bond in the amount of one hundred percent (100%) of the total contract price of the Project and Intersection Improvements for the benefit of the Parties, specifically including the Construction Costs, to ensure the completion of the Project

and Intersection Improvements. McKinney must also require the selected contractor to execute and deliver to the Parties a payment bond in the amount of one hundred percent (100%) of the total contract price of the Project and Intersection Improvements for the benefit of payment bond beneficiaries who have a direct contractual relationship with the selected contractor and/or the selected contractor's subcontractors and suppliers to provide labor or material for the construction of the Project and the Intersection Improvements. The bonds must be executed by a corporate surety in accordance with Chapter 2253 of the Texas Government Code and delivered to the Parties before the contractor begins any work on the Project or Intersection Improvements.

(e) Maintenance Bond. Upon completion of the Intersection Improvements, McKinney shall require the selected contractor to furnish to Frisco a good and sufficient maintenance bond, in the form attached hereto as Exhibit "D" and incorporated herein by reference, in the amount of one hundred percent (100%) of the actual construction costs for the Intersection Improvements with a reputable and solvent corporate surety, in favor of Frisco, to indemnify Frisco against any repairs arising from defective workmanship or materials used in any part of the construction of the Intersection Improvements, for a period of two (2) years from the date of final acceptance of such improvements.

(f) Insurance.

(1) Coverages Required. McKinney shall require the selected contractor to furnish, before commencing work on the Project, appropriate levels of insurance coverage as may be necessary to best protect McKinney and Frisco from any claims or causes of action arising out of selected contractor's construction of the Project and the Intersection Improvements. Such insurance coverages shall at a minimum include:

(i) *Commercial General Liability* insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$2,000,000 per-occurrence and \$4,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

(ii) *Workers' Compensation* insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$1,000,000 each accident, b) by disease, \$1,000,000 per employee with a per policy aggregate of \$1,000,000.

(iii) *Business Automobile Liability* insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.

(iv) The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The selected contractor may maintain reasonable deductibles, subject to approval by McKinney, such approval not to be unreasonably withheld, delayed, conditioned or denied.

(2) Endorsements Required. With reference to the foregoing required insurance, the selected contractor shall endorse applicable insurance policies as follows:

(i) A waiver of subrogation in favor of McKinney and Frisco, and their respective officials, employees and officers, shall be contained in the Workers' Compensation insurance policy.

(ii) McKinney and Frisco, and their respective officials, employees and officers, shall be named as additional insureds on the Commercial General Liability and Business Automobile Liability policies.

(iii) All insurance policies shall be endorsed to the effect that McKinney and Frisco will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination or material change of the policies.

(3) Financial Rating Required. All insurance shall be purchased from an insurance company that meets a financial rating of A-VI or better as assigned by the A.M. BEST Company or equivalent.

(g) McKinney specifically agrees that it will not intentionally act or fail to act in any regard that interferes with, limits, restricts, prohibits or bars any claim or cause of action that might be asserted by Frisco under the Indemnification Clause, Performance Bond, Maintenance Bond or insurance coverage provided by the selected contractor. McKinney further agrees to reasonably cooperate with Frisco to provide information and documentation that may be necessary to the preparation and assertion of any claim or cause of action that might be asserted by Frisco under the Indemnification Clause, Performance Bond, Maintenance Bond or insurance coverage provided by the selected contractor.

3. Frisco's Payment of the Estimated Construction Costs. Within fifteen (15) days following the Effective Date of this Agreement, Frisco will tender to McKinney funds equal to the Estimated Construction Costs to be placed in escrow by McKinney at the location solely determined by McKinney ("Escrow Funds"). The Escrow Funds will be available to McKinney for the Construction Costs, and McKinney shall in its discretion be entitled to use, at any time, all or a portion of the Escrow Funds for the construction of the Intersection Improvements and all costs and expenses related to such Intersection Improvements. McKinney shall further be entitled to, as its sole property, any and all interest earned on the Escrow Funds, and Frisco hereby waives and relinquishes any and all rights or claim to interest earned, if any, on the Escrow Funds. In addition, if any amount of the Escrow Funds remains in the account after the construction of the Intersection Improvements is completed, and all of the Costs associated with the Intersection Improvements have been paid ("Remaining Escrow Funds"), McKinney will promptly return to Frisco, as Frisco's sole property, the Remaining Escrow Funds. McKinney may, in its sole discretion, utilize the interest earned on the Escrow Funds, if any, for any purpose. Further, Frisco shall, subject to the availability of funds, within thirty (30) days of receiving written notice from McKinney and supporting documentation as reasonably required by Frisco to verify the nature and amount of any Cost Overruns, tender to McKinney any and all reasonable and necessary Cost Overruns for the construction of the Intersection Improvements and all costs and expenses related to such Intersection Improvements. Notwithstanding anything to the contrary herein, McKinney and Frisco agree that McKinney shall, under no circumstance, be responsible for any part or portion of the Construction Costs associated, directly or indirectly, with the Intersection Improvements.

4. Disclaimer/Waiver of Damages/Liability.

(a) Frisco acknowledges and agrees that McKinney is not providing any guarantee, representation and/or warranty regarding the work performed by the contractor selected by McKinney in connection with the construction of the Intersection Improvements, in whole or in part, including, but not limited to, the Date of Completion. Frisco also acknowledges and agrees that McKinney hereby disclaims any guarantee, representation and/or warranty regarding the work performed by the contractor selected by McKinney in connection with the construction of the Intersection Improvements, in whole or in part, including, but not limited to, the Date of Completion. Frisco further acknowledges and agrees that McKinney shall in no way be liable for any damages whatsoever, if any, which may be sustained by Frisco and/or adjacent property(ies), resulting, in whole or in part, directly or indirectly, from the selected contractor's construction of the Intersection Improvements and/or construction of the Intersection Improvements by the Date of Completion except to the extent caused by the direct and sole negligence or willful misconduct of McKinney (this Paragraph shall be referred to as "Frisco's Acknowledgments").

(b) **FRISCO HEREBY RELEASES MCKINNEY FROM AND AGAINST, AND WAIVES ANY AND ALL RIGHTS TO, ANY AND ALL CLAIMS AND/OR DEMANDS FOR DAMAGES (PERSONAL OR PROPERTY), INJURY (INCLUDING DEATH), OR OTHERWISE, IT MAY HAVE WITH REGARD TO THE CONSTRUCTION AND/OR DATE OF COMPLETION OF THE INTERSECTION IMPROVEMENTS AND/OR ANY OTHER ACT AND/OR OMISSION RELATING, DIRECTLY OR INDIRECTLY, TO THE INTERSECTION IMPROVEMENTS, IN WHOLE OR IN PART, AS PROVIDED IN THIS AGREEMENT, EXCEPT TO THE EXTENT ANY SUCH CLAIMS AND/OR DAMAGES ARISE OUT OF AND/OR ARE CAUSED BY THE DIRECT AND SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF MCKINNEY (COLLECTIVELY, "FRISCO'S RELEASE AND WAIVER"). NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN FRISCO'S RELEASE AND WAIVER RELEASES MCKINNEY FROM AND AGAINST, OR WAIVES FRISCO'S RIGHT TO PURSUE AGAINST MCKINNEY, ANY CLAIMS OR CAUSES OF ACTION ARISING OUT OF MCKINNEY'S FAILURE OR REFUSAL TO FULLY PERFORM THIS AGREEMENT.**

5. INDEMNIFICATION.

(a) **BY MCKINNEY. TO THE EXTENT ALLOWED BY LAW, MCKINNEY HEREBY AGREES TO FULLY DEFEND, INDEMNIFY, AND HOLD HARMLESS, FRISCO FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF MCKINNEY AND ARISING OUT OF, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, MCKINNEY'S REPRESENTATIONS AND/OR MCKINNEY'S RELEASE AND WAIVER AND/OR ARISING OUT OF, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, TO THE EXTENT ONLY THAT MCKINNEY IS INDEMNIFIED BY THE SELECTED CONTRACTOR, THE SELECTED CONTRACTOR'S CONSTRUCTION OF THE INTERSECTION IMPROVEMENTS PURSUANT TO THIS AGREEMENT (HEREINAFTER "CLAIMS"). IN ITS SOLE DISCRETION, FRISCO SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY MCKINNEY IN FULFILLING ITS OBLIGATION HEREUNDER TO**

DEFEND AND INDEMNIFY FRISCO, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY FRISCO IN WRITING. FRISCO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, FRISCO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY FRISCO IS NOT TO BE CONSTRUED AS A WAIVER OF MCKINNEY'S OBLIGATION TO DEFEND FRISCO OR AS A WAIVER OF MCKINNEY'S OBLIGATION TO INDEMNIFY FRISCO PURSUANT TO THIS AGREEMENT. MCKINNEY SHALL RETAIN FRISCO-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF FRISCO'S WRITTEN NOTICE THAT FRISCO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF MCKINNEY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, FRISCO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND MCKINNEY SHALL BE LIABLE FOR THE REASONABLE AND NECESSARY LEGAL COSTS INCURRED BY FRISCO. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

(b) **BY FRISCO. TO THE EXTENT ALLOWED BY LAW, FRISCO HEREBY AGREES TO FULLY DEFEND, INDEMNIFY, AND HOLD HARMLESS, MCKINNEY FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF FRISCO AND ARISING OUT OF, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, THE SELECTED CONTRACTOR'S CONSTRUCTION OF THE INTERSECTION IMPROVEMENTS PURSUANT TO THIS AGREEMENT (HEREINAFTER "CLAIMS"). IN ITS SOLE DISCRETION, MCKINNEY SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY FRISCO IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY MCKINNEY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY MCKINNEY IN WRITING. MCKINNEY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, MCKINNEY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY MCKINNEY IS NOT TO BE CONSTRUED AS A WAIVER OF FRISCO'S OBLIGATION TO DEFEND MCKINNEY OR AS A WAIVER OF FRISCO'S OBLIGATION TO INDEMNIFY MCKINNEY PURSUANT TO THIS AGREEMENT. FRISCO SHALL RETAIN MCKINNEY -APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF MCKINNEY'S WRITTEN NOTICE THAT MCKINNEY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF FRISCO FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, MCKINNEY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND FRISCO SHALL BE LIABLE FOR THE REASONABLE AND NECESSARY LEGAL COSTS INCURRED BY MCKINNEY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

6. **Limitations of Agreement.** The parties hereto acknowledge this Agreement is limited to the Intersection Improvements only.

7. **Default.** In the event Frisco fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from McKinney, McKinney shall have the following remedies in addition to McKinney's other rights and remedies, at law or in equity:

- (a) to immediately, without further notice to Frisco, cease any and all construction of the Intersection Improvements; and/or

(b) to seek specific enforcement of this Agreement.

In the event McKinney fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from Frisco, Frisco will be entitled to seek specific performance and/or any other remedy available to it at law or in equity.

8. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested; facsimile; electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such Party via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

If to Frisco, to:

City of Frisco
Attn: Wesley Pierson, City Manager
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5100
Facsimile: (972) 292-5122
Email: wpierson@friscotexas.gov

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attn: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4044
Email: rpittman@abernathy-law.com

If to McKinney, to:

City of McKinney
Attn: Paul G. Grimes, City Manager
222 N. Tennessee Street
McKinney, Texas 75069
Telephone: (972) 547-7520
Facsimile: (972) 547-2607
Email: pgrimes@mckinneytexas.org

With a copy to:

Brown & Hoffmeister, L.L.P.
Attn: Mark S. Houser
740 East Campbell Road, Suite 800
Richardson, Texas 75081

Telephone: (214) 747-6100
Facsimile: (214) 747-6111
Email: mhouser@bhlaw.net

9. Relationship of Parties. Each Party understands and agrees that each Party's performance of its respective obligations required by this Agreement is an action of an independent entity and that the execution of this Agreement shall not be construed as creating a joint venture or agency relationship by or between the Parties. Each Party is an independent governmental entity acting pursuant to the laws of the State of Texas and local ordinances regulating its conduct and by execution of this Agreement the Parties make no representations regarding the validity of the actions taken by the other Party hereto.

10. Miscellaneous.

(a) Binding Agreement/Assignment. The terms and conditions of this Agreement are binding upon the Parties hereto. This Agreement may not be assigned without the written consent of the other Party.

(b) Cooperation. The Parties acknowledge and agree that mutual cooperation and assistance is essential to each Party's performance under this Agreement; therefore, it will be the duty of both Parties to make all good faith efforts to cooperate in the execution of this Agreement and the performance of their respective obligations hereunder.

(c) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(d) Appropriation of Funds. Funds are presently budgeted for each Party's performance under this Agreement through the end of each Party's 2021-2022 fiscal year. The Parties represent and warrant that they will each make all necessary and appropriate provisions for each following fiscal year that this Agreement is in effect in order to effectuate the terms of the Agreement and for any and all payments of funds required for the performance of their respective obligations.

(e) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

(f) Consideration. This Agreement is executed by the Parties hereto without coercion or duress for substantial consideration, the sufficiency of which is forever confessed.

(g) Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other Party.

(h) Capacity. Each of the signatories below hereby represents that this Agreement has been approved by his/her City Council and that he/she has full capacity and authority to sign and assume all obligations granted and assumed under this Agreement.

(i) Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other Parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(j) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal and/or unenforceable in any respect, such invalidity, illegality and/or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal and/or unenforceable provision had never been contained herein.

(k) Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.

(l) Immunity. It is expressly understood and agreed that, in the execution of this Agreement, neither Party has waived, nor shall be deemed hereby to have waived, any immunity, governmental, sovereign and/or official, or defense that would otherwise be available to either Party against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing Party may recover its reasonable and necessary attorneys' fees from the non-prevailing Party as permitted by Tex. Loc. Gov't Code §271.153, as it exists or may hereafter be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of McKinney and Frisco, respectively.

(p) Waiver. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

(q) Governing Law; Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas. Venue for any action arising out of the Parties' performance under this Agreement shall be in a court of appropriate jurisdiction in Collin County, Texas.

(r) Warranties/Representations/Covenants. All warranties, representations and covenants made by Frisco in this Agreement or in any certificate or other instrument delivered by Frisco to McKinney under this Agreement shall be considered to have been relied upon by McKinney and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by McKinney or on McKinney's behalf.

(s) Warranties/Representations/Covenants. All warranties, representations and covenants made by McKinney in this Agreement or in any certificate or other instrument delivered by McKinney to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

(t) References to McKinney. When referring to "McKinney" herein, this Agreement shall refer to and be binding upon McKinney, its Council Members, officers and authorized agents, representatives, employees, contractors, subcontractors, designees, licensees, invitees and/or any other authorized third parties for whom McKinney is legally responsible.

(u) References to Frisco. When referring to "Frisco" herein, this Agreement shall refer to and be binding upon Frisco, its Council Members, officers and authorized agents, representatives, employees, contractors, subcontractors, designees, licensees, invitees and/or any other authorized third parties for whom Frisco is legally responsible.

(v) Survival of Covenants. Any of the representations, warranties, covenants and obligations of the Parties, as well as, any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

(w) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the Effective Date.

[Signatures begin on following page.]

APPROVED BY THE CITY COUNCIL FOR THE CITY OF MCKINNEY, TEXAS
pursuant to the duly authorized City Council Resolution No. _____, dated the _____
day of _____, 2022.

CITY OF MCKINNEY, TEXAS
a Texas home-rule municipality

By: _____
PAUL G. GRIMES
City Manager

Date: _____

ATTEST:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

[Signatures continue on following page.]


APPROVED BY THE CITY COUNCIL FOR THE CITY OF FRISCO, TEXAS, as reflected in the minutes relating to Agenda Item Number ____ at the City Council meeting dated the ____ day of _____, 2022.

CITY OF FRISCO, TEXAS
a Texas home-rule municipality

By: _____
WESLEY PIERSON
City Manager

Date: _____

APPROVED AS TO FORM:



RYAN D. PITTMAN
ABERNATHY ROEDER BOYD
& HULLETT P.C.
City Attorneys

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared PAUL G. GRIMES, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the City Manager and duly authorized representative for the **CITY OF MCKINNEY, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____ 2022.

Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **WESLEY PIERSON**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the City Manager and duly authorized representative for the **CITY OF FRISCO, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2022.

Notary Public in and for the State of Texas
My Commission Expires:_____

Exhibit “A”

The Project

[Consisting of following one page.]

ST1838

Eldorado and Custer Intersection / Bridge Improvements

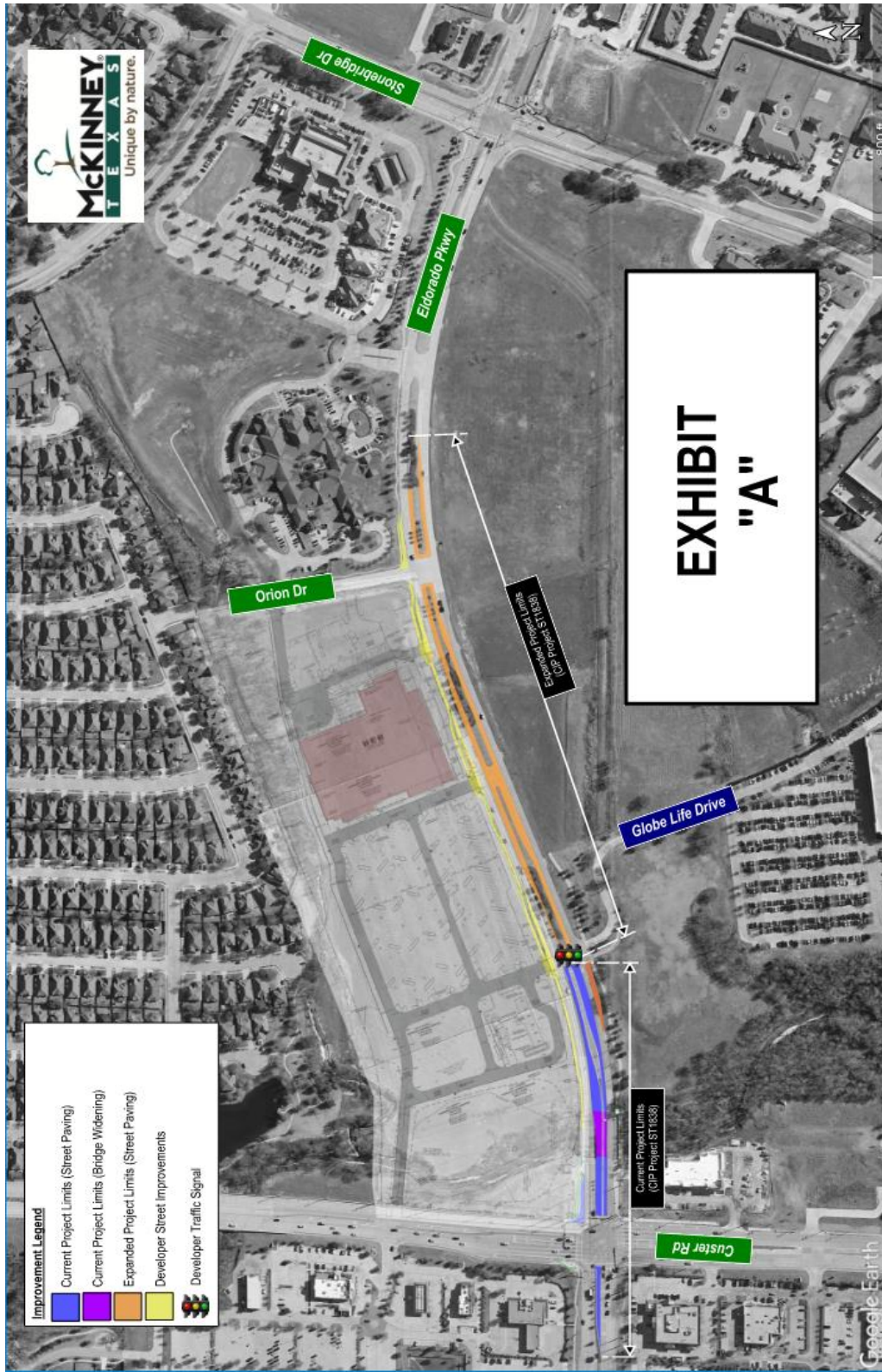
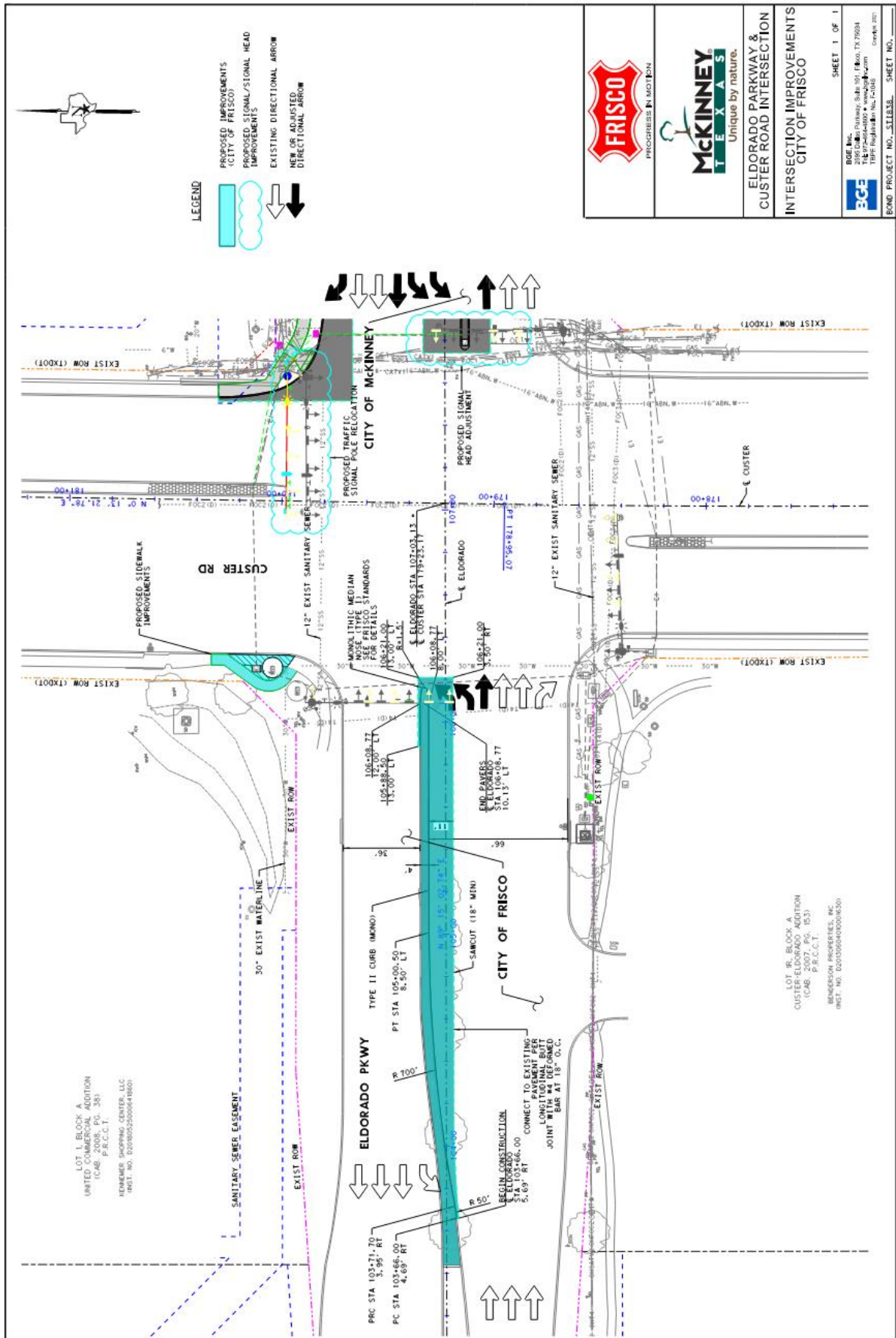


Exhibit “B”

The Intersection Improvements

[Consisting of following one page.]



LEGEND

- PROPOSED IMPROVEMENTS (CITY OF FRISCO)
- PROPOSED SIGNAL/SIGNAL HEAD IMPROVEMENTS
- EXISTING DIRECTIONAL ARROW
- NEW OR ADJUSTED DIRECTIONAL ARROW

FRISCO
PROGRESS IN MOTION

MCKINNEY TEXAS
Unique by nature.

ELDORADO PARKWAY & CUSTER ROAD INTERSECTION INTERSECTION IMPROVEMENTS CITY OF FRISCO

BCE
BCE Inc. Frisco, TX 75034
Tel: 972-420-0100 • www.bce.com
TYPE Registration No. F01400
Copyright 2017

ES&M
ES&M PROJECT NO. 21118338 SHEET NO.

SHEET 1 OF 1

LOT 1, BLOCK A ADDITION
UNITED COMMERCIAL ADDITION
(CASE NO. 10-08-100-00-00)
P.R.C.C.T.

REDWOOD SHOPPING CENTER, LLC
(CASE NO. 10-08-100-00-00)
P.R.C.C.T.

INSTR. NO. D0018052500049807

LOT 1R, BLOCK A
CUSTER ROAD ADDITION
(CASE NO. 10-08-100-00-00)
P.R.C.C.T.

BRANDERSON PROPERTIES, INC.
(CASE NO. 10-08-100-00-00)
P.R.C.C.T.

INSTR. NO. D0010504000040501

Exhibit "C"
Estimated Construction Costs

BID ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	ESTIMATED QNTY	UNIT PRICE	TOTAL
200A	N 203	SITE PREP	STA	4.0	\$ 1,458.50	\$ 5,834.00
201A	T 104	REMOVING CONC (PAV)	SY	67.0	\$ 27.41	\$ 1,836.47
202A	T 104	REMOVING CONC (CURB AND GUTTER)	LF	291.0	\$ 4.64	\$ 1,350.24
204A	T 104	REMOVING CONC (SIDEWALKS)	SY	18.0	\$ 9.77	\$ 175.86
208A	T 677	ELIM EXT PAV MRK & MRKS (4")	LF	740.0	\$ 1.20	\$ 888.00
209A	T 677	ELIM EXT PAV MRK & MRKS (8")	LF	593.0	\$ 2.28	\$ 1,352.04
210A	T 677	ELIM EXT PAV MRK & MRKS (12")	LF	529.0	\$ 3.36	\$ 1,777.44
211A	T 677	ELIM EXT PAV MRK & MRKS (24")	LF	174.0	\$ 4.56	\$ 793.44
212A	T 677	ELIM EXT PAV MRK & MRKS (ARROW)	EA	7.0	\$ 108.00	\$ 756.00
213A	T 677	ELIM EXT PAV MRK & MRKS (WORD)	EA	6.0	\$ 108.00	\$ 648.00
214A	T 644	REMOVE SIGN ASSEMBLY	EA	3.0	\$ 222.00	\$ 666.00
215A	N 201	TREE REMOVAL	EA	6.0	\$ 809.41	\$ 4,856.46
300A	N 203	EXCAVATION (ROADWAY)	CY	179.0	\$ 25.21	\$ 4,512.59
301A	N 203	EMBANKMENT (FINAL) (DENS CONT) (TY C1)	CY	3.5	\$ 58.12	\$ 203.42
302A	T 247	FLEX BASE (12") (TY A or B GR 4)	SY	333.0	\$ 67.94	\$ 22,624.02
310A	N 303	MEDIAN NOSE (TY 1 -Frisco)	SY	6.0	\$ 513.72	\$ 3,082.32
313A	N 305	CONC SIDEWALKS (4")	SY	25.0	\$ 72.00	\$ 1,800.00
315A	T 360	CONC PVMT (CONT REINF - CRCP) (10")	SY	272.0	\$ 136.83	\$ 37,217.76
316A	T 360	CURB (TYPE II)	LF	264.0	\$ 21.49	\$ 5,673.36
318A	T 432	RIPRAP (CONC)(4 IN)	cy	2.0	\$ 1,755.03	\$ 3,510.06
319A	T 432	RIPRAP (MOW STRIP)(4 IN)	CY	1.0	\$ 1,441.90	\$ 1,441.90
320A	T 528	MEDIAN PAVERS	SF	999.0	\$ 23.70	\$ 23,676.30
325A	T5001	GEOGRID BASE REINFORCEMENT (TY II)	SY	333.0	\$ 3.34	\$ 1,112.22
500A	T664	RELOCATE SIGN AND ASSEMBLY	EA	1.0	\$ 558.00	\$ 558.00

Exhibit "C"
Estimated Construction Costs

BID ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	ESTIMATED QNTY	UNIT PRICE	TOTAL
501A	T 666	REFL PAV MRK TY I (W)4"(BRK)(100MIL)	LF	180.0	\$ 1.32	\$ 237.60
503A	T 666	REFL PAV MRK TY I (W)4"(DOT)(100MIL)	LF	134.0	\$ 2.40	\$ 321.60
504A	T 666	REFL PAV MRK TY I (W)8"(SLD)(100MIL)	LF	755.0	\$ 2.70	\$ 2,038.50
505A	T 666	REFL PAV MRK TY I (W)24"(SLD)(100MIL)	LF	722.0	\$ 9.60	\$ 6,931.20
506A	T 666	REFL PAV MRK TY I (W)(ARROW)(100MIL)	EA	6.0	\$ 150.00	\$ 900.00
507A	T 666	REFL PAV MRK TY I (W)(WORD)(100MIL)	EA	3.0	\$ 150.00	\$ 450.00
508A	T 666	REFL PAV MRKR TY II-CR	EA	39.0	\$ 4.98	\$ 194.22
509A	T 678	PAV SURF PREP FOR MRK (4")	LF	827.0	\$ 0.06	\$ 49.62
510A	T 679	PAV SURF PREP FOR MRK (8")	LF	755.0	\$ 0.30	\$ 226.50
511A	T 678	PAV SURF PREP FOR MRK (24")	LF	722.0	\$ 0.60	\$ 433.20
512A	T 678	PAV SURF PREP FOR MRK (ARROW)	EA	6.0	\$ 12.00	\$ 72.00
513A	T 678	PAV SURF PREP FOR MRK (WORD)	EA	3.0	\$ 12.00	\$ 36.00
514A	T 666	PAVEMENT SEALER 4"	LF	827.0	\$ 0.06	\$ 49.62
515A	T 666	PAVEMENT SEALER 8"	LF	755.0	\$ 0.30	\$ 226.50
516A	T 666	PAVEMENT SEALER 24"	LF	722.0	\$ 0.60	\$ 433.20
517A	T 666	PAVEMENT SEALER (ARROW)	EA	6.0	\$ 6.00	\$ 36.00
518A	T 666	PAVEMENT SEALER (WORD)	EA	3.0	\$ 6.00	\$ 18.00
519A	T 666	REFL PAV MRK TY I (Y) 4" (SLD)(100MIL)	EA	220.0	\$ 1.32	\$ 290.40
700A	T 416	DRILL SHAFT (RDWY ILL POLE) (30 IN)	LF	8.0	\$ 556.80	\$ 4,454.40
702A	T 610	RELOCATE RD IL ASM (TRANS-BASE)	EA	1.0	\$ 1,366.80	\$ 1,366.80
704A	T 618	CONDT (PVC) (SCH 40) (2")	LF	195.0	\$ 46.80	\$ 9,126.00
706A	T 620	ELEC CONDR (NO.8) BARE	LF	205.0	\$ 3.36	\$ 688.80
707A	T 620	ELEC CONDR (NO.8) INSULATED	LF	410.0	\$ 3.36	\$ 1,377.60
901A		CURB INLET PROTECTION TYPE P-2 INLET FILTERS (INSTALL & REMOVE)	EA	2.0	\$ 909.30	\$ 1,818.60
TOTAL ESTIMATED CONSTRUCTION COSTS (CITY OF FRISCO)						\$ 158,122.26

Exhibit “D”

Agreed Form of Maintenance Bond

MAINTENANCE BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL BY THESE PRESENTS: [REPLACE W CONTRACTOR NAME] whose address is [Replace w Street address], [Replace w City], [Replace w State], [Replace w Zip], hereinafter called Principal, and [Replace w Surety Name], a corporation organized and existing under the laws of the State of [Replace w Surety State], as Surety, are held and firmly bound unto **H-E-B, LP**, a Texas limited partnership, the **CITY OF MCKINNEY**, a Texas municipal corporation, and the **CITY OF FRISCO**, a home-rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "Owner" whether one or more, in the penal sum of _____ DOLLARS (\$_____) in lawful money of the United States to be paid to Owner, its successors and assigns, for the payment of which sum well and truly to be made, we bind ourselves, our successors, heirs, executors, administrators and successors and assigns, jointly and severally; and firmly by these presents, the condition of this obligation is such that:

WHEREAS, Principal entered into a certain written Contract with H-E-B, LP, or the City of McKinney, dated on or about the ____ day of _____, 20____, to furnish all permits, licenses, bonds, insurance, products, materials, equipment, labor, supervision, and other accessories necessary for the construction of: The penal sum of this Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement, which reduces the Contract price, decrease the penal sum of this Bond.

COMBINED ELDORADO PARKWAY PROJECT

in the City of McKinney, Texas, and the City of Frisco, Texas, as more particularly described and designated in the above-referenced contract, such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word:

WHEREAS, in said Contract, the Principal binds itself to use first class materials and workmanship and of such kind and quality that for a period of two (2) years from the completion and final acceptance of the improvements by Owner the said improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of two (2) years following the date of final acceptance of the Work by Owner, Principal binds itself to repair or reconstruct said improvements in whole or in part at any time within said period of time from the date of such notice as the City Engineer, Director of Public Works or the Director of Community Services shall determine to be necessary for the preservation of the public health, safety or welfare. If Principal does not repair or reconstruct the improvements within the time period designated, Owner shall be entitled to have said repairs made and charge Principal and/or Surety the cost of same under the terms of this Maintenance Bond.

NOW, THEREFORE, if Principal will maintain and keep in good repair the Work herein contracted to be done and performed for a period of two (2) years from the date of final acceptance and do and perform all necessary work and repair any defective condition (it being

understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal) then this obligation shall be void; otherwise it shall remain in full force and effect and Owner shall have and recover from Principal and its Surety damages in the premises as provided in the Plans and Specifications and Contract.

PROVIDED, however, that Principal hereby holds harmless and indemnifies Owner from and against any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation.

PROVIDED, further, that if any legal action be filed on this Bond, exclusive venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in either Collin or Dallas Counties to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

IN WITNESS WHEREOF, this instrument is executed in two (2) copies, each one of which shall be deemed an original, on this the _____ day of _____, 20_____.

ATTEST:

PRINCIPAL:

[REPLACE W CONTRACTOR NAME]

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

SURETY:

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

NOTE: Date on **Page 1** of Maintenance Bond must be **same date as Contract**. Date on **Page 2** of Maintenance Bond must be **after date of Contract**. If Resident Agent is not a corporation, give a person's name.