



Control Number: 45870



Item Number: 8

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

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§  
§

PUBLIC UTILITY

PUBLIC UTILITY COMMISSION  
FILING CLERK

COMMISSION OF TEXAS

**CITY OF FRISCO'S REPLY TO RESPONSE OF KER - SEVA LTD.**

NOW COMES, City of Frisco ("Frisco") and files this Reply to the Response filed by Ker-Seva Ltd. ("Complainant"). This Reply does not waive any matters raised in Frisco's original response, which are incorporated herein for all purposes, and is filed to respond to the latest allegations made by Complainant.

In its response, Complainant has now raised the specific rules it contends were not followed and it makes other allegations. Despite the latest response by Complainant, it fails to show that the Commission has jurisdiction over this matter and/or that Frisco has failed to follow the law, and Frisco offers the following reasons in support thereof:

1. Complainant is not a "qualified service applicant" which is a requirement of the Texas Administrative Code sec. 24.85 (a). A qualified service applicant must show that it has taken all required steps of the retail public utility to receive service, including compliance with the service policies and regulations for extensions. Complainant is not a qualified service applicant because it has not constructed the necessary utilities and obtained and dedicated to Frisco the easements to extend service to its property as required by Frisco's subdivision regulations. Frisco is not required to establish a construction plan or costs because its regulations require the developer to pay for and construct the same. Those regulations were identified in Frisco's original response, as well as in the response to the informal complaint that was made earlier on this issue.

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Further, the requirement for adequate and continuous service under Texas Water Code section 13.250(d) recognizes that service may be discontinued, reduced or impaired for other similar reasons in the usual course of business. Frisco's requirements for extension of utility lines are part of its lawful regulations for which the complainant and all other developers must follow. Complainant has failed to meet the requirements.

2. In June 2015, Complainant filed and received Frisco approval of a preliminary plat that included off-site improvements for utilities to serve Lot 2, which lot is the subject of this Complaint. See Exhibit A, attached hereto and incorporated herein for all purposes. Exhibit A includes the preliminary utility plans for the locations and types of utility connections, including any proposed easements necessary to provide service to Lot 2. A preliminary plat is a step in the develop process. Amongst other matters, it is the developer's representation on how and where the utility services will be provided for compliance with applicable policies. Upon construction of the utilities at the cost and expense of the Complainant, the next step in the Frisco development process is for the Complainant to file a final plat that dedicates to Frisco and shows the final location of the constructed utilities and all necessary easements, which Complainant has not done.

3. In November 2015, Complainant asserts it filed a request for commercial water service. However, at no time has the Complainant completed the utilities as shown on the preliminary plat, nor has it received a final approved plat. The application for water service is the last step in a process for utility service, not the first step. Other than a preliminary plat, Complainant has not followed the regulations for service as required by Frisco. Complainant is required to construct and dedicate to Frisco the improvements shown on the preliminary plat, which it has failed to do. Frisco's regulations requires all development, both in and outside of Frisco, to obtain the necessary infrastructure to serve the development.

4. Complainant's response or implied proposal is to not follow the preliminary plat but, instead, to connect to the utility system that is located on Lot 1 adjacent to its property (Lot 2). Not only is such a proposal in contravention to its representations on the approved preliminary plat, it would also violate Frisco's Certificate of Convenience and Necessity "CCN" for Lot 2.

5. In 2006, the owners of Lot 1 and Frisco entered into an annexation agreement. **Exhibit B**, attached hereto and incorporated herein for all purposes. Per the terms of that agreement, the parties agreed that Lot 1 *was allowed to connect to the City of McKinney for water and sanitary sewer service until such time that the Frisco lines were available to serve the property*. See Paragraph 4. In 2006, the City of McKinney was the service provider for the area encompassing Lot 1. Presently, there are no service lines from Frisco to serve Lot 1.

6. In March 2007, the City of McKinney and Frisco entered into an agreement to transfer certain areas of their respective CCNs that included Lot 1 and Lot 2. **Exhibit C**, attached hereto and incorporated herein for all purposes. Before that date, Lot 1 was within the City of McKinney's service area. *The cities agreed to allow customers within the area covered by the City of McKinney's transfer area to **continue** temporary water and sanitary service.*<sup>1</sup> The transfer agreement was later approved by the Commission. See **Exhibit D**, attached hereto and incorporated herein for all purposes.

7. Lot 2 has never had utility service from any provider. Since 2007, it has been in Frisco's CCN, so it must obtain utility service from Frisco. It may not circumvent service by connecting to Lot 1, which receives service from the City of McKinney through an agreement established in 2006.

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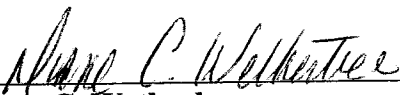
<sup>1</sup> See paragraph (10) of that Exhibit.

8. Complainant further contends that the Consumer Protection Division investigation indicated that the City "may be delaying service" based upon unidentified information. But Complainant has failed to identify any facts in support of this. Frisco cannot respond to the baseless allegation. Further, Frisco has taken no actions to delay the Complainant. Since the approval of the preliminary plat, the next step in the development process was and continues to be the responsibility of the Complainant.

**PRAYER**

Frisco respectfully requests that the Complaint in this matter be dismissed.

Respectfully Submitted,

By:   
**Diane C. Wetherbee**  
State Bar No.: 03653500  
**Richard Abernathy**  
State Bar No.: 00809500  
**Abernathy Roeder Boyd & Hullett P.C.**  
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P.O. Box 1210  
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Facsimile: (214) 544-4040  
Email: [dwetherbee@abernathy-law.com](mailto:dwetherbee@abernathy-law.com)

**CERTIFICATE OF SERVICE**


This is to certify that a true and correct copy of the foregoing was served on all parties on this 1<sup>st</sup> day of June, 2016 via facsimile.

Mallory Beck  
Leonard Dougal  
Jackson Walker, LLP  
100 Congress, Ste. 1100  
Austin, Texas 78701  
Telephone: (512) 236-2233  
Facsimile: (512) 391-2112

**ATTORNEYS FOR COMPLAINANT, KER-SEVA, LTD.**

Sam Chang  
Attorney – Legal Division  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, Texas 78711-3326  
Telephone: (512) 936-7261  
Facsimile: (512) 936-7268

**ATTORNEYS FOR PUBLIC UTILITY COMMISSION OF TEXAS**

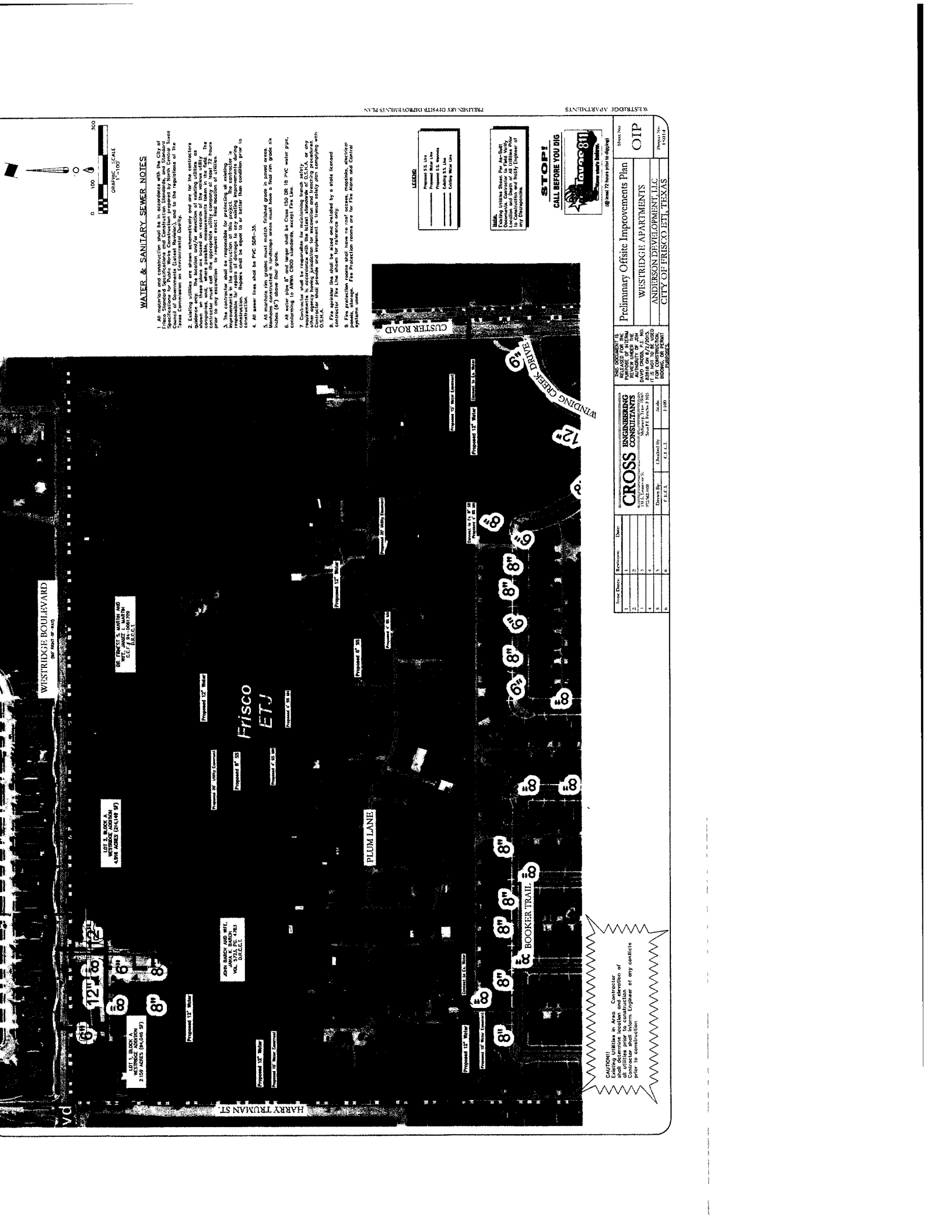
  
Diane Callander Wetherbee

## **EXHIBIT “A”**









**WATER & SANITARY SEWER NOTES**

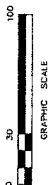
1. All materials and construction shall be in accordance with the City of Frisco, Standard Specifications and Construction Standards, and Standard Specifications for Sanitary Sewerage Systems, and the specifications of the Texas Commission on Environmental Quality.
2. Existing utilities are shown schematically and are for the contractor's information only. The contractor shall verify the location and depth of all utilities shown on these plans are based on records of the utility company at least 72 hours prior to any excavation. To represent exact: field location of utilities.
3. The contractor shall be responsible for obtaining the necessary permits for construction of the sewer system. The contractor shall be responsible for obtaining the necessary permits for construction of the sewer system.
4. All sewer lines shall be PVC 300-36.
5. All manholes and structures must match finished grade in located areas. All manholes and structures must have a final rim grade of 6" above final grade.
6. All water pipe 8" and larger shall be Class 150 DR 18 PVC water pipe, conforming to ASTM C900 standards, except Fire Line.
7. Contractor shall be responsible for obtaining the necessary permits for construction of the sewer system. The contractor shall be responsible for obtaining the necessary permits for construction of the sewer system.
8. The sewer line shall be sized and installed by a state licensed contractor. The sewer line shall be sized and installed by a state licensed contractor.
9. The sewer line shall be sized and installed by a state licensed contractor. The sewer line shall be sized and installed by a state licensed contractor.

**LEGEND**

- Proposed 12" Water
- Proposed 8" Water
- Proposed 6" Water
- Proposed 4" Water
- Proposed 3" Water
- Proposed 2" Water
- Proposed 1" Water
- Proposed 0.5" Water
- Proposed 0.25" Water
- Proposed 0.125" Water
- Proposed 0.0625" Water
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# WATER & SANITARY SEWER NOIES

1. All water and sewer lines shall be in accordance with the City of Frisco Engineering Department Specifications for Public Works Construction prepared by North Central Texas Council of Governments and approved by the City of Frisco Engineering Department. The City of Frisco Engineering Department shall be responsible for the design and construction of the water and sewer lines.
2. Existing utilities are shown schematically and are for the contractor's guidance only. The location and/or elevation of existing utilities shall be verified by the contractor prior to construction. The contractor shall be responsible for protecting all existing utilities and for the safety of the public. The contractor shall be responsible for the safety of the public and for the safety of the construction workers.
3. The contractor shall be responsible for protecting all existing utilities and for the safety of the public. The contractor shall be responsible for the safety of the public and for the safety of the construction workers.
4. All sewer lines shall be PVC 36" x 36".
5. All water lines shall be PVC 12" x 12".
6. All water lines shall be Class 150 12" x 12" PVC water pipe, conforming to ANSI C900 standards, except the 12" x 12" water pipe, which shall be Class 200 12" x 12" PVC water pipe.
7. Contractor shall be responsible for maintaining trench safety. The contractor shall be responsible for the safety of the public and for the safety of the construction workers.
8. Fire protection shall be provided in accordance with the City of Frisco Engineering Department Specifications for Public Works Construction prepared by North Central Texas Council of Governments and approved by the City of Frisco Engineering Department.



WESTRIDGE BOULEVARD  
(W. SIDE OF LOT)

FUTURE WESTRIDGE BOULEVARD

FUTURE WESTRIDGE BOULEVARD

LOT 1, BLOCK A  
2159 ACRES (21.448 SF)

LOT 2, BLOCK A  
4,815 ACRES (24,418 SF)

LOT 3, BLOCK A  
4,815 ACRES (24,418 SF)

LOT 4, BLOCK A  
4,815 ACRES (24,418 SF)

LOT 5, BLOCK A  
4,815 ACRES (24,418 SF)

LOT 6, BLOCK A  
4,815 ACRES (24,418 SF)

LOT 7, BLOCK A  
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4,815 ACRES (24,418 SF)

LOT 35, BLOCK A  
4,815 ACRES (24,418 SF)

LEGEND

- Proposed 12" Water Line
- Proposed 12" Sewer Line
- Proposed 12" Gas Line
- Proposed 12" Electric Line
- Proposed 12" Cable TV Line
- Proposed 12" Fiber Optic Line
- Proposed 12" Storm Water Line
- Proposed 12" Fire Water Line
- Proposed 12" Fire Gas Line
- Proposed 12" Fire Electric Line
- Proposed 12" Fire Cable TV Line
- Proposed 12" Fire Fiber Optic Line

WATER METER CHART

No.	Proposed Meter	Size
1	Domestic Meter	2"
2	Domestic Meter	2"
3	Domestic Meter	2"
4	Domestic Meter	2"

SANITARY SEWER SERVICE CHART

No.	Proposed S.S.	Size
1	PVC LATERAL	6"
2	PVC LATERAL	6"
3	PVC LATERAL	6"
4	PVC LATERAL	6"

STOP! CALL BEFORE YOU DIG

DR. ERNEST S. MARTIN AND  
WILLIAM J. MARTIN  
CIVIL ENGINEERS  
P.C.

WESTRIDGE APARTMENTS  
ANDERSON DEVELOPMENT, LLC  
CITY OF FRISCO, TEXAS

ENGINEERING CONSULTANTS  
CROSS ENGINEERING CONSULTANTS  
11111 WEST 10TH AVENUE  
SUITE 100  
DENVER, CO 80231  
TEL: 303.733.1111  
FAX: 303.733.1112  
WWW.CROSS-ENGINEERING.COM

DESIGNER: JOHN E. ANDERSON, P.E.  
CHECKED: JAMES E. ANDERSON, P.E.  
DATE: 01/15/11

CAUTION: Existing Utilities in Area. Contractor shall be responsible for the location and elevation of all utilities prior to construction. Contractor shall inform Engineer of any conflicts prior to construction.

LOT 1, BLOCK A  
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## **EXHIBIT “B”**

CITY OF FRISCO, TEXAS

RESOLUTION NO. 06-08-190R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS TO EXECUTE AN ANNEXATION AGREEMENT BY AND BETWEEN THE CITY OF FRISCO AND BALJEET K. JAWANDA AND DALJIT S. HUNDLE FOR WESTRIDGE MONTESSORI SCHOOL.

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


SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an Annexation Agreement by and between the City of Frisco and Baljeet K. Jawanda and Daljit S. Hundle for Westridge Montessori School, a copy of which is attached hereto and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the 15th day August, 2006.

  
E. Michael Simpson, Mayor

ATTEST TO:

  
Nan Parker  
City Secretary

AFTER RECORDING,  
RETURN TO:  
~~Scott Ingalls~~ City Secretary  
City of Frisco, Texas  
6101 Frisco Square Blvd - 5th Floor  
Frisco, Texas 75034

STATE OF TEXAS

§

ANNEXATION AGREEMENT

§

COUNTY OF COLLIN

§

This Annexation Agreement (the "Agreement") is made and entered into as of this 15<sup>th</sup> day of October, 2006, (the "Effective Date") by and between the City of Frisco, Texas, (the "City") and Baljeet K. Jawanda and Daljit S. Hundle (collectively the "Owner") on the terms and conditions hereinafter set forth.

**WHEREAS**, Owner owns approximately 8.579 acres, more or less, being Lots 1-3, Block A, Westridge Addition in the extraterritorial jurisdiction of the City, Collin County, Texas which is more particularly described in **Exhibit "A"** which is attached hereto and fully incorporated herein for all purposes (hereinafter defined as the "Property"); and

**WHEREAS**, City and the Owner desire that the property be developed as set forth herein;  
and

**WHEREAS**, Owner desires to construct a Montessori School on Lot 1 of the Property; and

**WHEREAS**, pursuant to Section 212.172 of the Texas Local Government Code, the City is authorized to make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality for purposes set forth in that section; and

**WHEREAS**, the parties desire to agree on the matters set forth in this Agreement pursuant to Section 212.172 of the Texas Local Government Code and for the purposes set forth in that section.

**NOW, THEREFORE**, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. Land Subject to Agreement. The land that is subject to this Agreement is approximately 8.579 acres of land, more or less, located in the Westridge Addition, Collin County, Texas and more particularly described in **Exhibit "A"**, attached hereto and incorporated herein for all purposes (the "Property"). Owner represents that there are no other owners of the Property.

2. Use and Development. The use and development of the Property before and after annexation shall conform to the uses, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to masonry requirements, parking standards and landscaping standards) set forth by the ordinances of City (including but not limited to the Comprehensive Zoning Ordinance and the Subdivision Regulations) as they exist or may be amended. Prior to annexation, the Property shall be developed as if it has been designated with Retail (R) zoning.

3. Annexation and Zoning. City will not annex the Property, unless requested to do so by Owner, during the term of this Agreement provided that Owner complies with the terms and conditions of this Agreement. The parties agree that City, in its sole discretion, shall determine whether Owner is in compliance with the Agreement and whether it will approve annexation of the Property.

4. Water and Sewer Service. Following annexation of the Property by City, City agrees to provide sanitary sewer service for the Property in the same manner and in accordance to the same regulations as any retail development in the City and in accordance with the annexation service plan. City agrees provide water service for the Property in the same manner and in accordance to the same schedule as any retail development in the City if it can lawfully do so. Owner may temporarily connect to the City of McKinney's water and sanitary sewer system to serve the Property until such time as City lines are available to the Property. Upon being requested to do so by City, Owner agrees to execute convey an easement to City on that portion of the Property reasonably needed by City, in City's sole discretion, to be used as a utility easement for water and sewer service, free from any liens or other encumbrances, for the construction and/or extension of water or sewer facilities. Said easement shall be materially in the same form as Exhibit "B", attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the easement.

5. Right-of-Way Dedication for Westridge Blvd. Upon being requested to do so by City, Owner agrees to dedicate to City that portion of the Property reasonably needed by City, in City's sole discretion, to be used as right-of-way for Westridge Blvd, free from any liens or other encumbrances, for the construction and/or extension of Westridge Blvd ("ROW Property"). Said right-of-way dedication shall be by warranty deed materially in the same form as Exhibit "C", attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the right-of-way dedication.

6. Impact Fees. The Property shall be subject to impact fees adopted by Ordinance No. 05-07-53, as it exists or may be amended.

7. Other Development Fees. City ordinances covering property taxes, park dedication and/or payment in lieu of dedication of land, utility rates, permit fees and the like are not affected by this Agreement and shall be applied to the Property in the same manner as any other Property located within the City's corporate boundaries. Further this Agreement does not waive or limit any of the obligations of Owners to City under any other ordinance, whether now existing or in the future

arising.

8. Term. This Agreement is an agreement authorized by Section 212.172 of the Texas Local Government Code. The term of this Agreement shall be five (5) years from the effective date. The term of this Agreement shall not be affected by the fact that some or all of the Property is annexed into the corporate limits of the City.

9. Default. If any party breaches any of the terms of this Agreement, then that party shall be in default (the "Defaulting Party") of this Agreement (an "Event of Default"). If an Event of Default occurs, the nondefaulting party shall give the Defaulting Party written notice of such Event of Default and if the Defaulting Party has not cured such Event of Default within thirty (30) days of said written notice, this Agreement is breached. Each party is entitled to all remedies available at law or in equity.

10. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

City: City of Frisco  
6101 Frisco Square Blvd.  
Frisco, TX 75034  
Attn: City Manager

With copy to: Julie Fort  
Abernathy, Roeder, Boyd & Joplin, P.C.  
1700 Redbud Blvd.  
Suite 300  
P.O. Box 1210  
McKinney, TX 75070-1210

Owner: Baljeet K. Jawanda and Daljit S. Hundle  
4588 Penbrook Court  
Plano, Texas 75024

11. Miscellaneous.

(a) Assignment. This Agreement is assignable. If all or any portion of the Property is transferred, sold or conveyed, the Owner shall give notice immediately to City of the name, address, phone number and contact person of the person or entity acquiring an interest in the Property. This Agreement shall run with the land and shall be binding on and inure to the benefit of the Owners' successors and assigns.



(b) Compliance with Ordinances. Except as provided for in this Agreement, the parties agree that the Owners shall be subject to all ordinances of City. All construction will be in accordance with applicable ordinances and regulations of Frisco, whether now existing or in the future arising.

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

(d) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

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

(f) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

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

(h) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

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

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

(k) Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing their respective obligations under this Agreement.

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

(m) Incorporation of Recitals. The Recitals above are incorporated herein as if repeated verbatim.

(n) No Chapter 245 Permit. This Agreement, and any requirement contained in this Agreement, shall not constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**IN WITNESS WHEREOF,** the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.



**CITY OF FRISCO, TEXAS**

By: George Purefoy  
George Purefoy, City Manager

**ATTEST:**

Estela Barrera for Nan Parker  
City Secretary

**APPROVED AS TO FORM:**

Julie Y. Fort  
Julie Y. Fort  
Abernathy, Roeder, Boyd & Joplin, P.C.

**OWNERS:**

Bajwanda  
Bajwanda K. Jawanda, Individually  
Daljit S. Hundle  
Daljit S. Hundle, Individually

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, City Manager of the City of Frisco, Texas, being the person whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the City of Frisco, Texas, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of October, 2006.

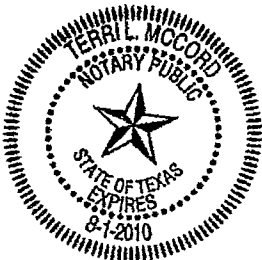


Terril L. McCord  
Notary Public in and for the State of Texas  
My Commission Expires:  
Aug. 1. 2010

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared **Baljeet K. Jawanda**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of October, 2006.

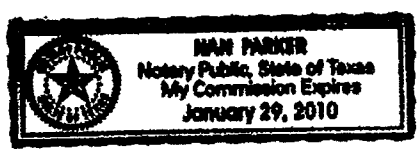


Terril L. McCord  
Notary Public in and for the State of Texas  
My Commission Expires:  
8/1/10

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared **Daljit S. Hundle**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledged to me that she has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13<sup>th</sup> day of October, 2006.



Nan Parker  
Notary Public in and for the State of Texas  
My Commission Expires:  
1-29-2010

**Exhibit "A"**  
**Legal Description and Diagram**

**EXHIBIT A**

**LEGAL DESCRIPTION**

**WHEREAS** Baljeet K. Jawanda and Daljits S. Hundle are the owners of a tract or parcel of land situated in the City of Frisco, Collin County, Texas, being part of the A.S. Young Survey, Abstract Number 1037, being all of that tract of land described in deed to said Baljeet K. Jawanda and Daljits S. Hundle recorded in Volume 5912, Page 6577 of the Deed Records of Collin County, Texas and being more particularly described as follows:

**BEGINNING** at a ½ inch iron rod with cap stamped "LONE STAR" set for corner in the southerly right-of-way line of Westridge Boulevard (a 60 foot wide right-of-way) according to the plat thereof recorded in Volume N, page 547 of the plat Records of Collin County, Texas, said iron rod being the northeasterly corner of said Jawanda/Hundle tract and the northwesterly corner of that tract described in deed to Dr. Ernest S. Martin and Janice L. Martin recorded under County Clerk's File Number 94-0061709, Deed Records of Collin County, Texas, from which a ½ inch iron rod with red plastic cap found bears North 22°41'33";

**THENCE** South 00°02'34" East along Martin tracts a distance of 336.13 feet to a "LONE STAR" set for corner in the northerly line of Barch and Jana Barch in Volume 572 of the Deed Records of Collin County, Texas, being the southwesterly corner of said Jawanda/Hundle tract, from which a plastic cap found bears North 13°51'37" East, 0.98 feet

*Please insert  
into agreement  
left out  
by accident*

and  
ONE  
ohn  
ollin  
lerly  
cap

**THENCE** South 89°57'25" West along Barch tracts a distance of 1282.98 feet to a corner in the monumented easterly right-of-way (unrecorded), being the southwesterly corner of said Jawanda/Hundle tract and the southwesterly corner of said Jawanda/Hundle tract

*Recently  
approved*

and  
for  
37.5  
tract

**THENCE** North 00°02'07" East along the westerly line of said Jawanda/Hundle tract a distance of 50.00 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the most westerly northwesterly corner of said Jawanda/Hundle tract and the southwesterly corner of the remainder of that tract of land described in deed to William A. Mains and Paula L. Mains recorded in Volume 1024, Page 753 of the Deed Records of Collin County, Texas;

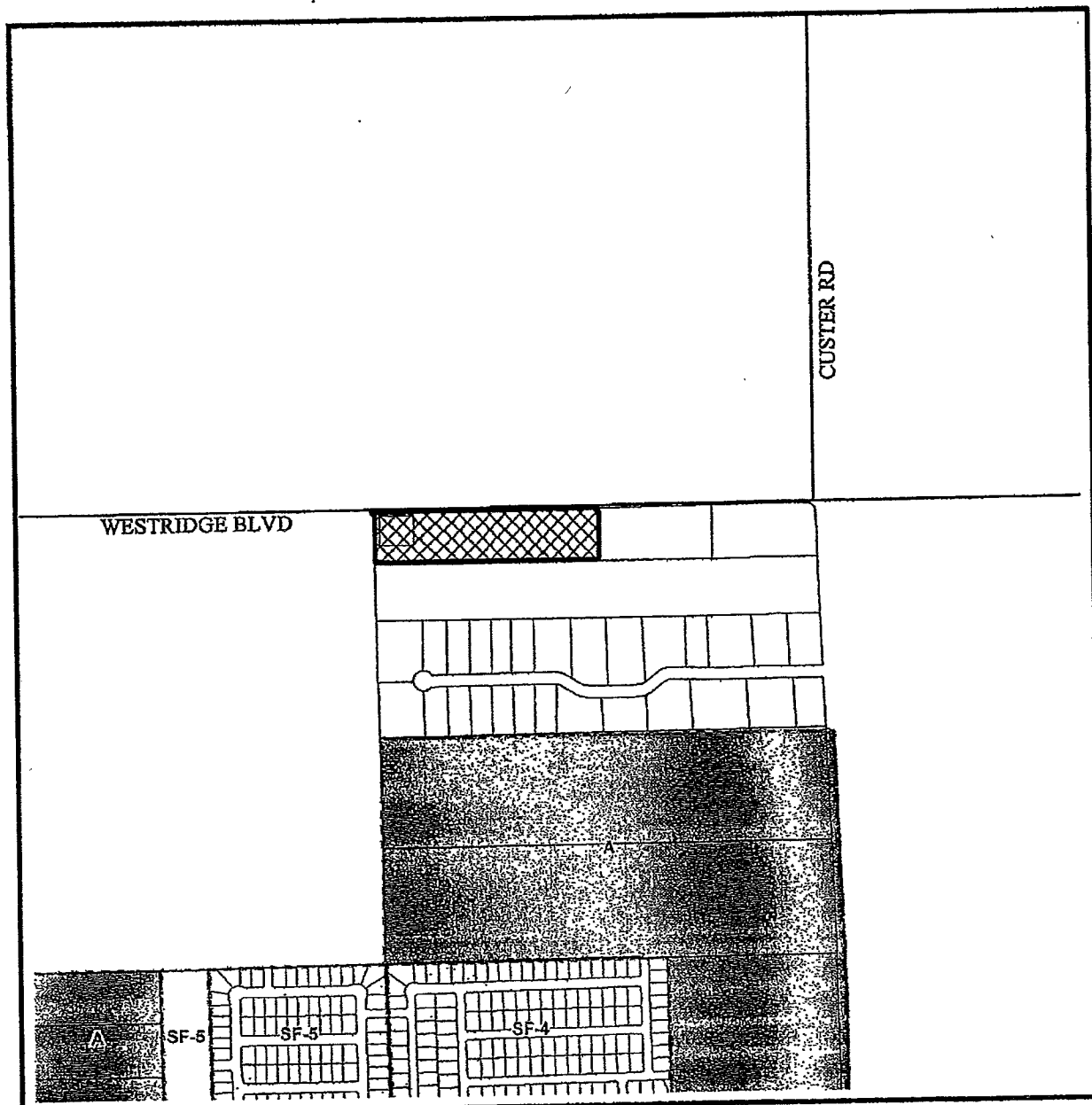
**THENCE** North 89°57'25" East along a northerly line of said Jawanda/Hundle tract and the southerly line of said Mains remainder tract, parallel to and 50.00 feet northerly of said Jawanda/Hundle and Barch tracts common line a distance of 190.61 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the southeasterly corner of said Mains remainder tract and an ell corner of said Jawanda/Hundle tract;

**THENCE** North 02°55'18" East along the easterly line of said Mains remainder tract and a westerly line of said Jawanda/Hundle tract a distance of 284.86 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner in said southerly right-of-way line of Westridge Boulevard, being the northeasterly corner of said Mains remainder tract and the most northerly northwesterly corner of said Jawanda/Hundle tract;

**THENCE** North 89°52'06" East along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 277.53 feet to a ½ inch iron rod with yellow plastic cap found at an angle point;

**THENCE** North 89°52'06" East continuing along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 800.04 feet to the **POINT OF BEGINNING** and containing 373,682 square feet or 8.579 acres of land.

# WESTRIDGE ANNEXATION AGREEMENT





**Exhibit "B"**  
**Utility Easement Form**  
**with Temporary Construction Easement**

**AFTER RECORDING,  
RETURN TO:**  
Scott Ingalls  
City of Frisco, Texas  
6101 Frisco Square Blvd  
Frisco, Texas 75034

**UTILITY EASEMENT**

**STATE OF TEXAS       §  
                              §  
COUNTY OF DENTON   §**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT,** \_\_\_\_\_, a Texas \_\_\_\_\_, hereinafter called "Grantor," for and in consideration of the sum of **ONE DOLLAR (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF FRISCO, TEXAS**, a Texas Municipal Corporation, hereinafter called "Grantee," the receipt and sufficiency of which are hereby acknowledged, does **GRANT, DEDICATE, and CONVEY** to the Grantee: (i) the exclusive easement and right to construct, reconstruct, repair, alter, operate, rebuild, replace, relocate, remove and perpetually maintain water and sewer facilities ( the "Facilities"), together with all incidental improvements, and all necessary laterals in, upon and across certain real property located in the City of Frisco, Collin County, Texas, as more particularly described in **Exhibit "A"**, which is attached hereto and made a part hereof by reference as if fully set forth herein (the "Easement Property"), and (ii) a temporary construction easement, fifty feet (50') on each side of the Easement Property, for the initial construction of the Facilities, as more particularly described in **Exhibit "A"** (the "Temporary Construction Easement").

The Temporary Construction Easement shall expire the completion of the initial construction of the Facilities and acceptance of the Facilities by the City of Frisco.

Grantee will at all times after doing any work in connection with the construction, alteration or repair of the Facilities, restore the Easement Property to as near as reasonably practical the condition in which it was found before such work was undertaken.

This instrument shall not be considered as a deed to the Easement Property or any part thereof, and the right is hereby reserved to Grantor, its successors and assigns, to use such property to landscape and build and construct fences, driveways, parking lots and other associated improvements over or across said easement; provided, however, that in no event shall a wall, structure or building of any type other than those previously described or any piling, pier or isolated footing of any wall, structure or building be placed directly on said Easement Property.

This Easement shall constitute a covenant running with the land and shall benefit and burden the applicable real properties described herein, and shall inure to the benefit of, and be binding upon, Grantee and Grantor, and their respective successors and assigns.

**TO HAVE AND TO HOLD** the same perpetually unto the Grantee, its successors and assigns, together with the right and privilege at all times (i) to enter the Easement Property and/or Temporary Construction Easement, or any part thereof, for the purpose of constructing, reconstructing, repairing, altering, operating, rebuilding, replacing, relocating, removing and/or maintaining the Facilities and all incidental improvements, and for making connections therewith; and (ii) to enter Grantor's adjacent property solely for the purpose of ingress and egress to the Easement Property and/or Temporary Construction Easement. Grantee, its successors and assigns,

shall have the right to construct, reconstruct, repair, alter, operate, rebuild, replace, relocate, remove and perpetually maintain additional Facilities at all times in the future within the Easement Property.

Grantor does hereby bind itself and its successors and assigns to **WARRANT AND FOREVER DEFEND**, all and the singular, the successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor does hereby represent and warrant that there are no liens affecting the Easement Property.

This instrument may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

**EXECUTED** on the dates appearing in the acknowledgements below, however, to be effective on this \_\_\_\_ day of \_\_\_\_\_, 2006.

**OWNERS:**

\_\_\_\_\_  
Baljeet K. Jawanda, individually

\_\_\_\_\_  
Daljit S. Hundle, Individually

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared **Baljeet K. Jawanda**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2006.

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

BEFORE ME, the undersigned authority, on this day personally appeared **Daljit S. Hundle**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledged to me that she has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2006.

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

**JOINDER OF OTHER EASEMENT HOLDERS**

The undersigned, being the holder of an easement on the Easement Property evidenced by:

1. Easement and Right of Way dated \_\_\_\_\_, recorded in Volume \_\_\_,  
Page \_\_\_, \_\_\_\_\_ County Land Records, in favor of  
\_\_\_\_\_; and
2. Easement for Underground Facilities dated \_\_\_\_\_, recorded in  
Volume \_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County Land Records, in favor of  
\_\_\_\_\_.

hereby agrees and consents to the encroachment, if any, of the foregoing ROW Deed.

\_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ and duly authorized representative of \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of \_\_\_\_\_, and acknowledged to me that such company executed the foregoing instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ and duly authorized representative of \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of \_\_\_\_\_, and acknowledged to me that such partnership executed the foregoing instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

**Exhibit "C"**  
**Warranty Deed Form**



"Notice of Confidentiality rights: If you are a Natural Person, you may remove or strike any of the following information from this instrument before it is filed for record in the Public Records: Your Social Security Number or your Drivers' License Number."

AFTER RECORDING, RETURN TO:

City Manager  
City of Frisco, Texas  
6101 Frisco Square Blvd  
Frisco, Texas 75034

**RIGHT OF WAY WARRANTY DEED**

*(with Temporary Construction and Grading Easement)*

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

That \_\_\_\_\_, a Texas \_\_\_\_\_ ("Grantor"), whether one or more, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash in hand to Grantor paid by the **CITY OF FRISCO, TEXAS**, a Texas municipal corporation ("Grantee") the receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, has this day GRANTED and by these presents does GRANT, GIVE, and CONVEY unto the said Grantee all the following described real estate, to-wit:

Being \_\_\_\_\_ acres of land, more or less, in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_, in the City of Frisco, \_\_\_\_\_ County, Texas, more particularly depicted and described in Exhibits "A" and "B", respectively, attached hereto and incorporated herein for all purposes (the "Property").

*Grantor hereby further grants to Grantee a temporary construction and grading easement of \_\_\_\_\_ feet (\_\_\_\_') running adjacent and parallel along the \_\_\_\_\_ side of the Property, as more particularly depicted in Exhibit "A" attached hereto, with rights of ingress and egress for the construction of roadway and related improvements, such temporary construction and grading easement terminating upon completion and acceptance of said roadway improvements by Grantee.*

The warranty contained herein is subject to: (i) any and all mineral reservations, restrictions, covenants, conditions and easements, if any, relating to the above-described property, but only to the extent that they are still in effect and shown of record in \_\_\_\_\_ County, Texas; and (ii) all zoning law regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect and relate to the Property.

**TO HAVE AND TO HOLD** the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's successors, and assigns forever.

And Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof.

This instrument may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

**EXECUTED** on the dates appearing in the acknowledgements below, however, to be effective on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**OWNERS:**

\_\_\_\_\_  
Baljeet K. Jawanda, individually

\_\_\_\_\_  
Daljit S. Hundle, Individually

**LIENHOLDER'S CONSENT TO PARTIAL RELEASE OF LIEN:**

The undersigned, being the holder(s) of the lien against a portion of the Property and Temporary Construction Easement evidenced by:

Deed of Trust dated \_\_\_\_\_, recorded under Clerk's File No. \_\_\_\_\_, from \_\_\_\_\_, to \_\_\_\_\_, Trustee, securing payment of one certain promissory note of even date therewith in the principal amount of \$\_\_\_\_\_, payable to the order of \_\_\_\_\_; said Note being additionally secured by a Vendor's Lien of even date retained in Deed, executed by \_\_\_\_\_ to \_\_\_\_\_, recorded under \_\_\_\_\_, and subject to all of the terms and conditions and stipulations contained therein, including but not limited to, any future indebtedness also secured by this lien,

hereby consents to the execution of the foregoing Right of Way Warranty Deed and agrees that in the event of a foreclosure of the Property and/or Temporary Construction Easement or any portion thereof and/or the underlying property or any portion thereof (or deed in lieu thereof), the conveyance made by this deed will remain in full force and effect and shall not be extinguished by such foreclosure (or deed in lieu thereof).

\_\_\_\_\_ Bank, a \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, the \_\_\_\_\_ and duly authorized representative of \_\_\_\_\_ Bank, a \_\_\_\_\_, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT “C”**

CITY OF FRISCO, TEXAS

RESOLUTION NO. 07-03-50R

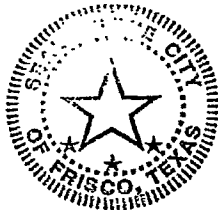
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS, TO EXECUTE AN AGREEMENT TO TRANSFER RETAIL WATER UTILITY SERVICE AREA BETWEEN THE CITY OF FRISCO AND THE CITY OF MCKINNEY REGARDING PROPOSED WATER FACILITIES LOCATED WEST OF CUSTER ROAD AND NORTH OF ELDORADO PARKWAY.

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

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an Agreement to Transfer Retail Water Utility Service Area between the City of Frisco and the City of McKinney regarding proposed water facilities located west of Custer Road and north of Eldorado Parkway, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the day 06th of March, 2007.



E. Michael Simpson  
E. MICHAEL SIMPSON, Mayor

ATTEST TO:

E. Barrera for Dan Parker  
City Secretary

Resolution - Agreement to Transfer Retail Water Utility Service Area  
March 6, 2007

\\Frisco2\Engineering\COUNCIL\_ITEMS\Council\_Agendas\2007\2007-03-06\City of McKinney - Water CCN Agreement\4 - Resolution.doc

**TRANSFER RETAIL WATER UTILITY SERVICE AREA  
AGREEMENT**

RECEIVED  
MAR 22 2007  
City Secretary's Office

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

THIS AGREEMENT to Transfer Retail Water Utility Service Area is made and entered into on this the 9th day of March, 2007 (the "Effective Date"), by and between the City of Frisco, Texas (hereinafter "Frisco"), and the City of McKinney, Texas (hereinafter "McKinney"). Frisco and McKinney may be collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, Frisco is a Texas municipal corporation which holds Certificate of Convenience and Necessity ("CCN") No. 11772 and owns water facilities, transmission lines and distribution lines in Collin and Denton Counties in and around McKinney, and provides retail water utility service to customers within its certificated service area;

WHEREAS, McKinney is a Texas municipal corporation which holds CCN No. 10194 and owns water facilities, transmission lines and distribution lines in Collin County in and around Frisco, and provides retail water utility service to customers within its certificated service area;

WHEREAS, McKinney desires to decertify certain CCN area within Frisco's city limits and extraterritorial jurisdiction ("ETJ"), and Frisco desires to certificate said CCN service area as more precisely defined later in this Agreement;

WHEREAS, Frisco desires to decertify certain CCN area within McKinney's city limits and ETJ, including an area subject to a municipal boundary dispute between Frisco and McKinney located generally along the southernmost border of the Custer West development, and McKinney desires to certificate said CCN service area as more precisely defined later in this Agreement;

WHEREAS, Frisco and McKinney desire to continue discussions outside of this Agreement regarding the municipal boundary dispute;

WHEREAS, Frisco and McKinney desire to amend their respective CCNs to be generally coterminous with their current city limits and ETJs.

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, Frisco and McKinney agree as follows:

---

**TERMS OF AGREEMENT**

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Frisco and McKinney agree as follows:

- (1) Frisco Transfer Area. The water utility service area to be transferred to Frisco is specifically identified as the cross-hatched area on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A attached hereto and incorporated herein for all purposes, and designated herein as the "Frisco Transfer Area."
- (2) Transfer to Frisco. Frisco and McKinney agree that, after the Transfer Effective Date, Frisco shall have the sole right to provide retail water service within the Frisco Transfer Area, and McKinney will have no further obligation or right to provide water service to any existing or future customers in the Frisco Transfer Area, except as may be agreed by the Parties in writing.
- (3) Current Customers in Frisco Transfer Area. All current retail water customers of McKinney and any customers added between the date of this Agreement and the Transfer Effective Date whose place of use of water is located within the Frisco Transfer Area will, after the Transfer Effective Date, become customers of Frisco.
- (4) Facilities and Waterlines in Frisco Transfer Area. All facilities, waterlines, easements, or equipment belonging to McKinney used to provide service in the Frisco Transfer Area shall be transferred to Frisco by this Agreement. To the extent McKinney has facilities, waterlines, easements, or equipment belonging to McKinney in the Frisco Transfer Area that are not used to serve the area, but are used to provide service to McKinney's service territory, those facilities, waterlines, easements, or equipment shall not be transferred.
- (5) Temporary Service. Should it be necessary for Frisco to provide retail water service to the Frisco Transfer Area following execution of the Agreement by the Parties, but prior to approval of the CCN transfer by the TCEQ, the Parties agree that Frisco shall be entitled to provide temporary water service to the Frisco Transfer Area. All revenue, fees, charges, or other monies collected by Frisco during the period of temporary service shall inure to Frisco's benefit.
- (6) McKinney Transfer Area. The water utility service area to be transferred to McKinney is specifically identified as the cross-hatched area on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A, attached hereto and incorporated herein for all purposes, and designated herein as the "McKinney Transfer Area."

Transfer of Retail Water Utility Service Area  
City of Frisco and City of McKinney

- (7) Transfer to McKinney. Frisco and McKinney agree that, after the Transfer Effective Date, McKinney shall have the sole right to provide retail water service within the McKinney Transfer Area, and Frisco will have no further obligation or right to provide water service to any existing or future customers in the McKinney Transfer Area, except as may be agreed by the Parties in writing.
- (8) Current Customers in McKinney Transfer Area. All current retail water customers of Frisco and any customers added between the date of this Agreement and the Transfer Effective Date whose place of use of water is located within the McKinney Transfer Area will, after the Transfer Effective Date, become customers of McKinney.
- (9) Facilities and Waterlines in the McKinney Transfer Area. All facilities, waterlines, easements, or equipment belonging to Frisco used to provide service in the McKinney Transfer Area shall be transferred to McKinney by this Agreement. To the extent Frisco has facilities, waterlines, easements, or equipment belonging to Frisco in the McKinney Transfer Area that are not used to serve the area, but are used to provide service to Frisco's service territory, those facilities, waterlines, easements, or equipment shall not be transferred.
- (10) Service by McKinney to the Transfer Area. McKinney currently provides retail water service to the McKinney Transfer Area, and the Parties agree that McKinney shall be entitled to continue to provide temporary water service to the McKinney Transfer Area. All revenue, fees, charges, or other monies collected by McKinney during the period of temporary service shall inure to McKinney's benefit.
- (11) Transfer and Amendment of CCNs. Frisco and McKinney shall each file appropriate applications with the Texas Commission on Environmental Quality ("TCEQ") to formally transfer the Transfer Areas from McKinney's CCN to Frisco's CCN and from Frisco's CCN to McKinney's CCN. Frisco and McKinney shall endeavor to obtain TCEQ approval of the CCN transfers contemplated herein in an expeditious manner and will support and cooperate with each other and the TCEQ to accomplish this goal. The Parties shall file the necessary application to transfer the CCNs by December 31, 2007. The Parties shall make all reasonable efforts to file the applications simultaneously with the TCEQ. Each Party shall bear their own costs associated with preparing and filing the CCN applications and the pursuit of regulatory approvals.



Transfer of Retail Water Utility Service Area  
City of Frisco and City of McKinney

- (12) Transfer of Customers. Frisco and McKinney shall cooperate in providing notice of the transfer to customers located within the Transfer Area, if any. McKinney shall be entitled to receive all water utility service revenues and fees for water utility services rendered by McKinney prior to the execution date of the Agreement, unless otherwise contracted. Frisco shall be entitled to receive all water utility service revenues and fees for water utility services rendered by Frisco prior to the execution date of the Agreement, unless otherwise contracted. The Parties shall transfer all customers within 90 days after the issuance date of the TCEQ order approving the transfer.
- (13) Effective Dates. This Agreement is effective and enforceable as between Frisco and McKinney following execution by both parties. The transfer of the Transfer Areas to the other Party is effective and enforceable upon notice of the intended date of transfer of the retail water service (the "Transfer Effective Date").
- (14) Filing of Agreement. After Execution of the Agreement by the Parties, a copy of the Agreement shall be filed with the TCEQ.
- (15) Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

MISCELLANEOUS

- (16) Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- (17) Performance. The obligations and undertakings of each of the parties to this Agreement shall be performed in Collin County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Collin County, Texas.
- (18) Entire Agreement. This Agreement contains the entire agreement of Frisco and McKinney with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties to be charged.
- (19) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.

Transfer of Retail Water Utility Service Area  
City of Frisco and City of McKinney

- (20) Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.
- (21) Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- (22) Attorney's Fees. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled as provided by Texas Local Government Code § 271.159.
- (23) Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

IN WITNESS WHEREOF, EXECUTED by the City of Frisco and the City of McKinney under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below.

CITY OF FRISCO



BY: George P. Pugh  
George P. Pugh Mayor City Manager  
Date: 3/9/07

ATTEST:

E. Barrera for Dan Parker  
City Secretary

Transfer of Retail Water Utility Service Area  
City of Frisco and City of McKinney

**CITY OF MCKINNEY**

BY: Laurence W. Robinson  
Lawrence W. Robinson,  
by Regle Neff, Assistant City  
Manager and authorized signatory

Date: \_\_\_\_\_

ATTEST:

Sandy Hall 3/20/07  
City Secretary



EXHIBIT "B"

## EXHIBIT “D”

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a  
Texas Commission on Environmental Quality document,  
which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on

*LaDonna Castanuela* DEC 17 2008

LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality

**AN ORDER** approving an agreement designating service areas between the City of Frisco and City of McKinney pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-0063-UCR.

A request for a Commission order approving a contract designating service areas between the City of Frisco (Frisco) Certificate of Convenience and Necessity (CCN) No. 11772, and the City of McKinney (McKinney), CCN No. 10194, in Collin County, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On August 22, 2007, the City of Frisco and the City of McKinney filed with the TCEQ an agreement (the "Agreement") regarding their respective water service areas. The Agreement addresses the transfer of the City of Frisco's authority to provide water service to approximately 696.5 acres and provides that the City of McKinney will be the sole provider of retail water service in that service area. The Agreement also addresses the transfer of the City of McKinney's authority to provide water service to approximately 1,888.5 acres and provides that the City of Frisco will be the sole provider of retail water service in that service area. The agreement transfers retail water customers within each area transferred from the city currently providing service to the city to which the area is transferred. The agreement also transfers all facilities, waterlines, easements or equipment used to provide service in the transferred areas transferred from the city currently providing service to the city to which the area is transferred. The Agreement is attached to this Order.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE §13.248.

x

The Commission held a hearing on the request at the December 10, 2008 agenda and found the request had merit.

The City of Frisco is capable of rendering continuous and adequate water service to every customer in the area transferred to it by the Agreement. The decertification of the City of McKinney's authority to provide service in that portion of the affected area, which results in City of Frisco being the sole service provider remaining in that area, is necessary for the service, accommodation, convenience, or safety of the public.

The City of McKinney is capable of rendering continuous and adequate water service to every customer in the area transferred to it by the Agreement. The decertification of the City of Frisco's authority to provide service in that portion of the affected area, which results in City of McKinney being the sole service provider remaining in that area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The Agreement addressing the transfer of portions of service area between the City of Frisco's CCN No. 11772 and the City of McKinney's CCN No. 10194 and designating by whom retail water service shall be provided in those areas, is hereby approved.

CCN No. 11772 in Collin County, held by the City of Frisco, is hereby amended in accordance with the Agreement.

CCN No. 10194 in Collin County, held by the City of McKinney, is hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Collin County, Texas. The certificate amendment requested in this application is necessary for the service, accommodation, convenience, and safety of the public.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **DEC 15 2008**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Buddy Garcia

Buddy Garcia, Chairman



RECEIVED  
MAR 22 2007  
City Secretary's Office

TRANSFER RETAIL WATER UTILITY SERVICE AREA  
AGREEMENT

STATE OF TEXAS

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COUNTY OF COLLIN

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THIS AGREEMENT to Transfer Retail Water Utility Service Area is made and entered into on this the 24 day of March 2007 (the "Effective Date"), by and between the City of Frisco, Texas (hereinafter "Frisco"), and the City of McKinney, Texas (hereinafter "McKinney"). Frisco and McKinney may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Frisco is a Texas municipal corporation which holds Certificate of Convenience and Necessity ("CCN") No. 11772 and owns water facilities, transmission lines and distribution lines in Collin and Denton Counties in and around McKinney, and provides retail water utility service to customers within its certificated service area;

WHEREAS, McKinney is a Texas municipal corporation which holds CCN No. 10194 and owns water facilities, transmission lines and distribution lines in Collin County in and around Frisco, and provides retail water utility service to customers within its certificated service area;

WHEREAS, McKinney desires to decertify certain CCN area within Frisco's city limits and extraterritorial jurisdiction ("ETJ"), and Frisco desires to certificate said CCN service area as more precisely defined later in this Agreement;

WHEREAS, Frisco desires to decertify certain CCN area within McKinney's city limits and ETJ, including an area subject to a municipal boundary dispute between Frisco and McKinney located generally along the southernmost border of the Custer West development, and McKinney desires to certificate said CCN service area as more precisely defined later in this Agreement;

WHEREAS, Frisco and McKinney desire to continue discussions outside of this Agreement regarding the municipal boundary dispute;

WHEREAS, Frisco and McKinney desire to amend their respective CCNs to be generally coterminous with their current city limits and ETJs.

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, Frisco and McKinney agree as follows:

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**TERMS OF AGREEMENT**

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Frisco and McKinney agree as follows:

- (1) Frisco Transfer Area. The water utility service area to be transferred to Frisco is specifically identified as the cross-hatched area on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A attached hereto and incorporated herein for all purposes, and designated herein as the "Frisco Transfer Area."
- (2) Transfer to Frisco. Frisco and McKinney agree that, after the Transfer Effective Date, Frisco shall have the sole right to provide retail water service within the Frisco Transfer Area, and McKinney will have no further obligation or right to provide water service to any existing or future customers in the Frisco Transfer Area, except as may be agreed by the Parties in writing.
- (3) Current Customers in Frisco Transfer Area. All current retail water customers of McKinney and any customers added between the date of this Agreement and the Transfer Effective Date whose place of use of water is located within the Frisco Transfer Area will, after the Transfer Effective Date, become customers of Frisco.
- (4) Facilities and Waterlines in Frisco Transfer Area. All facilities, waterlines, easements, or equipment belonging to McKinney used to provide service in the Frisco Transfer Area shall be transferred to Frisco by this Agreement. To the extent McKinney has facilities, waterlines, easements, or equipment belonging to McKinney in the Frisco Transfer Area that are not used to serve the area, but are used to provide service to McKinney's service territory, those facilities, waterlines, easements, or equipment shall not be transferred.
- (5) Temporary Service. Should it be necessary for Frisco to provide retail water service to the Frisco Transfer Area following execution of the Agreement by the Parties, but prior to approval of the CCN transfer by the TCEQ, the Parties agree that Frisco shall be entitled to provide temporary water service to the Frisco Transfer Area. All revenue, fees, charges, or other monies collected by Frisco during the period of temporary service shall inure to Frisco's benefit.
- (6) McKinney Transfer Area. The water utility service area to be transferred to McKinney is specifically identified as the cross-hatched area on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A, attached hereto and incorporated herein for all purposes, and designated herein as the "McKinney Transfer Area."