



Control Number: 45870



Item Number: 59

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
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COMPLAINT OF KER-SEVA LTD. §
AGAINST THE CITY OF FRISCO §

BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS

CITY OF FRISCO'S MOTION FOR SUMMARY DECISION

COMES NOW, the City of Frisco ("City" or "Frisco") and files this Motion for Summary Decision. In support thereof, the City shows the following:

I. BACKGROUND

On April 19, 2016, Ker Seva Ltd. ("Ker Seva") filed a formal complaint against the City alleging that the City had denied Ker Seva retail water and wastewater service. Ker Seva¹ has since sold the property that is the subject of this proceeding to ADC Wet Ridge, LP ("ADC") whose general partner is a wholly-owned subsidiary of the Center for Housing Resources, Inc. ("CHR").² The property that is the subject of this proceeding is referred to herein as the "Property" and is identified in **Exhibit 1**.³

On July 29, 2016, the Public Utility Commission of Texas ("PUC") issued a Preliminary Order detailing approximately 13 items to be addressed in the proceeding. All items related to the provision of retail water and sewer service to the Property. On July 29, 2016, the Administrative Law Judges ("ALJs") convened this matter before the State Office of Administrative Hearings ("SOAH"). However, due to the nature of the issues referred and the applicable state law, the issues presented are not ripe or beyond the jurisdiction of the PUC for a decision in this docket. The City should be granted a summary decision on the issues referred to SOAH by the PUC. Each issue will be considered in turn.

¹ The City of Frisco, contemporaneously with this Motion for Summary Decision, has filed a motion to remove Ker Seva as a party to this proceeding.
² Ker Seva, ADC, and CHR will be collectively referred to as "Complainants" herein.
³ All exhibits attached hereto are incorporated herein for all purposes and used as evidence to support the Motion for Summary Decision.

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II. MOTION FOR SUMMARY DECISION

In seeking summary decision, the City will examine each issue referred by the PUC individually. Because of the interplay between many of the issues, some arguments below will incorporate arguments made in other sections of the motion. Such will be done in the interest of brevity.

A summary decision is warranted when there is a demonstration that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.⁴ The issues described below are matters in which the City is entitled to summary disposition as a matter of law without the presentation of any evidence. Other issues are supported with proper summary decision evidence.

1. Is the property that is the subject of this complaint “not within the incorporated limits of a municipality exercising exclusive jurisdiction over...services,” thereby giving the Commission exclusive, original jurisdiction over services, in accordance with TWC § 13.042(e)? If not, does the Commission otherwise have jurisdiction over this application?

The proper response to the question, and for which the City is entitled to summary decision, is that the Commission does **not** have any jurisdiction over the services complained of in this docket. The Complainants assert that they have applied for retail water and sewer service from the City and the City has not provided said services to them. It is important to note that TWC⁵ §13.042(e) limits the PUC’s jurisdiction to “services *as provided in this chapter*” (emphasis added). This limitation is important in that it does not grant the PUC jurisdiction over all facets of a municipally owned utility. It limits the jurisdiction to only the activities covered in TWC Chapter 13.

It is undisputed that the City is a home rule municipality.⁶ Even the Complainants admit that the City is a municipality.⁷ As such, a municipality is given wide ranging authority to operate its own

⁴ 16 Tex. Admin. Code § 22.182(a).

⁵ Hereinafter Texas Water Code is referred to as “TWC.”

⁶ See Exhibit 2.

⁷ See Exhibit 3.

municipally owned utility. A city is given the ability to “purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality.”⁸ It is further given the express statutory ability to “extend the lines of its utility systems outside the municipal boundaries and may sell water, sewer, gas, or electric service to any person outside its boundaries.”⁹ Most importantly, the Texas legislature gives cities the ability to “prescribe the kind of water or gas mains, sewer pipes, and electric appliances that may be used inside or outside the municipality. The municipality may inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them.”¹⁰ Thus, the Texas Legislature has given the cities the express ability to prescribe the necessary rules that benefit the City regarding its utility system. In this specific grant of power, the Texas Legislature does not grant water and sewer rule making power to a city subject to PUC review on an exclusive or appellate basis. The specific grant of power provided to cities usurps any perceived grant of power provided to the PUC to review municipal rules related to line extensions. Further, the City’s ordinances regarding water and sewer service are presumed valid.¹¹ Courts have no authority to interfere unless there is a clear abuse of municipal discretion.¹² The party attacking the City ordinances bear the extraordinary burden of demonstrating an abuse of discretion.¹³ The determination of the validity of a city ordinance is reserved to the Courts. The Texas Legislature clearly did not give the PUC jurisdiction to determine the validity of a municipal ordinance. Thus, the PUC must take all City ordinances, rules and regulations as presumed valid and provide deference thereto.

⁸ Tex. Local Gov’t. Code § 552.001 (b).

⁹ Tex. Local Gov’t. Code § 552.001 (c).

¹⁰ Tex. Local Gov’t. Code § 552.001 (d).

¹¹ *Hunt v. City of San Antonio*, 462 S.W.2d 536, 538 (Tex. – 1971).

¹² *Id.*

¹³ *Thompson v. City of Palestine*, 510 S.W.2d 579, 581 (Tex. – 1974).

Because the Texas Legislature provides for a municipally owned utility to provide for line extensions outside the City and gives the City the ability to prescribe the rules for said extensions, the PUC's jurisdiction is limited solely to what is contained in TWC Chapter 13 that does not conflict with the powers granted under Tex. Local Gov't. Code Chapter 552.¹⁴ TWC Chapter 13 is careful to treat municipalities differently than other retail utility providers, such as investor owner utilities or water supply corporations. Thus, the only jurisdiction specifically conferred on the PUC over a municipality is the power to:

1. Review the rates adopted by a municipality from an investor owned utility;¹⁵
2. Review the rates charged by a municipality to a district;¹⁶
3. Issue, amend, decertify a CCN;¹⁷ and
4. Require continuous and adequate service to every *consumer* within its CCN.¹⁸

It is important to carefully consider TWC §13.250 when determining the PUC's specific grant of authority. Subsection (a) requires a CCN holder to "serve every consumer" and provide continuous and adequate service within its CCN area. It is important to read TWC §13.250 in its entirety as it clearly contemplates service to existing consumers, not prospective ones. There is no suggestion in TWC § 13.250 that it was intended to protect or apply to applicants for retail water and/or sewer service. The only time one can become a consumer is after the applicant has met all conditions precedent to receiving service AND is actually receiving service from the City. Until such time, one is not a "consumer."

¹⁴ *City of Allen v. Public Utility Com'n*, 161 S.W.3d 195, 199 (Austin, 2005) ("Administrative agencies may exercise only those powers the law confers upon them in clear and express statutory language and those reasonably necessary to fulfill a function or perform a duty that the legislature has expressly placed with the agency.")

¹⁵ TWC §13.043.

¹⁶ TWC §13.044.

¹⁷ TWC Subchapter G.

¹⁸ TWC §13.250 (a).

The only time that an “applicant” for service may be protected is under the PUC R.¹⁹ 24.114(a) wherein they expand TWC 13.250 to include protections for “qualified applicants.” Under PUC R. 24.114(a), the PUC is attempting to expand protections to persons or entities other than “consumers.” Since “consumer” is not defined in TWC Chapter 13, we must look at its common usage in the context of the statute.²⁰ A “consumer” is one that “buys goods and services.”²¹ The Texas Legislature clearly sought the protection of current consumers, not prospective applicants.

Likewise, “qualified applicant” is not defined in PUC rules. The context of the term clearly is intended to protect persons who have followed the rules of the incumbent service provider and has “qualified” for service. Even with such a definition, the PUC has expanded the clear intent of TWC §13.250 to protect persons not sought to be protected by statute. It is without question that an agency can only adopt rules that are consistent with its statutory authority.²²

By protecting “qualified applicants” in PUC R. 24.114(a), the PUC contravenes the objectives of TWC §13.250. As stated above, TWC §13.250 is intended to protect “consumers.” The entirety of the section discusses situations between retail public utilities or between a retail public utility and a ratepayer.²³ At no time, does TWC §13.250 seek to provide any protection for a prospective consumer or “qualified applicant.”

The attempt to expand the meaning and use of “qualified applicant” in PUC R. 24.114(a) imposes a greater burden, condition, or restriction in excess of the relevant statutory provision. By inclusion of the words “qualified applicant,” the PUC seeks to protect a class of persons that are not specifically protected or even impliedly protected by statute. Such an expansion of responsibilities is

¹⁹ Hereinafter, PUC rules found in Texas Administrative Code Title 16 shall be cited as “PUC R.”

²⁰ Tex. Gov’t. Code §311.011.

²¹ See <http://www.merriam-webster.com/dictionary/consumer>.

²² *Gulf Coast Coalition of Cities v. Public Utility Com’n*, 161 S.W.3d 706, 711 (Austin, 2005).

²³ “Ratepayer” is one that is receiving water or sewer service for compensation.

absent specific or implied statutory authority and, thus, void.²⁴ An agency may not exercise a new power that is expedient for administrative purposes.²⁵ Because “qualified applicants” are not afforded the protections conferred by statute upon the PUC, the PUC’s attempt to regulate “qualified applicants” is void.²⁶

The City asserts that the Complainants are not “qualified applicants.” However, such an argument is not necessary as it is clear that none of the Complainants are “consumers” of City services for the Property. The affidavit of Mr. John Lettellier with the City demonstrates that the Complainants are not consumers of City utility services for the Property.²⁷ As such, the PUC has no jurisdiction over any application for service, qualified or otherwise, as the PUC’s jurisdiction in the City’s ETJ extends only to “consumers.” Because of the above, the City seeks summary decision on Issue No. 1 by answering the questions in the negative.

2. If the Commission does not have original jurisdiction over this proceeding, does the City of Frisco’s governing body have original jurisdiction, subject to the appellate jurisdiction of the Commission? If so, have the complainants exhausted their administrative remedies with the City of Frisco?

The PUC does not have jurisdiction over this proceeding. Thus, we do not need to reach the merits of this Issue. The City incorporates the evidence and arguments provided above in response to Issue No. 1 herein. For the reasons stated, it is established that the PUC does not have jurisdiction over the Complaint. As such, the City is entitled to summary decision on this issue.

3. Is the City of Frisco a retail public utility as defined by TWC § 13.002(19)?

The City is a retail public utility.

²⁴ *State v. Public Utility Com’n of Texas*, 131 S.W.3d 314, 321 (Austin, 2004).

²⁵ *Public Utility Com’n of Texas v. City Public Service Bd. of San Antonio*, 53 S.W.3d 310, 316 (Texas 2001).

²⁶ *Office of Public Utility Counsel v. Public Utility Com’n of Texas*, 104 S.W.3d 225, 232 (Austin, 2003, no pet.).

²⁷ See Exhibit 4.

4. Does 16 TAC §24.85 apply to the City of Frisco?

The response to this question is negative. The applicability of PUC R. §24.85 is presumably based upon TWC §13.250. As explained above, TWC §13.250 does not provide the PUC with authority to expand obligations upon the City that encompass more than consumer protection. The City incorporates the evidence and arguments provided above in response to Issue No. 1 herein. As such, the City is entitled to summary decision on this issue.

5. Has the City of Frisco failed to serve complainants or failed to provide continuous and adequate service in violation of TWC §13.250 and 16 TAC §§ 24.83, 24.85, or 24.114?

a. Is complainant a “qualified service applicant,” as defined in 16 TAC § 24.85(a), meeting all of the city of Frisco’s requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service? If not, what specific tariff provisions, service policies, or regulations must be satisfied and what rates or fees (if any) must be paid in order for complainant to become a qualified service applicant?

b. If complainant is a qualified service applicant, did complainant provide a completed application to the city of Frisco?

c. If so, did the city of Frisco’s response comply with 16 TAC §§ 24.85(a)(1)-(5)?

d. Did the City of Frisco fail to provide service within 180 days of the date the competed (sic) application was provided? 16 TAC §§ 24.85(b)

The answer to the main question is “no” which makes all subset questions irrelevant. As explained above, TWC §13.250 does not provide the PUC with authority to expand obligations upon the City that encompass more than consumer protection. The City incorporates the evidence and arguments provided above in response to Issue No. 1 herein. As such, the City is entitled to summary decision on this issue.

However, the City would like a specific finding that 16 Tex. Admin. Code § 24.83 is inapplicable to the City of Frisco. PUC R. 24.83 regulates a “utility.” Both TWC §13.009(23) and PUC R. §§ 24.3(72) and (73) specifically exclude a municipal corporation, like the City from the definition of “utility.” Thus, the City requests a specific summary decision stating that 16 Tex. Admin. Code § 24.83 is inapplicable to the City.

6. Do the City of Frisco’s subdivision regulations, or any other relevant city regulations or ordinances with regard to extensions of water or sewer service apply to 9331 Westridge, which is located outside the corporate limits of Frisco?

The answer is “yes.” It is undisputed that the Property, which is located at 9331 Westidge, is outside the City’s corporate limits, but within the City’s extraterritorial jurisdiction.²⁸ A city has the ability to extend its subdivision regulations to its extraterritorial jurisdiction.²⁹ Frisco has indeed extended its subdivision regulations to its extraterritorial jurisdiction.³⁰ Further, regarding specific water or sewer regulations, a city is given the ability to “purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality.”³¹ Such statutory authority provides the City the ability to adopt subdivision regulations and service policies inside and outside the City’s corporate limits. As such, Issue No. 6 should be answered in the affirmative and the City is entitled to summary decision on the Issue as a matter of law.

7. Are new facilities necessary so that the property can receive service from the city of Frisco? If so, what facilities are required so that the property can receive service from the City of Frisco?

The PUC has no jurisdiction to make such an inquiry. As explained above in response to Issue Nos. 1 and 6, a city has the exclusive ability to adopt regulations to regulate its own utility system. Because of this exclusive grant of authority, the PUC has no jurisdiction over this issue. Further, Complainants are not “consumers” of service and not entitled to the protection sought from the PUC. The City incorporates the evidence and arguments provided above in response to Issue Nos. 1 and 6 herein. For the reasons stated, it is established that the PUC does not have jurisdiction over Issue No. 7. As such, the City is entitled to summary decision on this issue.

²⁸ See Exhibit 4.

²⁹ Tex. Local Gov’t. Code § 212.003.

³⁰ See Exhibit 5.

³¹ Tex. Local Gov’t. Code § 552.001 (b).

8. Do the City of Frisco's ordinances, regulations, rules, and policies prohibit complainant's property from receiving service from the pre-existing infrastructure adjacent to the property?

a. If not, is there any constraint that precludes complainant's property from receiving service from the pre-existing infrastructure adjacent to the property?

b. What are the city of Frisco's prior practices with regard to the use of pre-existing infrastructure to provide ner service?

The PUC has no jurisdiction to make such an inquiry. As explained above in response to Issue Nos. 1 and 6, a city has the exclusive ability to adopt regulations to regulate its own utility system. Because of this exclusive grant of authority, the PUC has no jurisdiction over this issue. Further, complainants are not "consumers" of service and not entitled to the protection sought from the PUC. The City incorporates the evidence and arguments provided above in response to Issue Nos. 1 and 6 herein. For the reasons stated, it is established that the PUC does not have jurisdiction over Issue No. 7. As such, the City is entitled to summary decision on this issue. In the event the PUC determined that it was authorized to allow connection to existing infrastructure, such would result in a violation of the PUC's approved CCN for this area as the water and sewer services would be delivered and treated by a party other than the City, the exclusive CCN holder for the Property.

9. Is the City of McKinney willing and able to provide service to the complainants' property?

The PUC has no jurisdiction over this inquiry. The PUC's predecessor agency issued a CCN to Frisco that included the Property. As such, the ability of McKinney to provide service to the property without the consent of Frisco is legally irrelevant to this proceeding. As such, the City is entitled to summary decision on this issue.

10. If the City of Frisco has violated TWC § 13.250 and 16 TAC §§ 24.83, 24.85, or 24.114, what is the appropriate remedy?

As explained above, the City has not violated any of the cited provisions. TWC §13.250 does not provide the PUC with authority to expand obligations upon the City that encompass more than

consumer protection. The City incorporates the evidence and arguments provided above in response to Issue No. 1 herein. As such, the City is entitled to summary decision on this issue.

However, the City would like a specific finding that 16 Tex. Admin. Code § 24.83 is inapplicable to the City of Frisco. PUC R. 24.83 regulates a “utility.” Both TWC §13.009(23) and PUC R. §§ 24.3(72) and (73) specifically exclude a municipal corporation, like the City from the definition of “utility.” Thus, the City requests a specific summary decision stating that 16 Tex. Admin. Code § 24.83 is inapplicable to the City.

11. Is the City of Frisco’s line extension policy consistent and nondiscriminatory in accordance with 16 TAC §24.86(c), or is the City of Frisco acting in a discriminatory manner with respect to the type of development proposed by complainants?

Issue No. 11 is irrelevant to the City. The City is NOT acting in a discriminatory manner. The rule is inapplicable to the City. PUC R. 24.86(c) applies to line extension policies of “utilities.” Both TWC §13.009(23) and PUC R. §§ 24.3(72) and (73) specifically exclude a municipal corporation, like the City, from the definition of “utility.” Thus, the City requests a specific summary decision stating that 16 Tex. Admin. Code § 24.86(c) is inapplicable to the City. The City is entitled to summary decision on this issue as a matter of law.

12. What are the rights and responsibilities of complaints and the City of Frisco in accordance with any valid annexation agreement?

Like Issue No. 1, the PUC does not have the jurisdiction to examine this issue. The City of Frisco is free to come to such agreements without any examination from the PUC.³² Nowhere in TWC Chapter 13 is there any jurisdiction conferred on the PUC to regulate, examine, or question the validity or invalidity of any annexation agreement or provision. Such examinations are solely retained by the courts.³³ Thus, if there is any ambiguity in the contract, such a determination is solely a question of

³² Tex. Local Gov’t. Code Ch. 43.

³³ *State v. Shumake*, 199 S.W.3d 379, 284 (Tex. 2006).

law for a court, not a state agency. The PUC has no jurisdiction to enforce any provisions of an annexation agreement.

13. What are the rights and responsibilities of complaints and the City of Frisco in accordance with any valid development agreement?

Like Issue No. 1, the PUC does not have the jurisdiction to examine this issue. The City of Frisco is free to come to such agreements without any examination from the PUC.³⁴ Nowhere in TWC Chapter 13 is there any jurisdiction conferred on the PUC to regulate, examine, or question the validity or invalidity of any annexation agreement or provision. Such examinations are solely retained by the courts.³⁵ Thus, if there is any ambiguity in the contract, such a determination is solely a question of law for a court, not a state agency. The PUC has no jurisdiction to enforce any provisions of an annexation agreement.

III. CONCLUSION AND PRAYER

The City respectfully requests an order:

- (1) Granting the City summary disposition as requested herein; and
- (2) Granting the City all other and further relief to which it is justly entitled.

Respectfully submitted,

Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)

³⁴ Tex. Local Gov't. Code Ch. 43.

³⁵ *Shumake* at 284.

Abernathy Roeder Boyd & Hullett, P.C.

Richard Abernathy
State Bar No. 00809500
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
(214) 544-4000
(214) 544-4040 (Fax)

_____/s/ Arturo D. Rodriguez, Jr._____

ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEYS FOR THE CITY OF FRISCO

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2016, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061 Fax

Meitra Farhadi
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

Mr. Sam Chang
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas
(512) 936-7261
Via Electronic Mail

Mr. Ali Abazari
Ms. Mallory Beck
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
Via Electronic Mail

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.

PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS

FORMAL COMPLAINT OF KER-SEVA §
LTD. AGAINST THE CITY OF FRISCO § BEFORE THE
RFI, TEXAS § PUBLIC UTILITY COMMISSION
OF TEXAS

**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc.'s file these Responses to City of FRISCO ("Frisco RFI") First Set of Requests for Information ("Frisco RFI RFI") and requests for Admission ("Frisco RFI RFA"), which was filed with the Public Utility Commission of Texas and served on Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. on July 26, 2016. These responses are timely filed. Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. agree and stipulate that all parties may treat these responses as if the answers were filed under oath. Complainants and Frisco agreed to amend some of the requests which are reflected herein.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
T: (512) 236 2233
F: (512) 391-2112

ATTORNEYS FOR COMPLAINANTS
KER-SEVA, LTD., ADC WEST RIDGE, L.P.,

Exhibit 1

AND CENTER FOR HOUSING
RESOURCES, INC.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served as shown below on
this 15th day of August 2016:

Art Rodriguez
Russell & Rodriguez, L.L.P.
1633 Williams Dr., Bldg. 2, Suite 200
Georgetown, Texas 78268
arodriguez@txadminlaw.com
Attorney for City of Frisco RFI

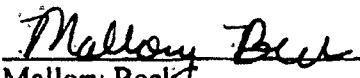
Via email and U.S. First Class Mail

Sam Chang
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
sam.change@puc.texas.gov
Attorney for Public Utility Commission of Texas

Via email and U.S. First Class Mail

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(512) 322-2061- Fax

Via U.S. First Class Mail


Mallory Beck

**PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS**

FORMAL COMPLAINT OF KER-SEVA LTD. AGAINST THE CITY OF FRISCO RFI, TEXAS	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Frisco RFI 2: (AMENDED AS AGREED): Please produce all documents evidencing the conveyance of Lot 2 to ADC West Ridge Villas, LP.

RESPONSE:

Please find enclosed documents produced in response to this Request.

Prepared/Sponsored by: To be supplemented.



RTT 1018-134708

Warranty Deed with Vendor's Lien

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: the 17th day of May, 2016

Grantor: Ker-Seva, Ltd.

Grantor's Mailing Address: 9421 Westridge Blvd., McKinney, TX 75070

Grantee: ADC West Ridge Villas, LP

Grantee's Mailing Address: 347 Walnut Grove Ln., Coppell, TX 75019

Consideration: TEN and no/100 DOLLARS and other good and valuable consideration and further consideration of a promissory note ("TDHCA HOME Note") of even date herewith in the original principal sum of Three Million and no/100 DOLLARS (\$3,000,000.00) executed by Grantee and payable to the Texas Department of Housing and Community Affairs ("TDHCA"), a public and official agency of the State of Texas, secured by the vendor's lien herein retained in the amount of One Million and no/100 Dollars (\$1,000,000.00) and is additionally secured a deed of trust (with security agreement and assignment of rents) of even date herewith from Grantee to Timothy Irvine, Trustee

Property (including any improvements): Lot 2, Block A, Westridge Addition, Frisco, Collin County, Texas, containing approximately 4.916 acres.

Reservations from and Exceptions to Conveyance and Warranty:

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against the Property and superior title to the Property are retained until that portion of the TDHCA HOME Note recurred by the vendor's lien is fully paid according to its terms, at which time this deed will become absolute.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED on the dates of our respective acknowledgements below.

GRANTOR: KER-SEVA, LTD. a Texas Limited Partnership

By: Ker-Seva Management, LTD, a Texas Limited Liability Company

By: Jastinder S. Jawanda
Jastinder S. Jawanda, Manager

GRANTEE:

ADC West Ridge, LP, a Texas limited partnership

By: CHR West Ridge Villas, LLC, a Texas limited liability company, its General Partner

By: Center for Housing Resources, Inc., a Texas Not for Profit Corporation, its Manager

By: Terri L. Anderson
Terri L. Anderson, Chairperson

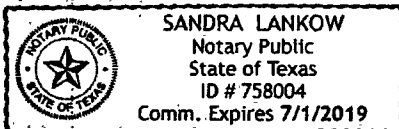
THE STATE OF TEXAS §
§
COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this 17th day of May, 2016, by Jastinder S. Jawanda, Manager of KER-SEVA MANAGEMENT, LTD, a Texas Limited liability Company, of KER-SEVA, LTD., a Texas limited partnership.

Seal

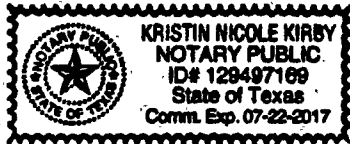
Sandra Lankow
Notary Public, State of Texas



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this 18th day of May, 2016, by Terri L. Anderson, Chairperson, Center for Housing Resources, Inc., Manager of CHR West Ridge, LLC, General Partner of ADC West Ridge, LP.



Kristin Nicole Kirby

Notary Public, State of Texas

Seal

AFTER RECORDING RETURN TO:

The Law Offices of Claire G. Palmer, PLLC
Attorney for Borrower
2224 Clearspring Drive South
Irving, TX 75063

Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
05/19/2016 11:25:44 AM
\$34.00 DFOSTER
20160519000612640



Stacey Kemp

ADC00047

CORRECTION AFFIDAVIT
(NON-MATERIAL CORRECTION, Texas Property Code Sec. 5.028)

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared SANDRA LANKOW, to me well known, and who, after being by me duly sworn, deposes and says that:

"My name is SANDRA LANKOW. I am a Vice President and Escrow Officer employed by Republic Title of Texas, Inc. and I am a 'person with personal knowledge' of the facts set forth herein, as defined in Section 5.028(a), Texas Property Code, as added by S.B. 1496.

The Warranty Deed filed of record on 05/19/2016, and recorded under cc#20160519000612640 Real Property Records of Collin County, Texas, and

contained an incorrect Grantee name as follows:

ADC West Ridge Villas, LP.

The correct Grantee name is and should have been:

ADC West Ridge, LP.

This correction is based on my review of the company documents for the Grantee and the closing documents.

A copy of this Correction Affidavit is being delivered via first class mail to all parties to the original instrument recorded."

FURTHER AFFIANT SAITH NOT.

Executed this 24th day of June, 2016



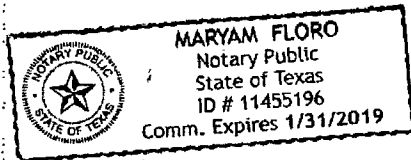
SANDRA LANKOW

STATE OF TEXAS

COUNTY OF

Denton

The above and foregoing instrument was acknowledged **subscribed and sworn to** before me, the undersigned authority, on this 27 day of June, 2016 by SANDRA LANKOW.



[Signature]

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Republic Title of Texas, Inc.
3024 E. Hebron Pkwy.
Carrollton, Texas 75012

PART I - HOME RULE CHARTER*

PREAMBLE

We, the citizens of Frisco, Texas, in order to establish a Home Rule municipal government, provide for the future progress of our city and obtain more fully the benefits of local self-government, and provide for the public welfare, hereby adopt this Home Rule Charter, in accordance with the statutes of the State of Texas; and do hereby declare the residents of the City of Frisco, in Collin and Denton County, Texas living within the legally established boundaries of the said city, to be a political subdivision of the State of Texas, incorporated forever under the name and style of the "City of Frisco" with such powers, rights, privileges, authorities, duties, and immunities, as are herein provided.

ARTICLE I. FORM OF GOVERNMENT AND BOUNDARIES

Sec. 1.01 Form of government

The municipal government provided by this Charter, shall be known as the "Council-Manager Government Pursuant to its provisions, and subject only to the limitations imposed by the state Constitution, the statutes this state, and by this Charter, all powers of the city shall be vested in an elective council, hereinafter referred to as the "city council", which shall enact local legislation, adopt budgets, determine policies, and appoint a city manager, who in turn, shall be held responsible to the city council for the execution of the laws and the administration of the government of the city. All powers of the city shall be exercised in the manner prescribed by this Charter, or if the manner not be prescribed, then in such manner as may be prescribed by ordinance, the state Constitution, or by the statutes of the State of Texas.

Sec. 1.02 The boundaries

The citizens of the city, Collin and Denton County, Texas, residing within its corporate limits, as heretofore hereafter established, are hereby constituted and shall constitute to be a municipal body politic and corporate in perpetuity, under the name of the "City of Frisco" with such powers, privileges, rights, duties, authorities and immunities, as are herein provided.

Sec. 1.03 Extension of boundaries

The boundaries of the city may be enlarged and extended by the annexation of additional territory, irrespective of size and configuration, by the method hereinafter set forth:

- (1) The city council shall have the power by ordinance to fix the boundary limits of the city and to provide for the alteration and extension of said boundary limits, and the annexation of additional territory lying adjacent to the city, in any manner provided by law.
- (2) When any additional territory has been so annexed, same shall be a part of the city and the property situated therein shall bear taxes levied by the city, and the citizens thereof shall be entitled to all the rights and privileges of the other citizens of said city, and shall be bound by the acts, ordinances, resolutions, and regulations of the city.

ARTICLE II. POWERS OF THE CITY

Exhibit 2

Sec. 2.01 General powers of the city

The city shall have all powers and rights of self-government and home rule that exists now or may be granted to municipalities by the Constitution and laws of the State of Texas, unless such power or right is expressly prohibited or restricted by this Charter.

Sec. 2.02 Public improvements

The city shall have the power to, among others, construct and maintain, within or without its corporate limits streets, flood control and sanitary facilities, water and storm drainage facilities in, over, under or upon all public property or easements granted for that purpose and to levy assessments for the costs of such improvements. The city shall have the power to collect attorney's fees for the collection of paving assessments in foreclosure cases as allowed under state law. It shall have the power to cause liens to be established for the purpose of securing the payment of such levies and shall have the power to compel the use of such improvements by the citizens of the city.

Sec. 2.03 Miscellaneous powers

The city shall have the power to, among others, establish and maintain ordinances and regulations governing the use of lands within the city and to enforce by all lawful means these ordinances and regulations, within and without its corporate limits. The city shall have the power to authorize, regulate and inspect all construction and existing structures within or without its limits, consistent with state statutes, and to establish and enforce ordinances and regulations concerning their use, construction and reconstruction. The city shall have the power to license and regulate persons, corporations and associations engaged in any business, occupation, profession or trade when authorized by state law. The city shall have all powers granted by any section of this Charter.

ARTICLE III. THE CITY COUNCIL

Sec. 3.01 Composition

(1) The "city council" shall be composed of a "mayor" and six "councilmembers" elected under the plurality system, with there being places 1, 2, 3, 4, 5 and 6. The mayor and each councilmember shall be elected at large, and unless sooner removed under the provisions of this Charter, shall serve for a term of three years and until their successor has been elected and duly qualified. All of the city council holding office at the time of passage of any amendments to this Charter shall continue to hold their respective office until the respective term for which they were elected expires.

(2) Terms of the council members shall be staggered so that every year there shall be an election for two of the places as follows: Places 1 and 3; Places 2 and 4; and Places 5 and 6. The mayor shall be elected in the same year as Places 5 and 6.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 3.02 Limitations on terms

No person shall serve as mayor for more than three consecutive elected terms, and no person shall serve as council member for more than three consecutive elected terms. No person shall serve as a council member and mayor (combined) for more than 18 consecutive years. For purposes of this Section 3.02 and computing the limitations on terms:

- (1) A mayor or council member, who vacates, for any reason, city office before the end of term for which he was elected, shall be considered to have completed that term.
- (2) An appointment or election to fulfill an unexpired council member term, or unexpired mayor term if applicable, shall be computed as follows:
 - (i) If 50 percent or more of the term is remaining, it shall be included in the computation of term limits; or
 - (ii) If less than 50 percent of the term is remaining, it shall not be included in computation of term limits.

Any council member or mayor, who is ineligible to run for elected city office due to the limitations on term as provided herein, shall remain ineligible to hold an elected city office for a period of one full term following the expiration of the most recent term of city office for which he or she was elected with the exception of a council member seeking the office of mayor or the mayor seeking the office of a council member.

To account for the transition from two consecutive terms to three consecutive terms, the term that each person on the city council is currently filling, as of January 1, 2010, and all terms consecutively served prior to the current term shall count for purposes of determining whether three consecutive terms have been served.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 3.03 Qualifications of city council

In addition to any other qualifications prescribed by law, the mayor and each councilmember shall meet the qualifications set forth in article V of this Charter while in office.

Sec. 3.04 Compensation

Compensation of the city council shall be determined by the city council by ordinance, but no increase in such compensation shall take effect until commencement of the terms of mayor and/or councilmembers elected at the next regular election. The city council shall also be entitled to reimbursement for actual expenses incurred in the performance of official duties with the approval of the city council at a public meeting.

Sec. 3.05 Mayor, mayor pro tem and deputy mayor pro tem

- (1) The mayor shall preside at meetings of the city council, and shall be recognized as head of the city government for all ceremonial purposes, and by the governor for purposes of military law, but shall have no regular administrative duties. The mayor may participate in the discussion of all matters coming before the city council. The mayor shall not be entitled to vote as a member thereof, on legislative or other matters except in case of a tie, when the mayor shall cast the deciding vote, but shall have no power to veto.
- (2) The mayor pro tem shall be a councilmember elected by the city council at the first regular meeting after each election of councilmembers and/or mayor. The mayor pro tem shall act as mayor during the disability or absence of the mayor, and in this capacity shall have the rights conferred upon the mayor.
- (3) The deputy mayor pro tem shall be a council member elected by the city council at the first regular meeting after each election of councilmembers and/or mayor. The deputy mayor pro tem shall act as mayor during the disability or absence of the mayor and mayor pro tem, and in this capacity shall have the rights

conferred upon the mayor.

Sec. 3.06 Vacancies, forfeiture and filling of vacancies

- (1) The office of a councilmember or the mayor shall become vacant upon his death, resignation, forfeiture of, or removal from office by any manner authorized by law.
- (2) If any member of the city council is absent from three consecutive regular meetings, with explanation acceptable to a majority of the remaining councilmembers, his office shall be declared vacant at the next regular meeting of the city council by resolution.
- (3) Any person on the city council who ceases to possess the required qualifications for office or who is convicted of a felony or of a misdemeanor involving moral turpitude or is convicted of violating any laws regulating conflicts of interest of municipal officers shall forfeit his office. Every forfeiture shall be declared and enforced by the city council.
- (4) If there is a vacancy in the office of mayor, a new mayor shall be elected by special election within 120 days after such vacancy occurs, in accordance with the Texas Constitution and the Texas Election Code.
- (5) A vacancy in the office of a councilmember, shall be filled by special election within 120 days after such vacancy occurs, in accordance with the Texas Constitution and the Texas Election Code. If the vacant office is that of mayor pro tem or deputy mayor pro tem, the city council shall elect a new mayor pro tem or deputy mayor pro tem at the next regular meeting.
- (6) Vacancies filled by special election shall be for the remainder of the term that was vacated.

Sec. 3.07 Powers of the city council

All powers of the city and the determination of all matters of policy shall be vested in the city council. Except where in conflict with and otherwise expressly provided by this Charter, the city council shall have all powers authorized to be exercised by the Constitution and laws of the United States and the State of Texas and the acts amendatory thereof and supplementary thereto, now or hereafter enacted. Without limitation of the foregoing and among the other powers that may be exercised by the city council, the following are hereby enumerated for greater certainty:

- (1) Appoint and remove the city manager;
- (2) Appoint and remove the municipal judge(s) of the municipal court;
- (3) Appoint and remove the city attorney;
- (4) Reserved;
- (5) Establish administrative departments;
- (6) Adopt the budget of the city;
- (7) Collectively inquire into the conduct of any office, department or agency of the city and make investigations as to municipal affairs;
- (8) Provide for a planning and zoning commission and a board of adjustment and other boards as deemed necessary, and appoint the members of all such boards and commissions. Such boards

and commissions shall have all powers and duties now or hereafter conferred and created by the Charter, by city ordinance or by law;

(9) Adopt and modify the official map of the city;

(10) Adopt, modify and carry out plans in cooperation with the planning and zoning commission for the replanning, improvement and redevelopment of specific areas of the city;

(11) Adopt, modify and carry out plans in cooperation with the planning and zoning commission for the replanning, reconstruction or redevelopment of any area or district which may have been destroyed in whole or part by disaster;

(12) Regulate, license and fix the charges or fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire on the public streets and alleys of the city;

(13) Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings or structures or improvements to be erected therein; provide for the erection of fireproof buildings within certain limits; and provide for the condemnation of dangerous structures of buildings or dilapidated buildings or buildings calculated to increase the fire hazard, and the manner of their removal or destruction;

(14) Fix and regulate rates and charges of all utilities and public services;

(15) Adopt plats, unless the city council votes to give this authority exclusively to the planning and zoning commission.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 3.08 Prohibitions

(1) Except where authorized by law or by this Charter, no mayor or councilmember shall hold any other city office or city employment during his or her term as mayor or councilmember. No former mayor or councilmember shall hold any compensated appointive office or city employment until one year after the expiration of the term for which they were elected or appointed to the city council.

(2) Members of the city council shall not in any way dictate the appointment or removal of the chief administrative officers or employees whom the city manager or any of the city manager's subordinates are empowered to appoint. The city council, at a meeting called for that purpose, may express its views and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(3) Except for the purpose of inquiries and investigations as provided by this Charter, the city council shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager. The city council shall not give orders to any such officer or employee either publicly or privately except as otherwise provided in this Charter.

Sec. 3.09 Meetings of the city council

(1) The city council shall hold at least two regular meetings each month and as many additional meetings as it deems necessary to transact the business of the city; provided, however, the city council may, in its sole discretion, determine to hold one regular monthly meeting two months out of the calendar year. The city

council shall fix by ordinance the date and time of the regular meetings.

(2) Special meetings of the city council shall be held at the call of the mayor or a majority of councilmembers upon provision of public notice in accordance with state law.

(3) Except as provided by state law, all city council meetings shall be open to the public and shall be held and notice given in accordance with the Texas Open Meetings Act.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 3.10 Quorum and voting

Four council members shall constitute a quorum for the purpose of transaction of business. No action of the city council, except as specifically provided in this Charter, shall be valid or binding unless adopted by the affirmative vote of a majority of the city council present. If a certain percentage of affirmative votes to pass a measure is required, the number of affirmative votes must be measured against the entire qualified city council, not just the number present and voting. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec 2, ex. B, adopted 5/18/2010)

Sec. 3.11 Conflict of interest

Should any person on the city council have a conflict of interest, pursuant to any state laws and/or city ordinances regulating conflicts of interest of municipal officers, with an agenda item then before the city council, he shall openly declare same before discussion proceeds, and he is thereby prohibited from discussing the item or voting on the question, and is not considered as present and voting for the purposes of the tally.

Sec. 3.12 Abstention

Should any person on the city council choose to abstain from voting on any question before the city council where no conflict of interest exists, the person's vote shall be recorded as a negative vote in the official minutes of the meeting.

Sec. 3.13 Rules of procedure

The city council shall determine its own rules of order and business. The city council shall provide that the citizens of the city shall have a reasonable opportunity to clearly hear and be heard at public hearings with regard to specific matters under consideration. The city council shall provide for minutes to be taken and recorded for all public meetings as required by law. Such minutes shall be a public record and shall be kept and maintained by the person performing the duties of the city secretary.

Sec. 3.14 Passage of ordinances in general

(1) The city council shall legislate by ordinance only, and the enacting clause of every ordinance shall "Be it ordained by the City Council of the City of Frisco, Texas". Each proposed ordinance shall be introduced in the written or printed form required for adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. General appropriation ordinances may contain various subjects and accounts for which monies are to be appropriated. After adoption, an ordinance shall not be amended or repealed except by the adoption of another ordinance amending or repealing the original ordinance. Copies of any proposed ordinance, in the form required for adoption, shall be furnished to the city council. Copies of the proposed ordinance, in the form required for adoption, shall be available at the city offices and shall be furnished citizens upon request to the city secretary from and after the date on which su

proposed ordinance is posted as an agenda item for a city council meeting and, if amended, shall be available and furnished in amended form for as long as the proposed ordinance is before the city council.

(2) A proposed ordinance which has been amended in substance after its placement on the agenda for a city council meeting may not be voted on at such meeting. Such amended ordinance shall be placed upon the agenda of a subsequent meeting of the city council in accordance with the provisions of this article. All persons interested in such ordinance shall have a reasonable opportunity to be heard.

(3) Every ordinance shall become effective upon adoption or at any later time(s) specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published twice in its entirety or summary form after adoption, in a newspaper designated as the official newspaper of the city.

(4) If a majority of the city council present request that the ordinance title and caption or its entirety be read, it must be read.

Sec. 3.15 Emergency ordinances

(1) The city council may adopt emergency ordinances only to meet public emergencies affecting life, health, property or the public peace. In particular, such ordinances shall not levy taxes, grant or renew a franchise, extend a franchise, or regulate the rate charged by any public utility for its services. Neither shall they authorize the borrowing of money except as provided elsewhere in this Charter.

(2) An emergency ordinance shall be introduced in the form and manner generally prescribed for other ordinances, except that they shall be plainly designated in the title as an emergency ordinance and shall contain after the enacting clause a declaration stating that an emergency exists and describing the emergency in clear and specific terms.

(3) An emergency ordinance may be introduced at any city council meeting and can be adopted without amendment or rejected at the meeting at which it is introduced. The affirmative vote of at least five councilmembers shall be required for adoption.

(4) Emergency ordinances shall become effective upon adoption and shall be published as soon thereafter as practicable. Every emergency ordinance so adopted, except one authorizing the borrowing of money described herein, is automatically repealed as of the 61st day following the day on which it became effective. The ordinance may be re-enacted if the emergency still exists.

Sec. 3.16 Authentication, recording, codification, printing and distribution

(1) All ordinances and resolutions adopted by the city council shall be authenticated by seal and signature of the person performing the duties of the city secretary and numbered consecutively as adopted. They shall be properly indexed and placed in a book kept open for public inspection.

(2) The city council may maintain the codification of ordinances of the city. This codification shall be known and cited as "The Frisco City Code" and shall be in full force and effect without the necessity of such code or any part thereof being published in any newspaper. The caption, descriptive clause and other formal parts of the ordinances of the city may be omitted without affecting the validity of such ordinances when codified. Every general ordinance enacted subsequent to such codification shall be enacted as an amendment to the code. For the purpose of this section, general ordinances shall be deemed to be those ordinances of permanent or continuing nature which affect the residents of the city at large. Copies of the code shall be furnished to city officers, placed in city offices and made available for purchase by the public at a reasonable price to be fixed by the city council.

(3) The city council shall cause all ordinances and amendments to this Charter to be printed promptly following their adoption. A copy of each ordinance and amendment shall be placed in appropriate city office for public reference. Printed ordinances and Charter amendments shall be sold to the public at a reasonable price to be fixed by the city council.

Sec. 3.17 Investigations by the city council

The city council shall have the power to inquire into the official conduct of any department, agency, office, officer or employee of the city. For that purpose, the city council shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers or other evidence material to the inquiry. The city council shall provide, by ordinance, penalties for contempt for failing or refusing to obey any such subpoena or to produce any such books, papers, or other evidence, and shall have the power to punish any such contempt in the manner provided by the ordinance.

Sec. 3.18 Bond

The city council shall require bonds of all municipal officers and employees who receive or pay out any monies of the city. The amount of the bonds shall be determined by the city council and the cost shall be borne by the city.

ARTICLE IV. CITY ADMINISTRATION

Sec. 4.01 City manager

(1) The city council shall appoint, upon the affirmative vote of a majority of the full membership of the city council, a city manager who shall serve as chief administrative officer of the city. The city manager shall be responsible to the city council for administration of all the affairs of the city, with only those exceptions that are named in this Charter. The city manager shall be appointed solely upon the city manager's executive, administrative and educational qualifications, and shall have previous city manager or assistant city manager experience and/or a degree in a field related to city government. The city manager need not be a resident of the city when appointed, but shall, within a reasonable time after such appointment, reside within the city during the balance of the tenure of his appointment.

(2) The city council shall fix the compensation of the city manager, and the city manager's compensation may be amended, from time to time, in accordance with the city manager's experience, qualifications and performance.

(3) The city manager shall be appointed for an indefinite term, and may be removed at the discretion of the city council by the affirmative vote of a majority of the full membership of the city council. Upon decision to remove the city manager, notice, in writing, of such decision shall be immediately furnished to him and the city council may then suspend him from duty.

(A) If, within five days after being notified of his termination and removal, the city manager files a written request to the city council requesting that his termination be reconsidered, the city council shall, as soon as practical, meet with the city manager in accordance with the Texas Open Meetings Act to review its decision to terminate.

(B) After such review, after affording the city manager an opportunity to respond to such initial decision to terminate, a new vote shall be taken with regards to termination of the city manager.

(C) The city manager shall, from the date of suspension, continue to receive his salary pending

the final decision of the city council.

(D) This procedure for a review meeting with the city manager shall not alter the fact that the city manager serves at the pleasure of the city council and the city manager shall not have, nor should this procedure be construed to grant to the city manager, right to continued employment.

(4) In case of the absence, disability or suspension of the city manager, the city council may designate a qualified administrative officer of the city to perform the duties of the office.

(5) The city manager shall:

(A) Appoint, suspend and remove all city employees and appointive administrative officers provided for in this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant thereto;

(B) Direct and supervise the administration of all departments, offices and agencies of the city except as otherwise provided by law or this Charter;

(C) See that all state laws and city ordinances are effectively enforced;

(D) Attend all city council meetings, with the right to take part in discussion, but the city manager shall not vote;

(E) Prepare and accept, or designate an appropriate department head or city employee to prepare and accept, items for inclusion in the official agenda of all city council meetings and meetings of all boards and commissions;

(F) Prepare and recommend to the city council the annual budget and capital program, and administer the budget as adopted by the city council;

(G) Keep the city council fully advised at least quarterly as to the financial conditions and future needs of the city, and make such recommendations concerning the affairs of the city, as the city manager or the city council deems desirable or necessary;

(H) Make reports as the city manager or the city council may require concerning the operation of the city departments, offices, or agencies subject to the city manager's direction or supervision and

(I) Perform such other duties as are specified in this Charter or may be required by the city council, and are consistent with this Charter or state or federal law.

Sec. 4.02 City secretary

(1) The city manager shall appoint or remove the city secretary.

(2) The city secretary shall:

(A) Give notice of all official public meetings of the city council in a manner consistent with this Charter and state laws;

(B) Attend all public meetings and hearings of the city council;

- (C) Keep the minutes of the proceedings of all public official meetings and hearings of the council in a manner prescribed by the city council consistent with applicable law;
- (D) Act as custodian of all official records of the city council;
- (E) Hold and maintain the seal of the city and affix this seal to all appropriate documents;
- (F) Authenticate by signature and seal and record all ordinances, resolutions and proclamations of the city; and
- (G) Perform such other duties as may be required by the city manager consistent with the Charter and the laws of the State of Texas.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 4.03 Municipal court

- (1) The city council shall establish and cause to be maintained a municipal court. The court shall have the powers and duties as are now, or as may be, prescribed by the laws of the State of Texas.
- (2) The city council shall appoint by the affirmative vote of a majority of the full membership of the council such municipal judges of the municipal court as may be necessary, all of whom shall be competent, duly qualified attorneys licensed and practicing for at least two years in the State of Texas. In the event a duly qualified attorney is not available, the city council shall then select a qualified person to be the municipal judge. The municipal judge(s) of the municipal court(s) shall be appointed to a term of two years and may be appointed to additional consecutive terms upon completion of his/their term(s) of office. The appointment of the municipal judge(s) may be terminated, without cause, at any time by the affirmative vote of a majority of the full membership of the city council. The municipal judge(s) shall receive compensation as may be determined by the city council.
- (3) In the event of failure of any municipal judge to perform his or her duties, the mayor shall act in the municipal judge's place and stead (and in the event of a vacancy, until a municipal judge is appointed by the city council to fill the vacancy). If the mayor acts as municipal judge, the mayor shall be compensated at the same salary, if any, as the municipal judge for whom the mayor is acting.
- (4) The clerk and deputy clerks of the municipal court(s) shall have the power to administer oaths, certify affidavits, make certificates, affix the seal of the court, and perform all usual and necessary clerical acts in conducting the business of the court(s) including but not limited to, the keeping of records and accounts of the municipal court(s).
- (5) All special expenses and fines imposed by the municipal court(s) shall be paid into the city treasury for the use and benefit of the city, as may be consistent with present and future laws.

Sec. 4.04 City attorney

- (1) The city council shall appoint by the affirmative vote of a majority of the full membership of the council a competent, duly qualified licensed and practicing attorney in the State of Texas who shall serve as the city attorney.
- (2) The city attorney shall:
 - (A) Serve as the legal advisory to the city council and city manager;

(B) Represent the city in litigation and legal proceedings as directed by the city council and city manager; and

(C) Review and provide opinions as requested by the city council or city manager on contracts, legal instruments, ordinances of the city and other city business.

(3) The city council shall have the right to retain special counsel at any time that it may deem necessary and appropriate.

(4) The city attorney and special counsel shall receive compensation as may be determined by the city council.

(5) The city attorney, with approval of the city council, may select additional attorneys to act for him or her in the city in its representation and/or litigation.

(6) The city attorney may be removed, without cause, by the affirmative vote of a majority of the full membership of the city council.

Sec. 4.05 Administrative departments, offices and agencies

(1) The city council may, after hearing recommendations of the city manager, establish, abolish, redesignate and/or combine departments, offices or agencies in addition to those provided for by this Charter and may prescribe the functions and duties of such departments, offices and agencies.

(2) Except as provided elsewhere in this Charter, all departments, offices and agencies of the city shall be under the direction and supervision of the city manager, and shall be administered by officers appointed by and subject to the direction and supervision of the city manager. The city manager may, with the consent of the city council, serve as the head of one or more city departments, offices or agencies or appoint one person as head of two or more of them.

(3) The city manager may appoint a city tax collector, whose duties and functions shall be those usual for the office and consistent to existing or future laws of the State of Texas as they may apply to city or county tax collectors. The city manager may recommend that the city council enter into an outside contract for such services.

Sec. 4.06 Personnel system

(1) Personnel rules shall be prepared by the city manager and presented to the city council, who may adopt them by ordinance, with or without amendment. The adopted rules shall establish the city as an equal opportunity employer and shall govern the equitable administration of the personnel system of the city.

(2) The adopted rules shall provide for the following requirements:

(A) A pay and benefit plan for all city employment positions;

(B) A plan for working hours, attendance policy and regulation and provision for sick and vacation leave;

(C) Procedure for the hearing and adjudication of grievances;

(D) Additional practices and procedures necessary to the beneficial and equitable administration of the city's personnel system;

(E) A plan for annual oral and written evaluation based on a job description for all employees by their immediate supervisor, including evaluation of the city manager, city secretary, municipal judge, and city attorney by the city council; and

(F) Procedure for the giving and receiving of gifts by city employees.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

ARTICLE V. NOMINATIONS AND ELECTIONS

Sec. 5.01 City elections

(1) All city elections shall be conducted in accordance with the Texas Election Code.

(2) The regular city election shall be held annually on the second Saturday in May or such other date required by the Texas Election Code. The city council shall be responsible for specification of places holding such elections.

(3) The city council may, by resolution, order a special election for purposes consistent with this Charter and laws of the State of Texas. The city council will fix the time and places for such a special election, and provide all means for holding same.

(4) Municipal elections shall be conducted by election officials appointed by the city council, or prescribed by law. Sample ballots identical in format to those used in the specific election shall be posted at the voting place(s) for the purpose of voter orientation.

(5) All municipal elections shall be publicized in accordance with the Texas Election Code.

(6) A sample ballot shall be published twice in the official newspaper of the city.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, 5/18/2010)

Sec. 5.02 Filing for office

(1) Candidates for elective city offices shall file for office in accordance with the Texas Election Code.

(2) Candidates for elective city offices shall meet the following qualifications:

(A) Shall be at least 18 years of age at the time of the election for which they are filing;

(B) Shall be a qualified voter;

(C) Shall have resided within the corporate limits of the city, or recently annexed territory, for at least one year immediately preceding the filing date;

(D) Shall not, at the time of filing or while in office, be in arrears in payment of taxes or other liabilities due the city after notice of any delinquency;

(E) No candidate may file in a single election for more than one office or position as provided by this Charter;

(F) No employee of the city shall continue in such position after filing for an elective office.

provided for in this Charter;

(G) The office of an incumbent elected city official shall become vacant when the person holding such office files an application to have his name placed on an official ballot as a candidate for any elective public office other than the one such person holds, unless otherwise prohibited by law; and

(H) Shall comply with all other city ordinances or resolutions that may be applicable.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 5.03 Official ballots

(1) The name of each candidate seeking elective office, except those who have withdrawn, died, or become ineligible, shall be printed on the official ballot in the form designated by the candidate in accordance with the Texas Election Code. If two or more candidates have the same surname, their residence addresses shall be printed with their names on the ballot.

(2) The order of the names of the candidates on the ballot shall be determined by lot in a public drawing to be held under the supervision of the person performing the duties of the city secretary in accordance with the Texas Election Code.

(3) Procedures for voting by absence ballot shall be consistent with the Texas Election Code.

(4) An ordinance, bond issue, or Charter amendment to be voted on by the voters of the city shall be presented for voting by ballot title. The ballot title of a measure may be different from its legal title and shall be a clear, concise statement, approved by the city council, describing the substance of the measure without argument or prejudice.

(5) Procedures for write-in votes shall be consistent with the Texas Election Code.

Sec. 5.04 Official results

(1) The candidate for elective office receiving a majority of the votes cast shall be declared the winner. In the event that no candidate receives a majority of all votes cast for any one place at such election, the city council shall, upon completion of the official canvass of the ballots, issue a call for a runoff election to be held within 30 days following the issuance of such call, or in accordance with the Texas Election Code. In such runoff election, the two candidates receiving the highest number of votes (or three persons in case of a runoff for second place) for any one place in the first election shall again be voted for.

(2) The returns of every municipal election shall be handled in accordance with the Texas Election Code. These returns shall be delivered from the election judges to the person performing the duties of the city secretary and the mayor at city hall as soon as possible after the closing of the polls. Election returns, general and special, shall be presented to the city council at their next meeting following the election, at which time the city council shall canvass and declare the results of the election, which shall be recorded in the minutes of the meeting.

Sec. 5.05 Taking of office

(1) Each newly elected person to the city council shall be inducted into office at the first regular city council meeting following the election.

(2) At such meeting the oath shall be in accordance with the city Charter.

ARTICLE VI. RECALL, INITIATIVE, AND REFERENDUM

Sec. 6.01 Scope of recall

Any elected city official, whether elected to office by qualified voters or appointed by the city council to fill vacancy, shall be subject to recall and removal from office by the qualified voters of the city on grounds of incompetency, misconduct, or malfeasance in office.

Sec. 6.02 Petitions for recall

Before the question of recall of such officer shall be submitted to the qualified voters of the city, a petition demanding such question to be so submitted shall first be filed with the person performing duties of city secretary, which said petition must be signed by qualified voters of the city of at least 30 percent of the number of votes cast at the last regular mayoral election, or 150, whichever is greater. Each signature on a recall petition shall conform to the requirements for information as set forth in the Texas Election Code, as amended. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 6.03 Form of recall petition

The recall petition mentioned above must be addressed to the city council of the city, must be distinctly and specifically pointed to the grounds upon which such petition for removal is predicated, and, if there be more than one ground, said petition shall specifically state each ground with such certainty as to give the officer sought to be removed notice of the matters and things with which the officer is charged. The signature shall be verified by oath in the following form.

“State of Texas”

County of _____ / _____ / _____

I, _____ / _____ / _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition, and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person it purports to be.

Signature

Sworn and subscribed before me this _____ day of _____, 20_____.

Signed _____

Notary Public in and for State of Texas

Sec. 6.04 Various papers constituting petition

The petition may consist of one or more copies, or subscription lists, circulated separately, and the signature thereto may be upon the paper or papers containing the form of petition, or upon other paper attached thereto. Verifications provided for in the next preceding section of this article may be made by one or more petitioners, and the several parts of copies of the petition may be filed separately and by different persons, but

no signatures to such petition shall remain effective or be counted which were placed thereon more than 45 days prior to the filing of such petition or petitions with the person performing the duties of city secretary. Papers comprising a recall petition shall be filed with the person performing the duties of city secretary on the same day, and the said person performing the duties of city secretary shall immediately notify, in writing, the officer so sought to be removed, by mailing such notice to the officer's city address.

Sec. 6.05 Presentation of petition to the city council

Within 21 days after the date of the filing of the papers constituting the recall petition, the person performing the duties of city secretary shall present such petition to the city council of the city.

Sec. 6.06 Public hearing to be held

The officer whose removal is sought may, within seven days after such recall petition has been presented to the city council, request that a public hearing be held to permit him to present the facts pertinent to the charges specified in the recall petition. In this event, the city council shall order such public hearing to be held, not less than five days nor more than 15 days after receiving such request for a public hearing.

Sec. 6.07 Calling of recall election

If the officer whose removal is sought does not resign, then the city council shall order an election and set the date for holding such recall election. The date selected for the recall election shall be in accordance with the Texas Election Code. If after the recall election date is established, the officer vacates his position, the election shall be cancelled.

Sec. 6.08 Ballots in recall election

Ballots used at recall elections shall conform to the following requirements:

- (1) With respect to each person whose removal is sought, the question shall be submitted: "Shall _____ be removed from the office of _____ by recall?"
- (2) Immediately below each such question there shall be printed the following words, one above the other, in the order indicated:

"Yes"

"No"

Sec. 6.09 Result of recall election

If a majority of the votes cast at a recall election shall be "No", that is against the recall of the person named on the ballot, the officer shall continue in office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at such election be "Yes", that is for the recall of the person named on the ballot, the officer shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy be filled by the city council as provided in this Charter.

Sec. 6.10 Recall, restrictions thereon

No recall petition shall be filed against any officer of the city within three months after the officer's election nor within three months after an election for such officer's recall.

Sec. 6.11 Failure of the city council to call an election-recall

In case that all the requirements of this Charter shall have been met and the city council shall fail or refuse to receive the recall petition, or order such recall election, or discharge any other duties imposed on the city council by the provisions of this Charter with reference to such recall, then the District Judge of Collin County, Texas, shall discharge any of such duties herein provided to be discharged by the person performing the duties of city secretary or by the city council.

Sec. 6.12 General power of initiative and referendum

The qualified voters of the city, in addition to the method of legislation herein before provided, shall have the power of direct legislation by the initiative and referendum.

(1) Initiative: Such power shall not extend to the budget or capital program or any ordinance or resolution subject to initiative as provided by state law, relating to appropriation of money, issuing, or bonding, or levy of taxes or salaries of city officers or employees.

(2) Referendum: Such power shall not extend to the budget or capital program or a special emergency ordinance or ordinance not subject to referendum as provided by state law, relating to appropriation of money, issuing of bonds, or levy of taxes.

Sec. 6.13 Initiative

Following a review by the city attorney for enforceability and legality, qualified voters of the city may initiate legislation by submitting a petition addressed to the city council which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the city. Said petition must be signed by qualified voters of the city of at least 30 percent of the number of votes cast at the last regular mayoral election, or 15 whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in this article, and shall be verified by oath in the manner and form provided for recall petitions in this article. The petition may consist of one or more copies as permitted for recall petitions. Such petition shall be filed with the person performing the duties of city secretary. Within 21 days after the filing of such petition, the person performing the duties of city secretary shall present said petition and proposed ordinance or resolution to the city council. Upon presentation to the city council, it shall become the duty of the city council, within two regularly scheduled city council meetings after the receipt thereof, to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition, or to call a special election, to be held within 30 days thereafter and/or on a date allowed under the Texas Election Code, at which the qualified voters of the city shall vote on the question of adopting or rejecting the proposed legislation. However, if any other municipal election is to be held within 60 days after the filing of the petition, the question may be voted on at such election. Any election order so issued shall comply fully with the Texas Election Code. Unless otherwise provided by law, any election for an initiative under this Charter shall be held on the first authorized uniform election date that occurs after the 65th day after the petition was presented to the city council. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 6.14 Referendum

Qualified voters of the city may require that any ordinance or resolution, with the exception of ordinances or resolutions appropriating money or levying taxes, passed by the city council be submitted to the voters of the city for approval or disapproval, by submitting a petition for this purpose within 30 days after final passage of said ordinance or resolution, or within 30 days after its publication. Said petition shall be addressed, signed,

and verified as required for recall petitions in this article and shall be submitted to the person performing the duties of city secretary. Immediately upon the filing of such petition, the person performing the duties of city secretary shall present said petition to the city council. Thereupon the city council shall immediately reconsider such ordinance or resolution and, if the city council does not entirely repeal the same, shall submit it to popular vote as provided in section 6.13 of this Charter. Pending the holding of such election, each ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof. Unless otherwise provided by law, any election for a referendum under this Charter shall be held on the first authorized uniform election date that occurs after the 65th day after the petition was presented to the city council.

Sec. 6.15 Voluntary submission of legislation by the city council

The city council, upon its own motion and by the affirmative vote of a majority of the full membership of the city council, may submit to popular vote at any election for adoption or rejection any proposed ordinance or resolution or measure, or may submit for repeal any existing ordinance, or resolution, or measure, in the same manner and with the same force and effect as provided in this article for submission of petition, and may at its discretion call a special election for this purpose.

Sec. 6.16 Form of ballots

The ballots used when voting upon such proposed and referred ordinance, resolutions or measures, shall set forth their nature sufficiently to identify them and shall also set forth upon separate lines the words:

“For the Ordinance” or

“Against the Ordinance” or

“For the Resolution” or

“Against the Resolution”

Sec. 6.17 Publication of proposed and referred ordinances

The person performing the duties of city secretary of the city shall publish at least twice in the official newspaper of the city the proposed or referred ordinance or resolution within 15 days before the date of the election, and shall give such other notices and do such other things relative to such election as are required by law in municipal elections and by the ordinance or resolution calling said election.

Sec. 6.18 Adoption of ordinances

If a majority of the qualified voters voting on any proposed ordinance or resolution or measure shall vote in favor thereof, it shall thereupon or at any time fixed therein, become effective as a law or as a mandatory order of the city council.

Sec. 6.19 Inconsistent ordinances

If the provisions of two or more proposed ordinances or resolutions approved at the same election are inconsistent, the ordinance or resolution receiving the highest number of votes shall prevail.

Sec. 6.20 Ordinances passed by popular vote, repeal or amendment

No ordinance or resolution which may have been passed by the city council upon a petition or adopted by

popular vote under the provisions of this article shall be repealed or amended except by the city council in response to a referendum petition or by submission as provided by section 6.15 of this Charter.

Sec. 6.21 Further regulations by the city council

The city council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this article consistent herewith.

Sec. 6.22 Franchise ordinances

Nothing contained in this article shall be construed to be in conflict with any of the provisions of this Charter pertaining to ordinances granting franchises when valuable rights shall have accrued thereunder.

Sec. 6.23 Failure of the city council to call an election-initiative or referendum

In case that all of the requirements of this Charter shall have been met and the city council shall fail or refuse to receive the initiative or referendum petition, or order such initiative or referendum election, or discharge any other duties imposed on the city council by the provisions of this Charter with reference to such initiative or referendum, then the District Judge of Collin County, Texas, shall discharge any of such duties herein provided to be discharged by the person performing the duties of city secretary or by the city council.

ARTICLE VII. FINANCIAL PROCEDURES

Sec. 7.01 Fiscal year

The fiscal year of the city shall begin on October 1 and end on September 30 on the next succeeding year. Such fiscal year shall also constitute the budget and accounting year.

Sec. 7.02 Submission of budget and budget message

On or before August 15th of the fiscal year, the city manager shall submit to the city council a budget for the ensuing fiscal year and an accompanying budget message.

Sec. 7.03 Budget message

The city manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the city for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city's debt position and include such other material as the city manager deems desirable.

Sec. 7.04 Budget a public record

The budget and all supporting schedules shall be filed with the person performing the duties of city secretary when submitted to the city council and shall be open to public inspection by anyone interested.

Sec. 7.05 Public hearing on budget

At the city council meeting when the budget is submitted, the city council shall name the date and place of a public hearing and shall have published in the official newspaper of the city, at least twice, the time and place, which will be not less than ten days nor more than 30 days after the date of notice. At this hearing, interested citizens may express their opinions concerning items of expenditures, giving their reasons for

wishing to increase or decrease any items of expense.

Sec. 7.06 Proceeding on adoption of budget

After public hearing, the city council shall analyze the budget, making any additions or deletions which the council feels appropriate, and shall, at least ten days prior to the beginning of the next fiscal year, adopt the budget by the affirmative vote of a majority of the full membership of the city council. Should the city council take no final action on or prior to such day, the current budget shall be in force on a month-to-month basis until a new budget is adopted.

Sec. 7.07 Budget, appropriation and amount to be raised by taxation

On final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the city council shall constitute the official appropriations as proposed by expenditures for the current year and shall constitute the basis of official levy of the property tax as the amount of tax to be assessed and collected for the corresponding tax year. Estimated expenditures will in no case exceed proposed revenue plus cash on hand. Unused appropriations may be transferred to any item required for the same general purpose.

Sec. 7.08 Contingent appropriation

Provision shall be made in the annual budget and in the appropriation ordinance for a contingent appropriation in an amount not more than three percent of the total general fund expenditures, to be used in case of unforeseen items of expenditures. This contingent appropriation shall apply to current operating expenses and shall not include any reserve funds of the city. Such contingent appropriation shall be under the control of the city manager and distributed by him only after prior approval by the city council. The proceeds of the contingent appropriation shall be disbursed only by transfer to other departmental appropriation, the spending of which shall be charged to the departments or activities for which the appropriations are made.

Sec. 7.09 Amending the budget

Under conditions which may arise and which could not reasonably have been foreseen in the normal process of planning the budget, the city council may, by the affirmative vote of a majority of the full membership of the city council, amend or change the budget to provide for any additional expense in which the general welfare of the citizenry is involved. These amendments shall be by ordinance, and shall become an attachment to the original budget.

Sec. 7.10 Certification; copies made available

A copy of the budget, as finally adopted, shall be filed with the person performing the duties of city secretary and such other places required by state law or as the city council shall designate. The final budget shall be printed or otherwise reproduced and sufficient copies shall be made available for the use of all offices, agencies, and for the use of interested persons and civic organizations.

Sec. 7.11 Capital program

The city manager shall submit a five-year capital program as an attachment to the annual budget. The program as submitted shall include:

- (1) A clear general summary of its contents;
- (2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years succeeding the budget year, with appropriate supporting information as to the necessity for each.

such improvements;

(3) Cost estimates, method of financing, and recommended time schedules for each improvement; and

(4) The estimated annual cost of operating and maintaining the facilities to be constructed acquired. The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Sec. 7.12 Defect shall not invalidate the tax levy

Errors or defects in the form or preparation of the budget or the failure to perform any procedural requirements shall not nullify the tax levy or the tax rate.

Sec. 7.13 Lapse of appropriations

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made had been accomplished or abandoned. The purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation. Any funds not expended, disbursed or encumbered shall be deemed excess funds.

Sec. 7.14 Borrowing

(1) The city shall have the right and power, except as prohibited by law or this Charter, to borrow money by whatever method it may deem to be in the public interest.

(2) General obligation bonds:

(A) The city shall have the power to borrow money on the credit of the city and to issue general obligation bonds for permanent public improvements or any other public purpose not prohibited by law and this Charter, and to issue refunding bonds to refund outstanding bonds previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for purposes for which they were issued.

(B) Any bonds issued under the provisions of this section shall not be issued without an election. The city council shall prescribe the procedure for calling and holding such election; shall define the voting precincts and shall provide for the return and canvass of the ballots cast at such elections.

(C) If at such elections a majority of the vote shall be in favor of creating such a debt to refund outstanding valid bonds of the city, it shall be lawful for the city council to issue bonds as proposed in the ordinance submitting same. However, if a majority of the voters shall vote against the creation of such debt or refunding such bonds, the city council shall be without authority to issue the bonds. In all cases when the city council shall order an election for the issuance of bonds of the city, it shall at the same time submit the question of whether or not a tax shall be levied upon the property within the city for the purpose of paying the interest on the bonds and to create a sinking fund for their redemption.

(3) The city shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, or any other self-liquidating municipal function not prohibited

the Constitution and the laws of the State of Texas. With an affirmative vote of at least five councilmembers it shall have the power to issue revenue bonds and to evidence the obligation created thereby. Such bonds shall be a charge upon and payable from the properties, or interest therein pledged, or the income therefrom gained from, or both. The holders of the revenue bonds shall never have the right to demand payment therefrom out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for the purpose for which they were issued.

(4) In any budget year, the city council may, by affirmative vote of at least five councilmembers, authorize the borrowing of money. Notes may be issued which are repayable not later than the end of the current fiscal year.

Sec. 7.15 Purchasing

(1) The city council may by ordinance, give the city manager general authority to contract for expenditures without further approval of the city council for all budgeted items not exceeding limits set by the city council within the ordinance.

(2) All contracts for expenditures or purchases involving more than the limits must be expressly approved in advance by the city council. All contracts or purchases involving more than the limits set by the city council shall be awarded by the city council, in accordance with state law.

(3) Emergency contracts as authorized by law and this Charter may be negotiated by the city council or city manager if given authority by the city council, without competitive bidding, and in accordance with state law. Such emergency shall be declared by the city manager and approved by the city council, or may be declared by the city council.

Sec. 7.16 Administration of budget

(1) No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, unless the city manager, or the city manager's designee, first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable.

(2) Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such payment or obligation, and the officer shall also be liable to the city for any amount so paid.

(3) This prohibition shall not be construed to prevent the making or authorizing of payments, or making contracts for capital improvements to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, or certificates of obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, providing that such action is made or approved by ordinance.

(4) The city manager shall submit to the city council each month a report covering the revenues and expenditures of the city in such form as requested by the city council.

Sec. 7.17 Depository

All monies received by any person, department or agency of the city for or in connection with the affairs of the city shall be deposited promptly in the city depository or depositories. The city depositories shall be

designated by the city council in accordance with such regulations and subject to the requirements as to security for deposits and interest thereon as may be established by ordinance and law. Procedures for withdrawal of money or the disbursement of funds from the city depositories shall be prescribed by ordinance.

Sec. 7.18 Independent audit

At the close of each fiscal year, and at such other times as may be deemed necessary, the city council shall call for an independent audit to be all accounts of the city by a certified public accountant. No more than five consecutive annual audits shall be completed by the same firm. The certified public accountant selected shall have no personal interest, directly or indirectly, in the financial affairs of the city or any of its officers. The report of audit, with the auditor's recommendations will be made to the city council. Upon completion of the audit, the summary shall be published immediately in the official newspaper of the city and copies of the audit placed on file in the office of the person performing the duties of city secretary, as a public record.

Sec. 7.19 Power to tax

(1) The city shall have the power to levy, assess and collect taxes of every character and type for a municipal purpose not prohibited by the Constitution and laws of the State of Texas as now written hereafter amended.

(2) The city shall have the power to grant tax exemptions in accordance with the laws of the State of Texas.

Sec. 7.20 Office of tax collector

There shall be an office of taxation to collect taxes, the head of which shall be the city tax collector. The city council may contract for such services.

Sec. 7.21 Taxes; when due and payable

(1) All taxes due in the city shall be payable at the office of the city tax collector, or at such location or locations as may be designated by the city council, and may be paid at any time after the tax rolls for the year have been completed and approved. Taxes for each year shall be paid before February 1 of the next succeeding year, and all such taxes not paid prior to that date shall be deemed delinquent, and shall be subject to penalty and interest as the city council shall provide by ordinance. The city council may provide discount for the payment of taxes prior to January 1 in amount not to exceed those established by the laws of the State of Texas.

(2) Failure to levy and assess taxes through omission in preparing the appraisal rolls shall not relieve a person, firm or corporation so omitted from obligation to pay such current or past due taxes as shown to be payable by recheck of the rolls and receipts for the years in question, omitting penalty and interest.

Sec. 7.22 Tax liens, liabilities and suits

(1) All taxable property located in the city on January 1 of each year shall stand charged from that date with a special lien in favor of the city for the taxes due. All persons purchasing any such property on or after January 1 in any year shall take the property subject to the liens provided above. In addition to the liens herein provided, on January 1 of any year, the owner of property subject to taxation by the city shall be personally liable for the taxes due for that year.

(2) The city shall have the power to sue for and recover personal judgment for taxes without foreclosure, to foreclose its lien or liens, or to recover both personal judgment and foreclosure. In any such suit where

appears that the description of any property in the city appraisal rolls is insufficient to identify such property, the city shall have the right to plead a good description of the property to be assessed, to prove the same, or to have its judgment foreclosing the tax lien or for personal judgment against the owners for such taxes.

ARTICLE VIII. BOARDS AND COMMISSIONS

Sec. 8.01 Authority, composition and procedures

(1) The city council shall create, establish or appoint, as may be required by the laws of the State of Texas or this Charter, or deemed desirable by the city council, such boards, commissions and committees as it deems necessary to carry out the functions and obligations of the city. The city council shall, by ordinance or resolution, prescribe the purpose, composition, function, duties, accountability and tenure of each board, commission and committee where such are not prescribed by law or this Charter.

(2) Individuals who are qualified voters in the city may be appointed by the city council to serve on one or more boards, commissions or committees. Such appointees shall serve at the pleasure of the city council and may be removed at the discretion of the city council. Except as otherwise provided in this Charter, members of any such board, commission or committee shall serve without compensation but may be reimbursed for actual expenses as approved by the city council.

(3) All boards, commissions or committees of the city shall keep and maintain minutes of any proceedings held and shall submit a written report of such proceedings to the city council no more than three weeks following each meeting.

(4) No officer or employee of the city nor any person who holds a compensated appointive position with the city shall be appointed to any board, commission or committee created or established by this Charter other than in an advisory capacity.

(5) Any member of a board, commission or committee who is absent from three consecutive regular meetings, or 25 percent of regularly scheduled meetings during the 12-month period immediately preceding and including the absence in question, without explanation acceptable to a majority of the other members shall forfeit his position on the board, commission, or committee.

ARTICLE IX. PLANNING AND ZONING COMMISSION

Sec. 9.01 Organization

There is hereby established a planning and zoning commission which shall consist of at least seven members who shall be qualified voters of the city and appointed by the city council to staggered terms in accordance with the then existing zoning ordinance. The length and number of terms shall be established in accordance with the then existing zoning ordinance. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, section 2, ex. B, adopted 5/18/2010)

Sec. 9.02 Duties and powers

(1) The commission shall be responsible to and act as an advisory board to the city council. The commission shall:

(A) Review all current and proposed ordinances and amendments pertaining to planning and zoning and make recommendations to the city council for action to be taken;

- (B) Make proposals to the city council to amend, extend and add to the comprehensive plan the physical development of the city;
- (C) Keep public records of its resolutions, findings and determinations; and
- (D) Review plats and zoning requests and make recommendations to the city council for final adoption of same.

(2) The commission, shall have full power to:

- (A) Exercise the authority of the commission as provided by state law, this Charter and city ordinances;
- (B) Make reports and recommendations relating to the comprehensive plan and development of the city; and
- (C) Adopt plats, if it has been given that authority by the city council.

(3) A vote of three-fourths of the councilmembers present, or four votes, whichever is greater is required to overrule a recommendation of the commission that a proposed zoning amendment, supplement, or change be denied.

Sec. 9.03 Procedure

(1) All rules and regulations adopted by the commission shall be forwarded in writing to the city manager who shall submit them to the city council with the city manager's recommendations. The city council may amend, adopt or reject any such rules or regulations. If any rules or regulations should be rejected, the commission may modify them and submit such modified rules and recommendations to the city council.

(2) Should any person on the commission have a conflict of interest, pursuant to any state laws and/or city ordinances regulating conflicts of interest of municipal officers, with an agenda item then before the commission, he shall openly declare same before discussion proceeds, and he is thereby prohibited from discussing the item or voting on the question, and is not considered as present and voting for the purposes of the tally.

(3) Should any person on the commission choose to abstain from voting on any question before the commission, where no conflict of interest exists, the person's vote shall be recorded as a negative vote in the official minutes of the meeting.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, adopted 5/18/2010)

Sec. 9.04 The comprehensive plan: Procedure and legal effect

(1) The comprehensive plan shall include, but not be limited to, the future land use plan, thoroughfare plan, and parks and open space plan. The existing comprehensive plan for the physical development of the city contains recommendations for the growth, development and beautification of the city and extraterritorial jurisdiction. Additions to and amendments of the comprehensive plan shall be by ordinance resolution, but before any such revision, the commission shall hold at least one public hearing on the proposed action.

(2) A copy of the proposed revisions to the comprehensive plan shall be forwarded to the city manager who shall submit the proposal to the city council, together with the city manager's recommendations, if any. T

city council, after a public hearing, shall adopt or reject such proposed revision or any part thereof submitted within 60 days following its submission by the city manager. If the proposed revisions or part thereof should be rejected by the city council, the city council may request the commission to make other modifications and again forward it to the city manager for submission to the city council.

(3) Following the adoption by the city council of the comprehensive plan, and any revisions thereto, it shall serve as a guide to all future city council action concerning land use and development regulations and expenditures for capital improvements. Any proposal which deviates from the comprehensive plan regarding land use and development regulations shall not be authorized until and unless the location and extent thereof shall have been submitted to and approved by the commission. In case of denial, the commission shall communicate its reasons to the city council, which shall have the power to overrule such denial with a vote three-fourths of the council members present, or four votes, whichever is greater, and upon such overruling the city council or the appropriate office, department or agency shall have authority to proceed.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, 5/18/2010)

Sec. 9.05 Board of adjustment

The city council shall create and establish a board of adjustment. The city council shall, by ordinance, provide standards and procedures for such board to hear and determine appeals of administrative decisions, petition for variances in the case of peculiar and unusual circumstances which would prevent the reasonable use of land and such other matters as may be required by the city council or by law. Appointment and removal of members of the board of adjustment shall be in accordance with the provisions of article VIII, section 8.01(2) of this Charter and state law.

Sec. 9.06 Sale of liquor prohibited in residential districts

The sale of liquor, as defined in the Texas Alcoholic Beverage Code, as amended, shall be prohibited by a person or entity holding a package store permit, as described in the Texas Alcoholic Beverage Code, as amended, in any zoning district which allows, in whole or in part, residential development in the city. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, ex. B, 5/18/2010)

ARTICLE X. UTILITY AND PUBLIC SERVICE FRANCHISES AND LICENSES

Sec. 10.01 Authority

The city shall have the power to buy, own, and sell, construct, lease, maintain, operate and regulate public services and utilities and to manufacture, distribute and sell the output of such services and utility operations. The city shall not supply any utilities service outside the city limits, except by a written contract. The city shall have such regulatory and other power as may now or hereafter be granted under the Constitution and laws of the State of Texas.

Sec. 10.02 Ordinance granting franchise

No franchise shall be granted for a term of more than 20 years from the date of the grant, renewal or extension of any franchise.

Sec. 10.03 Transfer of franchise

No public service or utility franchise is transferable, except with the approval of the city council. However, the franchisee may pledge franchise assets as security for a valid debt or mortgage.

Sec. 10.04 Franchise value not to be allowed

Franchises granted by the city are of no value in fixing rates and charges for public services or utilities with the city and in determining just compensation to be paid by the city for property which the city may acquire by condemnation or otherwise.

Sec. 10.05 Right of regulation

In granting, amending, renewing and extending public service and utility franchises, the city reserves unto itself all the usual and customary rights, including, but not limited to, the following rights:

- (1) To repeal the franchise by ordinance for failure to begin construction or operation within the time prescribed, or for failure to comply with terms of the franchise;
- (2) To require all extensions of service within the city limits to become part of the aggregate property of the service and operate subject to all obligations and reserved rights contained in the Charter. Any such extension is considered part of the original grant and terminable at the same time and under the same conditions as the original grant;
- (3) To require expansion and extension of facilities and services and to require maintenance of existing facilities to provide adequate service at the highest level of efficiency;
- (4) To require reasonable standards of service and quality of product and prevent racial discrimination;
- (5) To impose reasonable regulations and restrictions to insure the safety and welfare of the public;
- (6) To examine and audit accounts and records and to require annual reports on local operations of the public service or utility;
- (7) To require the franchisee to restore, at franchisee's expense, all public or private property to a condition as good as or better than before disturbed by the franchisee for construction, repair or removal;
- (8) To require the franchisee to furnish to the city, from time to time within a reasonable time following request of the city, at franchisee's expense a general map outlining current location, character, size, length, depth, height and terminal of all facilities over and under property within the city and its extraterritorial jurisdiction; and
- (9) To require compensation, rent or franchise fees to be paid to the city as may be permitted by the laws of the State of Texas.

Sec. 10.06 Regulation of rates

- (1) The city council has the power to fix and regulate the rates and charges of all utilities and public services, consistent with state statutes.
- (2) Upon receiving written request from a utility or public service requesting a change in rates, or upon recommendation from the city that rates for services provided by or owned by the city be changed, the council shall call a public hearing for consideration of the change.

(3) The city, public service or utility must show the necessity for the change by any evidence required by the city council, including but not limited to, the following:

- (A) Cost of its investment for service to the city;
- (B) Amount and character of expenses and revenues connected with rendering the service;
- (C) Copies of any reports or returns filed with any state or federal regulatory agency within the last three years; or
- (D) Demonstration that the return on investment, if any, is within state and federal limitations.

(4) If not satisfied with the sufficiency of evidence, the city council may hire rate consultants, auditors and attorneys to investigate and, if necessary, litigate requests for rate changes, the expense of which shall be reimbursed to the city by the franchisee.

Sec. 10.07 Licenses

The city shall have the power to license, levy and collect fees in order to license any lawful business, occupation or calling subject to control pursuant to the police powers of the State of Texas and/or for any other purpose not contrary to the Constitution and laws of the State of Texas.

ARTICLE XI. GENERAL PROVISIONS

Sec. 11.01 Public records

All records of the city shall be open to inspection in accordance with state law.

Sec. 11.02 Official newspaper

The city council shall declare annually an official newspaper of general circulation in the city. All ordinance notices and other matters required by this Charter, city ordinance, or the Constitution and laws of the State of Texas shall be published in the official newspaper.

Sec. 11.03 Oaths

All elected and appointed officers of the city shall take and sign an oath of office based on those prescribed for state elective and appointive offices, respectively, in the Constitution of the State of Texas.

Sec. 11.04 Severability

If any section or part of this Charter is held invalid by a court of competent jurisdiction, such holding shall not invalidate or impair the validity, force or effect of any other section or part of this Charter.

Sec. 11.05 Wording interpretation

The gender of the wording throughout this Charter shall always be interpreted to mean either sex. All singular words shall include the plural and all plural words shall include the singular. All references to the state laws of the State of Texas, however expressed in this Charter, shall mean "as presently enacted or as may be amended or superceded". The use of the word "city" in this Charter shall mean the City of Frisco, Texas, and the use of the word "Charter" shall mean this Home Rule Charter.

Sec. 11.06 Amendment of Charter

Amendments to this Charter may be framed and submitted to the qualified voters of the city in the manner provided by the Constitution and the laws of the State of Texas as presently enacted or hereafter amended; including upon petition by five percent of the qualified voters or 20,000 qualified voters, whichever is less; but, no more often than once every two years, as provided by the laws of the State of Texas.

Sec. 11.07 Charter review commission

(1) The city council shall appoint a Charter review commission at least once every six years. The Charter review commission shall consist of ten citizens of the city who shall:

(A) Inquire into the operation of the city government under the Charter and determine whether any provisions require revision. To this end, public hearings may be held. The commission may compel the attendance of any officer or employee of the city and require submission of any records;

(B) Propose any recommendations it deems desirable to insure compliance with the Charter of the city government; and

(C) Report its findings and present its recommendations to the city council.

(2) The city council shall receive and have published in the official newspaper of the city a comprehensive summary of the report presented by the commission, shall consider any recommendations made, and may order any amendments suggested to be submitted to the voters of the city in the manner provided by state law as now written or hereafter amended.

(3) The term of office of the commission shall be for not more than six months, at the end of which time its report shall be presented to the city council and all records of proceedings of the commission shall be filed with the city secretary and become a public record.

Sec. 11.08 City depository

The provisions of the laws of the State of Texas, governing the selection and designation of the city depository are hereby adopted as the law governing the selection and designation of a depository of and for the city.

ARTICLE XII. LEGAL PROVISIONS

Sec. 12.01 Assignment, execution and garnishment

(1) Property, real and personal, belonging to the city shall not be liable to be sold or appropriated under a writ of execution or cost bill. Funds belonging to the city in the hands of any person, firm or corporation shall not be liable to garnishment, attachment or sequestration; nor shall the city be liable to garnishment, attachment or sequestration; nor shall the city be liable to garnishment on account of any debt it may owe or funds or property it may have on hand owing to any person. Neither the city nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatsoever.

(2) The city shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors, except as provided by the laws of this state or the United States of America.

Sec. 12.02 Security and bond

It shall not be necessary in any action, suit or proceeding in which the city is a party for any bond, undertaking or security to be demanded or executed by or on behalf of the city. All such actions shall be conducted in the same manner as if such bond, undertaking or security had been given as required by law.

Sec. 12.03 Notice of claim

The city shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, within 90 days after the time at which it is claimed such damages were inflicted upon such person or property, file with the city a written statement, under oath, stating the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which same happened and the condition causing same, with a detailed statement of each item of damages and the amount thereof, giving a list of any witnesses known by affiant to have seen the accident.

Sec. 12.04 Power to settle claims

The city council shall have the power to compromise and settle any and all claims and lawsuits of every kind and character, in favor of, or against, the city, including suits by the city to recover delinquent taxes.

Sec. 12.05 Service of process against the city

All legal process against the city shall be served upon either the city secretary or the city manager.

Sec. 12.06 Judicial notice

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Sec. 12.07 Pending matters

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the city department, office or agency appropriate under this Charter.

Sec. 12.08 Property not exempt from special assessments

No property of any kind, by whomsoever owned or held or by whatsoever institution, agency, political subdivision or organization, owned or held, whether in trust or by nonprofit organization, or corporation, or by foundation, or otherwise, (except property of the city), shall be exempt in any way from any of the special taxes, charges, levies and assessments, authorized or permitted by this Charter, for local improvements, for the public welfare.

Sec. 12.09 City council may require bonds

In addition to any provisions contained herein, the city council may require any city official, department director, or city employee, before entering upon his duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the city council. The premium of such bond shall be paid by the city.

Sec. 12.10 Disaster clause

In case of disaster when a legal quorum of the city council cannot otherwise be assembled due to multiple

deaths or injuries, the surviving persons of the city council, or highest surviving city official, if no elected official remains, must within 24 hours of such disaster, request the highest surviving officers of the local Chamber of Commerce and the board of trustees of the local school district, and the County Judge of Collin County to appoint a commission to act during the emergency and call a city election within 15 days of such disaster, or as provided in the Texas Election Code, for election of a required quorum, if for good reasons it known a quorum of the present city council will never again meet.

ARTICLE XIII. TRANSITIONAL PROVISIONS

Sec. 13.01 Effective date

This Charter or any amendments hereto shall take effect immediately following adoption by the voters, as prescribed by state law.

Sec. 13.02 Continuation of elective offices

Upon adoption of this Charter, the present persons filling elective offices on the city council will continue to fill those offices for the terms for which they were elected. Persons who, on the date this Charter is adopted are filling appointive positions with the city which are retained under this Charter, may continue to fill these positions for the term for which they were appointed, unless removed by the city council or by other means provided in this Charter.

Sec. 13.03 Continuation of operation

All city ordinances, bonds resolutions, rules and regulations in force on the effective date of this Charter shall remain in force until altered, amended, or repealed by the city council, and all rights of the city under existing franchises and contracts are preserved in full force and effect.

Sec. 13.04 Reserved

Editor's note—Ordinance 10-05-28, sec. 3(ex. B) adopted May 18, 2010, following the election of May 8, 2010, repealed sec. 13.04 which pertained to officers and employees and derived from the original Charter.

ARTICLE XIV. NEPOTISM, PROHIBITIONS AND PENALTIES

Sec. 14.01 Nepotism

No person related within the second degree by affinity or within the third degree by consanguinity to the mayor or any councilmember or the city manager shall be employed by or contracted with for the city. This shall not apply to the following:

- (1) Any person employed by the city prior to the person related in the above degree filing to run for elective office or being nominated for an appointment, or
- (2) Any person who is a seasonal employee or intern of the city.

Sec. 14.02 Equality of rights

Equality of rights under state and federal law shall not be denied or abridged with respect to appointment to or removal from any position.

Sec. 14.03 Wrongful influence

No person who seeks appointment or promotion with respect to any city position shall, directly or indirectly give, render or pay any money, service, or other valuable thing to any person for, or in connection with, his test, appointment or promotion.

Sec. 14.04 Wrongful interference

No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment or attempt to commit any fraud preventing the impartial execution of the personnel provisions, rules and regulations of this Charter.

Sec. 14.05 Employee's political activities

No person who holds any compensated non-elective city position shall make, solicit or receive any contribution for any candidate for council member or mayor, or take part in the management, affairs or political campaign of such candidate. Such person may exercise his or her rights as a citizen to express his or her opinion and cast his or her vote. (Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec. 2, e B, adopted 5/18/2010)

Sec. 14.06 Penalties

Any person who willfully engages in and is found in violation of any of the activities prohibited in sections 14.02, 14.03, 14.04 or 14.05 of this article shall be ineligible for appointment or election to a position in the city for a period of five years from that time. If the person is an officer or employee of the city at the time of the violation, he shall immediately forfeit his office or position, if found in violation.

Sec. 14.07 Indebtedness to city

No person who, after notice of any delinquency, shall be in arrears in the payment of taxes or any other liabilities due the city, shall be qualified to hold an appointive or compensative position of the city.

Sec. 14.08 Conflict of interest

No officer, whether elected or appointed, or any employee, whether full-time or part-time, of the city shall have a substantial financial interest, direct or indirect, in any contract, other than employment contracts, with the city; or have a substantial financial interest, direct or indirect in the sale to the city of any land, material, supplies or services, except on behalf of the city as an officer or employee, except as allowed by state law. Any willful violation of this section shall constitute malfeasance in office and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or the corporation contracting with the governing body of the city shall render the contract involved voidable by the city manager or the city council shall appoint by the affirmative vote of a majority of the full membership of the city council.

Sec. 14.09 No officer to accept gifts, etc.

(1) A city official shall not solicit, accept or agree to accept any gift or benefit except as authorized subsection (3) below.

(2) For purposes of this section, the words/phrases "city official", "gift", "matter", "official" and "official action" shall have the same definition as set forth in Ordinance No. 09-04-25, as it exists on the effective date of this Charter amendment.

(3) It is not a violation of subsection (a) for a city official to accept the following:

- (A) A gift to a city official relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fair and commensurate with the occasion and the relationship between the donor and recipient;
- (B) Payment by third parties for travel related expenses of a city official previously authorized by the city council;
- (C) A public award or reward for meritorious service or professional achievement, provided that the award or reward is reasonable in light of the occasion;
- (D) A loan from a lending institution made in its regular course of business on the same terms generally available to the public;
- (E) A scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants;
- (F) Admission to an event in which the city official is participating in connection with official duties;
- (G) Lawful campaign contributions;
- (H) attending social functions, ground breakings, or civic events pertinent to the public relations and operations of the city, including the receipt of a gift commensurate with the occasion;
- (I) A city official giving or receiving gifts with his family and relatives;
- (J) A city official giving or receiving gifts at church functions;
- (K) A city official giving or receiving gifts at city parties;
- (L) A city official giving or receiving gifts at functions where only city officials and their employees are invited or in attendance;
- (M) Giving or receiving gifts or receiving a bonus from the city official's place of employment;
- (N) Admission or ticket(s) (including parking) to a city official to an event held at any venue owned in whole or in part by the city;
- (O) Reasonable expenses paid by non-profit organizations, the Frisco Community Development Corporation or Frisco Economic Development Corporation for attendance of a city official at a fund raising event or other meeting;
- (P) Reasonable expenses paid by other governments or governmental entities for attendance of a city official at a convention, fact finding mission or trip or other meeting;
- (Q) A city official giving or receiving a gift whose value does not exceed \$50.00;
- (R) A city official giving or receiving a gift in excess of \$50.00 from a friend, client or customer if it cannot be reasonably inferred that the gift was intended to influence the city official. If the gift is in excess of \$50.00 and received within one year of the date the donor, either

personally or on behalf of another person or entity, seeks official action from the city in which the city official is in a position to take official action, the city official shall acknowledge the receipt of the gift to the city; immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and remove himself from the dais or area in which the other city officials who are voting on the measure are seated; and

(S) A city official giving or receiving a gift from a donor other than a friend, client or customer whose value is greater than \$50.00 and less than \$250.01 provided the city official complies with the recusal and disclosure process described below:

(i) The gift shall be disclosed by the city official who received it to the city secretary within 30 days of receipt of the gift. The disclosure of the gift to the city secretary shall be reported to the public as part of the city secretary's report to the city council at the next available city council meeting. The information to be disclosed to the city secretary is as follows:

- (1) The date the gift was received and who received it;
- (2) A description of the gift;
- (3) The fair market value of the gift at the time of its receipt; and
- (4) The name, address, phone number and employer of the person or entity who provided the gift.

(ii) From the date that the city official knows or should have known that the donor who has made a gift the subject of this subsection was presenting a matter, either personally or on behalf of another person or entity, in which the city official may take official action and such request is within one year from the date of the gift described above, the city official shall:

- (1) Immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
- (2) Remove himself from the dais or area in which the other city officials who are voting on the measure are seated.

[3] [reserved.]

(4) Application of Chapter 176, Local Government Code, as amended. Notwithstanding any gift to a city official authorized in Section 3(b), a city official shall comply with the requirements of Chapter 176, Local Government Code, as amended.

(5) Gifts to closely related persons. A city official shall take reasonable steps to persuade a parent, spouse, child, stepchild, or other relative within the second degree of consanguinity or affinity not to solicit, accept, or agree to accept any gift or benefit which would violate subsection (a) if the official solicited, accepted, or agreed to accept it.

(6) Any city official officer or employee of the city who shall violate the provisions of this section shall be guilty of a misdemeanor and may be punished by any fine that may be prescribed by ordinance for this offense, and may forthwith be removed from

office or employment.

(Ordinance 10-02-13 adopted 3/16/2010; Ordinance 10-05-28, sec: 2, ex. B, 5/18/2010)

PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS

FORMAL COMPLAINT OF KER-SEVA § BEFORE THE
LTD. AGAINST THE CITY OF FRISCO § PUBLIC UTILITY COMMISSION
RFI, TEXAS § OF TEXAS

**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc.'s file these Responses to City of FRISCO ("Frisco RFI") First Set of Requests for Information ("Frisco RFI RFI") and requests for Admission ("Frisco RFI RFA"), which was filed with the Public Utility Commission of Texas and served on Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. on July 26, 2016. These responses are timely filed. Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. agree and stipulate that all parties may treat these responses as if the answers were filed under oath. Complainants and Frisco agreed to amend some of the requests which are reflected herein.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
T: (512) 236 2233
F: (512) 391-2112

ATTORNEYS FOR COMPLAINANTS
KER-SEVA, LTD., ADC WEST RIDGE, L.P.,

Exhibit 3

AND CENTER FOR HOUSING
RESOURCES, INC.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served as shown below on
this 15th day of August 2016:

Art Rodriguez
Russell & Rodriguez, L.L.P.
1633 Williams Dr., Bldg. 2, Suite 200
Georgetown, Texas 78268
arodriguez@txadminlaw.com
Attorney for City of Frisco RFI

Via email and U.S. First Class Mail

Sam Chang
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
sam.change@puc.texas.gov
Attorney for Public Utility Commission of Texas

Via email and U.S. First Class Mail

State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- Fax

Via U.S. First Class Mail


Mallory Beck

PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS

FORMAL COMPLAINT OF KER-SEVA LTD. AGAINST THE CITY OF FRISCO RFI, TEXAS	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Frisco RFA 1: Admit that the City of Frisco, Texas, is a municipality.

RESPONSE:

Admit.

Prepared/Sponsored by: To be supplemented.

**SOAH DOCKET NO. 473-16-4619.WS
PUC DOCKET NO. 45870**

**COMPLAINT OF KER-SEVA LTD.
AGAINST THE CITY OF FRISCO**

§
§

**BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

AFFIDAVIT OF JOHN LETTELLEIR

STATE OF TEXAS

§

§

COUNTY OF COLLIN

§

BEFORE ME, the undersigned authority, personally appeared John Lettelleir, known to me to be the person who subscribed her name below, who, being by me first duly sworn did depose on her oath as follows:

1. I am over 18 years of age, have not been convicted of a crime, and I am of sound mind.
2. The City of Frisco, Texas ("City") employs me as the Director of Development Services. I am capable of making this Affidavit, and personally acquainted with the facts herein stated.
3. The City holds water certificate of convenience and necessity ("CCN") no. 11771 and sewer CCN no. 20591 from the Public Utility Commission.
4. Complainants, Ker Seva Ltd., ADC West Ridge, LP, and Center for Housing Resources, Inc., in this matter complain of water and sewer service to property located at 9331 Westridge Boulevard, Collin County, Texas ("Property").
5. The Property is located within the City's water and sewer CCNs and extraterritorial jurisdiction. The Property is not located within the City's corporate limits.
6. None of the Complainants are consumers of retail water or sewer utility service at the Property. There are no service accounts for retails water or sewer at the Property.
7. None of the Complainants have qualified to receive water or sewer service at the Property.
8. Further affiant sayeth not.

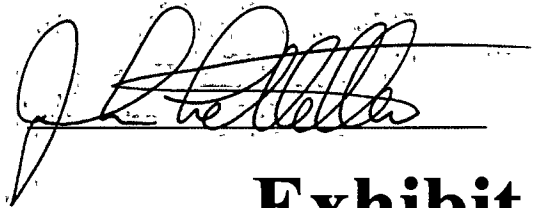
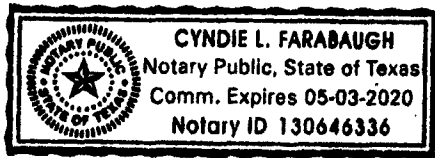


Exhibit 4

Subscribed to and sworn to before me, the undersigned authority on this the 26 day of October, 2016.



Cyndie Farabaugh
Notary Public in and for
the State of Texas

SECTION 1: GENERAL SUBDIVISION AUTHORITY OF THE CITY

SECTION 1.01 AUTHORITY, PURPOSE & APPLICABILITY

(a) **Authority.** The regulations of this Subdivision Ordinance are authorized under the authority of Texas Local Government Code, Chapter 212 (including Subchapter B) and the City's charter. The provisions of this Subdivision Ordinance expressly extend to all areas inside the City limits and throughout the City's extraterritorial jurisdiction (ETJ), as either may be adjusted in the future, and as provided in the City's interlocal agreements with Collin and Denton Counties in accordance with Chapter 242 of the Texas Local Government Code.

(b) **Purpose.**

- (1) The development and subdivision of land, as they affect a community's quality of life, are activities for which regulation is a valid function of municipal government. The regulations contained within this Subdivision Ordinance are intended to protect the interests of the public and of private parties by granting certain rights and privileges. The requirements in this Ordinance are also intended to establish a fair and rational procedure for developing and subdividing land such that land will be developed in accordance with existing physical, social, economic and environmental conditions.
- (2) The provisions of this Ordinance are intended to implement standards and requirements provided for herein, and shall be requirements for the platting and developing of subdivisions within the City and its ETJ.
- (3) The provisions of this Ordinance are intended to implement the following objectives:
 - a. Promote the development and the utilization of land in a manner that provides an attractive and high-quality community environment in accordance with the Comprehensive Plan and the Zoning Ordinance of the City;
 - b. Guide and assist property owners and applicants in the correct procedures to be followed, and to inform them of the required standards;
 - c. Protect the public interest by having standards for, but not limited to, the location, design, class and type of streets, sidewalks, trails, alleys, utilities and essential public services;
 - d. Assist orderly, efficient and coordinated development within the City's limits and its ETJ;
 - e. Integrate the development of various tracts of land into the community, and coordinate the future development of adjoining tracts;
 - h. Promote the most efficient and beneficial provision of public facilities and services for each tract being subdivided;
 - i. Provide for compatible relationships between land uses and buildings;

- j. Provide for efficient traffic circulation throughout the municipality;
- k. Provide for pedestrian circulation that is appropriate for the various uses of land and buildings;
- l. Minimize pollution of the air, streams, bodies of water, and aquifers; promote the adequacy of storm drainage facilities; minimize erosion; safeguard both surface and groundwater supplies, as well as natural resources and endangered or threatened plant and animal life; and encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and the value of the land;
- m. Preserve the natural beauty and topography of public and private properties by encouraging where possible that natural features and land forms are incorporated into developments as amenities;
- n. Establish adequate and accurate records of land subdivision;
- o. Provide for public or private facilities that are available and will have sufficient capacity to serve proposed and future developments and citizens within the City and its ETJ;
- p. Provide for adequate light, air and privacy; secure safety from fire, flood and other dangers; and prevent overcrowding of the land and undue congestion of population;
- q. Encourage the development of residential areas that incorporate a range of housing and lifestyle choices.

(c) Applicability.

- (1) The provisions of this Subdivision Ordinance apply to any non-exempt (see Section 4.01(c)) division of land, combination of separate land parcels, and/or development of land within the corporate boundaries of the City and within its ETJ.
- (2) No permit shall be issued for any building or structure on a property until a plat has been approved and filed for record unless specifically exempted herein (see Sections 4.01(c) and 5.02).

(d) Subdivision Rules. The provisions of this Subdivision Ordinance, the standards governing constructed facilities applicable to plats in other portions of the Municipal Code of Ordinances, and the technical standards contained in the *Engineering Design Standards and Construction Details*, constitute the subdivision rules of the City, which apply to applications for plat approval inside City limits and within the City's ETJ.

(e) Compliance with City Plans and Ordinances Required. Compliance with all City ordinances pertaining to the subdivision and development of land, and the City's Comprehensive Plan (where applicable), shall be required prior to approval of any application pursuant to this Ordinance. All such ordinances and the Comprehensive Plan shall be construed to mean those documents as they exist or may be amended. It is the property owner's responsibility to be familiar with, and to comply with, City ordinances, the Comprehensive Plan, and the provisions of this Ordinance. Applicable

City ordinances and plans with which all applications must comply include, but are not limited to, the following:

1. Comprehensive Plan (including all associated maps and plans);
2. Zoning Ordinance;
3. Building Codes;
4. Drainage System Design Requirements;
5. International Fire Code;
6. Other Applicable portions of the Municipal Code of Ordinances;
7. Impact Fee Ordinance;
8. Park Dedication Ordinance;
9. Engineering Documents including:
 - *Engineering Design Standards and Construction Details,*
 - *Thoroughfare and Circulation Design Requirements,* and
 - Other development-related engineering standards.
10. Federal, State and Local Environmental Regulations.

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