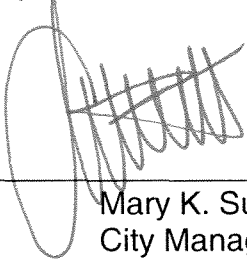


**MAY 1, 2013 CITY COUNCIL BRIEFING AGENDA
CERTIFICATION**

This certification is given pursuant to Chapter XI, Section 9 of the City Charter for the City Council Briefing Agenda dated May 1, 2013. We hereby certify, as to those contracts, agreements, or other obligations on this Agenda authorized by the City Council for which expenditures of money by the City are required, that all of the money required for those contracts, agreements, and other obligations is in the City treasury to the credit of the fund or funds from which the money is to be drawn, as required and permitted by the City Charter, and that the money is not appropriated for any other purpose.



Mary K. Suhm
City Manager

4.26.13

Date



Edward Scott
City Controller

4.26.13

Date

RECEIVED

2013 APR 26 PM 4: 54

CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA

May, 1, 2013

Date

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

General Information

The Dallas City Council regularly meets on Wednesdays beginning at 9:00 a.m. in the Council Chambers, 6th floor, City Hall, 1500 Marilla. Council agenda meetings are broadcast live on WRR-FM radio (101.1 FM) and on Time Warner City Cable Channel 16. Briefing meetings are held the first and third Wednesdays of each month. Council agenda (voting) meetings are held on the second and fourth Wednesdays. Anyone wishing to speak at a meeting should sign up with the City Secretary's Office by calling (214) 670-3738 by 5:00 p.m. of the last regular business day preceding the meeting. Citizens can find out the name of their representative and their voting district by calling the City Secretary's Office.

Sign interpreters are available upon request with a 48-hour advance notice by calling (214) 670-5208 V/TDD. The City of Dallas is committed to compliance with the Americans with Disabilities Act. **The Council agenda is available in alternative formats upon request.**

If you have any questions about this agenda or comments or complaints about city services, call 311.

Rules of Courtesy

City Council meetings bring together citizens of many varied interests and ideas. To insure fairness and orderly meetings, the Council has adopted rules of courtesy which apply to all members of the Council, administrative staff, news media, citizens and visitors. These procedures provide:

- That no one shall delay or interrupt the proceedings, or refuse to obey the orders of the presiding officer.
- All persons should refrain from private conversation, eating, drinking and smoking while in the Council Chamber.
- Posters or placards must remain outside the Council Chamber.
- No cellular phones or audible beepers allowed in Council Chamber while City Council is in session.

"Citizens and other visitors attending City Council meetings shall observe the same rules of propriety, decorum and good conduct applicable to members of the City Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the City Council or while attending the City Council meeting shall be removed from the room if the sergeant-at-arms is so directed by the presiding officer, and the person shall be barred from further audience before the City Council during that session of the City Council. If the presiding officer fails to act, any member of the City Council may move to require enforcement of the rules, and the affirmative vote of a majority of the City Council shall require the presiding officer to act." Section 3.3(c) of the City Council Rules of Procedure.

Informacion General

El Ayuntamiento de la Ciudad de Dallas se reúne regularmente los miércoles en la Cámara del Ayuntamiento en el sexto piso de la Alcaldía, 1500 Marilla, a las 9 de la mañana. Las reuniones informativas se llevan a cabo el primer y tercer miércoles del mes.

Estas audiencias se transmiten en vivo por la estación de radio WRR-FM 101.1 y por cablevisión en la estación *Time Warner City Cable* Canal 16. El Ayuntamiento Municipal se reúne el segundo y cuarto miércoles del mes para tratar asuntos presentados de manera oficial en la agenda para su aprobación. Toda persona que desee hablar durante la asamblea del Ayuntamiento, debe inscribirse llamando a la Secretaría Municipal al teléfono (214) 670-3738, antes de las 5:00 pm del último día hábil anterior a la reunión. Para enterarse del nombre de su representante en el Ayuntamiento Municipal y el distrito donde usted puede votar, favor de llamar a la Secretaría Municipal.

Intérpretes para personas con impedimentos auditivos están disponibles si lo solicita con 48 horas de anticipación llamando al (214) 670-5208 (aparato auditivo V/TDD). La Ciudad de Dallas se esfuerza por cumplir con el decreto que protege a las personas con impedimentos, *Americans with Disabilities Act*. **La agenda del Ayuntamiento está disponible en formatos alternos si lo solicita.**

Si tiene preguntas sobre esta agenda, o si desea hacer comentarios o presentar quejas con respecto a servicios de la Ciudad, llame al 311.

Reglas de Cortesía

Las asambleas del Ayuntamiento Municipal reúnen a ciudadanos de diversos intereses e ideologías. Para asegurar la imparcialidad y el orden durante las asambleas, el Ayuntamiento ha adoptado ciertas reglas de cortesía que aplican a todos los miembros del Ayuntamiento, al personal administrativo, personal de los medios de comunicación, a los ciudadanos, y a visitantes. Estos reglamentos establecen lo siguiente:

- Ninguna persona retrasará o interrumpirá los procedimientos, o se negará a obedecer las órdenes del oficial que preside la asamblea.
- Todas las personas deben abstenerse de entablar conversaciones, comer, beber y fumar dentro de la cámara del Ayuntamiento.
- Anuncios y pancartas deben permanecer fuera de la cámara del Ayuntamiento.
- No se permite usar teléfonos celulares o enlaces electrónicos (*paggers*) audibles en la cámara del Ayuntamiento durante audiencias del Ayuntamiento Municipal.

"Los ciudadanos y visitantes presentes durante las asambleas del Ayuntamiento Municipal deben obedecer las mismas reglas de comportamiento, decoro y buena conducta que se aplican a los miembros del Ayuntamiento Municipal. Cualquier persona que haga comentarios impertinentes, utilice vocabulario obsceno o difamatorio, o que al dirigirse al Ayuntamiento lo haga en forma escandalosa, o si causa disturbio durante la asamblea del Ayuntamiento Municipal, será expulsada de la cámara si el oficial que esté presidiendo la asamblea así lo ordena. Además, se le prohibirá continuar participando en la audiencia ante el Ayuntamiento Municipal. Si el oficial que preside la asamblea no toma acción, cualquier otro miembro del Ayuntamiento Municipal puede tomar medidas para hacer cumplir las reglas establecidas, y el voto afirmativo de la mayoría del Ayuntamiento Municipal precisará al oficial que esté presidiendo la sesión a tomar acción." Según la sección 3.3(c) de las reglas de procedimientos del Ayuntamiento.

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, MAY 1, 2013
CITY HALL
1500 MARILLA
DALLAS, TEXAS 75201
9:00 A.M.

9:00 am Invocation and Pledge of Allegiance 6ES

 Special Presentations

 Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the April 17, 2013 City Council Meeting
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

ITEMS FOR INDIVIDUAL CONSIDERATION

Business Development & Procurement Services

Note: If Agenda Item No. 3 is adopted, Council will not consider Agenda Item No. 4.
If Agenda Item No. 4 is adopted, Council will not consider Agenda Item No. 3.

3. Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates - Martin Eagle Oil Company, Inc. in the amount of \$5,452,448 and Mansfield Oil Company of Gainesville, Inc. in the amount of \$5,310,128, lowest responsible bidders of seven and Truman Arnold Companies dba TAC Energy in the amount of \$9,370,766, local preference bidder - Total not to exceed \$20,133,342 - Financing: Current Funds
4. Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates - Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels in the amount of \$8,152,658, Mansfield Oil Company of Gainesville, Inc. in the amount of \$6,465,399 and Martin Eagle Oil Company, Inc. in the amount of \$5,452,447, lowest responsible bidders of seven - Total not to exceed \$20,070,504 - Financing: Current Funds

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, MAY 1, 2013

- Briefings 6ES
- A. GrowSouth: Proposed Economic Development Project for Southern Dallas -
 Update on Trinity Forest Golf Course
- Lunch
- Closed Session 6ES
Attorney Briefings (Sec. 551.071 T.O.M.A.)
- Leanne Siri v. The City of Dallas, Civil Action No. 3:10-CV-0036-M
- Legal issues involving firefighter benefits.
- Open Microphone Speakers 6ES

The above schedule represents an estimate of the order for the indicated briefings and is subject to change at any time. Current agenda information may be obtained by calling (214) 670-3100 during working hours.

Note: An expression of preference or a preliminary vote may be taken by the Council on any of the briefing items.

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. Contemplated or pending litigation, or matters where legal advice is requested of the City Attorney. Section 551.071 of the Texas Open Meetings Act.
2. The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Section 551.072 of the Texas Open Meetings Act.
3. A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Section 551.073 of the Texas Open Meetings Act.
4. Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Section 551.074 of the Texas Open Meetings Act.
5. The deployment, or specific occasions for implementation of security personnel or devices. Section 551.076 of the Texas Open Meetings Act.
6. Deliberations regarding economic development negotiations. Section 551.087 of the Texas Open Meetings Act.

AGENDA ITEM # 3

KEY FOCUS AREA: Make Government More Efficient, Effective and Economical

AGENDA DATE: May 1, 2013

COUNCIL DISTRICT(S): All

DEPARTMENT: Business Development & Procurement Services
Equipment & Building Services

CMO: Jeanne Chipperfield, 670-7804
Forest E. Turner, 670-3390

MAPSCO: N/A

SUBJECT

Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates – Martin Eagle Oil Company, Inc. in the amount of \$5,452,448 and Mansfield Oil Company of Gainesville, Inc. in the amount of \$5,310,128, lowest responsible bidders of seven and Truman Arnold Companies dba TAC Energy in the amount of \$9,370,766, local preference bidder – Total not to exceed \$20,133,342 - Financing: Current Funds

BACKGROUND

This action does not encumber funds; the purpose of a master agreement is to establish firm pricing for goods, for a specific term, which are ordered on an as needed basis.

This master agreement will allow the City to purchase multiple types of unleaded and diesel fuels for the City’s fleet including unleaded, Texas low-emission diesel, bio-diesel, super unleaded 93 octane and red dye diesel. All fuel under this agreement is priced utilizing a +/- adder to Platts indices.

Platts indices showing current fuel prices are generated and published for specific areas of the country on a daily basis. The pricing service is internationally recognized as an accurate and comprehensive index for establishing fuel prices.

The City’s projected demand for the one-year agreement is approximately 6,100,000 gallons. Fuel is distributed from approximately 100 City sites including pump stations, fire stations, sanitation locations and eight fuel islands.

BACKGROUND (Continued)

This agreement will allow for the purchase of the following fuel types:

- Unleaded fuel used for cars, squad vehicles, pickup trucks
- Super unleaded fuel used for police motorcycles
- Diesel fuel used for fire equipment and some heavy duty vehicles
- Bio-diesel fuel used for sanitation fleet and other heavy duty vehicles
- Red dye diesel used for off-road vehicles used at the landfill

On June 27, 2012, City Council authorized an ordinance amending Chapter 2 of the City Code to provide that a preference may be given to local businesses in awarding City contracts under certain circumstances. When using the local preference option, Council must determine that awarding the contract to a local business offers the most advantageous combination of contract price and additional economic development benefits for the City.

Truman Arnold Companies dba TAC Energy, with their principal place of business located in Dallas, TX, is being recommended for two groups based on the local preference ordinance. Truman Arnold Companies dba TAC Energy currently has 40 employees at their Dallas location and plans to hire two new employees to supply motor fuels, provide logistics, transportation and order processing in relation to this City agreement.

As part of the solicitation process and in an effort to increase competition, Business Development and Procurement Services (BDPS) used its procurement system to send out 550 email bid notifications to vendors registered under respective commodities. To further increase competition, BDPS uses historical solicitation information, the internet, and vendor contact information obtained from user departments to contact additional vendors by phone. Additionally, in an effort to secure more bids, notifications were sent by the BDPS' ResourceLINK Team (RLT) to 25 chambers of commerce, the DFW Minority Business Council and the Women's Business Council – Southwest, to ensure maximum vendor outreach.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 4, 2009, City Council authorized a thirty-six-month master agreement for fuel based on Oil Pricing Index Service index rates by Resolution No. 09-0706.

On June 6, 2012, City Council was briefed on Local Preference/Contract Limits for Competitive Bidding, Claim Settlement Authority and Council Approval.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS) (Continued)

On June 27, 2012, City Council authorized an ordinance amending Chapter 2 of the Dallas City Code to: **(1)** provide that a preference may be given to local businesses in awarding City contracts under certain circumstances; **(2)** raise the thresholds on when City contracts must be competitively bid or approved by the City Council as authorized by state law; and **(3)** raise the thresholds on when settlements of claims against the City must be approved by the City Council by Resolution No. 12-1711.

On December 12, 2012, City Council authorized an increase to the master agreement for unleaded and diesel fuels based on Oil Pricing Information Service (previously referred to as Oil Pricing Index Service) rates by Resolution No. 12-3049.

FISCAL INFORMATION

\$20,133,341.61 - Current Funds

M/WBE INFORMATION

- 61 - Vendors contacted
- 60 - No response
 - 1 - Response (Bid)
 - 0 - Response (No bid)
 - 0 - Successful

550 M/WBE and Non-M/WBE vendors were contacted

The recommended awardees have fulfilled the requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826 as amended.

ETHNIC COMPOSITION

Truman Arnold Companies dba TAC Energy

White Male	26	White Female	11
Black Male	0	Black Female	0
Hispanic Male	1	Hispanic Female	1
Other Male	1	Other Female	0

Martin Eagle Oil Company, Inc.

White Male	8	White Female	16
Black Male	0	Black Female	0
Hispanic Male	2	Hispanic Female	2
Other Male	0	Other Female	0

ETHNIC COMPOSITION (Continued)

Mansfield Oil Company of Gainesville, Inc.

White Male	202	White Female	166
Black Male	18	Black Female	10
Hispanic Male	17	Hispanic Female	5
Other Male	13	Other Female	15

BID INFORMATION

The following bids were received from solicitation number BD1321 and were opened on March 28, 2013. This master agreement is being awarded to the lowest responsive and responsible bidders by group and local preference. Information related to this solicitation is available upon request.

*Denotes successful bidders

<u>Bidders</u>	<u>Address</u>	<u>Amount of Bid</u>
*Truman Arnold Companies dba TAC Energy	100 Crescent Ct. Suite 1600 Dallas, TX 75201	Multiple Groups**
*Martin Eagle Oil Company, Inc.	2700 James St. Denton, TX 76205	Multiple Groups
*Mansfield Oil Company of Gainesville, Inc.	1025 Airport Parkway SW Gainesville, GA 30501	Multiple Groups
Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels	1800 W. Katella Ave. Suite 400 Orange, CA 92867	Multiple Groups
Douglass Distributing	325 E. Forest Ave. Sherman, TX 75090	Multiple Groups
Four Sisters Petroleum, LLC	2900 N. Quinlan Park Rd. Suite B240 Austin, TX 78732	Multiple Groups
Lykins Oil Company	5163 Wolfpen-Pleasant Hill Rd. Milford, OH 45150	Multiple Groups

BID INFORMATION (Continued)

**Truman Arnold Companies dba TAC Energy is recommended for award on Groups 1 and 6 based on local preference. This award by local preference will result in an increase of \$62,838 in comparison to the lowest bidders.

OWNERS

Truman Arnold Companies dba TAC Energy

Greg Arnold, President
Carl Nelson, Vice President

Martin Eagle Oil Company, Inc.

Stephen L. Martin, Vice President/General Manager
Gary L. Martin, Vice President

Mansfield Oil Company of Gainesville, Inc.

Douglas Haugh, President
J. Alexander, Vice President
John Byrd, Secretary

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates – Martin Eagle Oil Company, Inc. in the amount of \$5,452,448 and Mansfield Oil Company of Gainesville, Inc. in the amount of \$5,310,128, lowest responsible bidders of seven and Truman Arnold Companies dba TAC Energy in the amount of \$9,370,766, local preference bidder – Total not to exceed \$20,133,342 - Financing: Current Funds

Martin Eagle Oil Company, Inc. and Mansfield Oil Company of Gainesville, Inc. are non-local, non-minority firm, have signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-contractors. Truman Arnold Companies dba TAC Energy is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-contractors.

PROJECT CATEGORY: Goods

LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$9,220,766.25	45.80%
Total non-local contracts	\$10,912,575.36	54.20%
TOTAL CONTRACT	\$20,133,341.61	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION

Local Contractors / Sub-Contractors

None

Non-Local Contractors / Sub-Contractors

<u>Non-local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
American Petrox	BMDB0106Y0813	\$955,823.04	8.76%
Lucky Lady Oil Company	WFWB56428Y0114	\$150,000.00	1.37%
Total Minority - Non-local		\$1,105,823.04	10.13%

TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local & Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$955,823.04	4.75%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$150,000.00	0.75%
Total	\$0.00	0.00%	\$1,105,823.04	5.49%

May 1, 2013

WHEREAS, on March 4, 2009, City Council authorized a thirty-six-month master agreement for fuel based on Oil Pricing Index Service index rates by Resolution No. 09-0706; and

WHEREAS, on June 27, 2012, City Council authorized an ordinance amending Chapter 2 of the Dallas City Code to: **(1)** provide that a preference may be given to local businesses in awarding City contracts under certain circumstances; **(2)** raise the thresholds on when City contracts must be competitively bid or approved by the City Council as authorized by state law; and **(3)** raise the thresholds on when settlements of claims against the City must be approved by the City Council by Resolution No. 12-1711; and

WHEREAS, on December 12, 2012, City Council authorized an increase to the master agreement for unleaded and diesel fuels based on Oil Pricing Information Service (previously referred to as Oil Pricing Index Service) rates by Resolution No. 12-3049.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That City Council determines that awarding a portion of this master agreement to Truman Arnold Companies dba TAC Energy (343033), a local business, offers the best combination of contract price and additional economic development benefits for the City created by the contract award, including employment of the residents of the City and/or increased tax revenue to the City.

Section 2. That a master agreement for the purchase of unleaded and diesel fuels based on Platts index rates is authorized with Truman Arnold Companies dba TAC Energy (343033) in the amount of \$9,370,766.25, Martin Eagle Oil Company, Inc. (VS0000038576) in the amount of \$5,452,447.36 and Mansfield Oil Company of Gainesville, Inc. (VS0000041706) in the amount of \$5,310,128.00 for a term of one year in an amount not to exceed \$20,133,341.61.

Section 3. That the Purchasing Agent is authorized, upon appropriate request and documented need by a user department, to issue a purchase order for unleaded and diesel fuels based on Platts index rates. If a written contract is required or requested for any or all purchases of unleaded and diesel fuels based on Platts index rates under the master agreement instead of individual purchase orders, the City Manager is authorized to execute the contract upon approval as to form by the City Attorney.

May 1, 2013

Section 4. That the City Controller is authorized to disburse funds in an amount not to exceed \$20,133,341.61.

Section 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

AGENDA ITEM # 4

KEY FOCUS AREA: Make Government More Efficient, Effective and Economical

AGENDA DATE: May 1, 2013

COUNCIL DISTRICT(S): All

DEPARTMENT: Business Development & Procurement Services
Equipment & Building Services

CMO: Jeanne Chipperfield, 670-7804
Forest E. Turner, 670-3390

MAPSCO: N/A

SUBJECT

Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates – Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels in the amount of \$8,152,658, Mansfield Oil Company of Gainesville, Inc. in the amount of \$6,465,399 and Martin Eagle Oil Company, Inc. in the amount of \$5,452,447, lowest responsible bidders of seven – Total not to exceed \$20,070,504 - Financing: Current Funds

BACKGROUND

This action does not encumber funds; the purpose of a master agreement is to establish firm pricing for goods, for a specific term, which are ordered on an as needed basis.

This master agreement will allow the City to purchase multiple types of unleaded and diesel fuels for the City's fleet including unleaded, Texas low-emission diesel, bio-diesel, super unleaded 93 octane and red dye diesel. All fuel under this agreement is priced utilizing a +/- adder to Platts indices.

Platts indices showing current fuel prices are generated and published for specific areas of the country on a daily basis. The pricing service is internationally recognized as an accurate and comprehensive index for establishing fuel prices.

The City's projected demand for the one-year agreement is approximately 6,100,000 gallons. Fuel is distributed from approximately 100 City sites including pump stations, fire stations, sanitation locations and eight fuel islands.

BACKGROUND (Continued)

This agreement will allow for the purchase of the following fuel types:

- Unleaded fuel used for cars, squad vehicles, pickup trucks
- Super unleaded fuel used for police motorcycles
- Diesel fuel used for fire equipment and some heavy duty vehicles
- Bio-diesel fuel used for sanitation fleet and other heavy duty vehicles
- Red dye diesel used for off-road vehicles used at the landfill

As part of the solicitation process and in an effort to increase competition, Business Development and Procurement Services (BDPS) used its procurement system to send out 550 email bid notifications to vendors registered under respective commodities. To further increase competition, BDPS uses historical solicitation information, the internet, and vendor contact information obtained from user departments to contact additional vendors by phone. Additionally, in an effort to secure more bids, notifications were sent by the BDPS' ResourceLINK Team (RLT) to 25 chambers of commerce, the DFW Minority Business Council and the Women's Business Council – Southwest, to ensure maximum vendor outreach.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 4, 2009, City Council authorized a thirty-six-month master agreement for fuel based on Oil Pricing Index Service index rates by Resolution No. 09-0706.

On December 12, 2012, City Council authorized an increase to the master agreement for unleaded and diesel fuels based on Oil Pricing Information Service (previously referred to as Oil Pricing Index Service) rates by Resolution No. 12-3049.

FISCAL INFORMATION

\$20,070,503.61 - Current Funds

M/WBE INFORMATION

61 - Vendors contacted
60 - No response
1 - Response (Bid)
0 - Response (No bid)
0 - Successful

550 M/WBE and Non-M/WBE vendors were contacted

The recommended awardees have fulfilled the requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826 as amended.

ETHNIC COMPOSITION

Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels

White Male	206	White Female	104
Black Male	39	Black Female	8
Hispanic Male	157	Hispanic Female	33
Other Male	29	Other Female	26

Mansfield Oil Company of Gainesville, Inc.

White Male	202	White Female	166
Black Male	18	Black Female	10
Hispanic Male	17	Hispanic Female	5
Other Male	13	Other Female	15

Martin Eagle Oil Company, Inc.

White Male	8	White Female	16
Black Male	0	Black Female	0
Hispanic Male	2	Hispanic Female	2
Other Male	0	Other Female	0

BID INFORMATION

The following bids were received from solicitation number BD1321 and were opened on March 28, 2013. This master agreement is being awarded to the lowest responsive and responsible bidders by group. Information related to this solicitation is available upon request.

*Denotes successful bidders

<u>Bidders</u>	<u>Address</u>	<u>Amount of Bid</u>
*Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels	1800 W. Katella Ave. Suite 400 Orange, CA 92867	Multiple Groups
*Mansfield Oil Company of Gainesville, Inc.	1025 Airport Parkway SW Gainesville, GA 30501	Multiple Groups
*Martin Eagle Oil Company, Inc.	2700 James St. Denton, TX 76205	Multiple Groups

BID INFORMATION (Continued)

<u>Bidders</u>	<u>Address</u>	<u>Amount of Bid</u>
Truman Arnold Companies dba TAC Energy	100 Crescent Ct. Suite 1600 Dallas, TX 75201	Multiple Groups
Douglass Distributing	325 E. Forest Ave. Sherman, TX 75090	Multiple Groups
Four Sisters Petroleum, LLC	2900 N. Quinlan Park Rd. Suite B240 Austin, TX 78732	Multiple Groups
Lykins Oil Company	5163 Wolfpen- Pleasant Hill Rd. Milford, OH 45150	Multiple Groups

OWNERS

Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels

Patrick W. Barnecut, President
Robert Bollar, Secretary
Mimi Taylor, Treasurer

Mansfield Oil Company of Gainesville, Inc.

Douglas Haugh, President
J. Alexander, Vice President
John Byrd, Secretary

Martin Eagle Oil Company, Inc.

Stephen L. Martin, Vice President/General Manager
Gary L. Martin, Vice President

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize a one-year master agreement for unleaded and diesel fuels based on Platts index rates – Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels in the amount of \$8,152,658, Mansfield Oil Company of Gainesville, Inc. in the amount of \$6,465,399 and Martin Eagle Oil Company, Inc. in the amount of \$5,452,447, lowest responsible bidders of seven – Total not to exceed \$20,070,504 - Financing: Current Funds

Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels, Mansfield Oil Company of Gainesville, Inc. and Martin Eagle Oil Company, Inc. are non-local, non-minority firms, have signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-contractors.

PROJECT CATEGORY: Goods

LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$0.00	0.00%
Total non-local contracts	\$20,070,503.61	100.00%
TOTAL CONTRACT	\$20,070,503.61	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION

Local Contractors / Sub-Contractors

None

Non-Local Contractors / Sub-Contractors

<u>Non-local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
American Petrox	BMDB50106Y0813	\$1,163,771.78	5.80%
Pinnacle Petroleum	WFWB2403010314	\$1,467,478.35	7.31%
Total Minority - Non-local		\$2,631,250.13	13.11%

TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local & Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$1,163,771.78	5.80%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$1,467,478.35	7.31%
Total	\$0.00	0.00%	\$2,631,250.13	13.11%

May 1, 2013

WHEREAS, on March 4, 2009, City Council authorized a thirty-six-month master agreement for fuel based on Oil Pricing Index Service index rates by Resolution No. 09-0706; and

WHEREAS, on December 12, 2012, City Council authorized an increase to the master agreement for unleaded and diesel fuels based on Oil Pricing Information Service (previously referred to as Oil Pricing Index Service) rates by Resolution No. 12-3049.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That a master agreement for the purchase of unleaded and diesel fuels based on Platts index rates is authorized with Southern Counties Oil Co., a CA Limited Partnership dba SC Fuels (VS0000039582) in the amount of \$8,152,657.50, Mansfield Oil Company of Gainesville, Inc. (VS0000041706) in the amount of \$6,465,398.75 and Martin Eagle Oil Company, Inc. (VS0000038576) in the amount of \$5,452,447.36 for a term of one year in an amount not to exceed \$20,070,503.61.

Section 2. That the Purchasing Agent is authorized, upon appropriate request and documented need by a user department, to issue a purchase order for unleaded and diesel fuels based on Platts index rates. If a written contract is required or requested for any or all purchases of unleaded and diesel fuels based on Platts index rates under the master agreement instead of individual purchase orders, the City Manager is authorized to execute the contract upon approval as to form by the City Attorney.

Section 3. That the City Controller is authorized to disburse funds in an amount not to exceed \$20,070,503.61.

Section 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

Memorandum



CITY OF DALLAS

DATE April 26, 2013

TO Honorable Mayor and Members of the City Council

SUBJECT GrowSouth: Proposed Economic Development Project for Southern Dallas – Update on Trinity Forest Golf Course

On Wednesday, May 1, 2013, you will be briefed on the proposed lease agreement for the Trinity Forest Golf Course, the AT&T Trail donation and the activities that have occurred since your last briefing in December 2012. The attached documents included the term sheet and negotiated material changes (in red), the lease agreement for the Trinity Forest Golf Course, the AT&T donation agreement and the schedule of activities.

If you have questions or need additional information, please let me know.

A handwritten signature in blue ink, appearing to read 'Mary K. Surm'.

Mary K. Surm
City Manager

cc: Thomas P. Perkins, Jr., City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel Solis, Administrative Judge
A.C. Gonzalez, First Assistant City Manager
Ryan S. Evans, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Joey Zapata, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Stephanie Cooper, Assistant to the City Manager
Frank Libro, Public Information Officer



Term Sheet & Material Changes (In Red)

Parties: Owner – City of Dallas (“City”)

Tenant – a not-for-profit entity acceptable to the City (“Tenant”)

The Tenant is a nonprofit corporation, The Company of Trinity Forest Golfers, Inc., (“CTFG”) and CTFG will also be the operator of the Golf Course.

Lease Term: 40-year term with option to renew at the City’s discretion.

Rent / Consideration: Base rent of \$1,000 at signing and \$10,000 per year thereafter beginning on the earlier of: (1) the date the Landlord Improvements (defined below) are completed, and and Tenant takes possession (2) May 15, 2015.

Consideration for the Lease shall also include the following:

Tenant shall invest, or cause to be invested, a minimum of \$20 million into development of the Golf Course. In addition, Tenant shall be responsible for any development and construction cost overruns, and shall also be responsible for all utilities, operating and maintenance costs for the Golf Course as herein provided.

Leasee’s proof of funding and possession deliver date for the Premises was effectively accelerated to August 31, 2013.

In addition to the minimum \$20 million investment in the Golf Course, Tenant shall commit, or cause to be committed, up to \$2.5 million for Trinity Trails Phase 3 (the “Trinity Trails Phase 3 Commitment”). If the actual final costs of Trinity Trails Phase 3 are less than \$2.5 million, then the City may elect to use the remaining balance for other portions of the Trinity Trails project.

A separate agreement has been negotiated with AT&T for the payment of the \$2.5 million to the City for the construction of Trinity Trails Phase 3A that includes the portions of the Trail west and south of the Golf Course and through the Audubon Center (the “AT&T Trail”), Security Enhancements for the AT&T Trail, AT&T Trail signage and a bird tower

servicing the Audubon Center in exchange for exclusive AT&T naming rights along the AT&T Trail and adjoining portions of the trail.

Tenant shall manage, for and on behalf of City, the construction contracts for the Landlord Improvements to the Premises as herein provided.

City will select the contracts to be assigned, if any.

Tenant shall secure the following: (1) agreement of the Salesmanship Club of Dallas to relocate the Byron Nelson Championship to the Golf Course no later than 2019 (the “SCD Agreement”); (2) agreement from SMU to make the Golf Course the home course for the SMU golf teams and collegiate tournaments hosted by SMU (the “SMU Agreement”); and (3) agreement of First Tee to provide youth programs at the Golf Course.

Tenant must secure the SCD Agreement, the SMU Agreement and the First Tee agreement (the “User Agreements”) and make such agreements available for review by the City by May 15, 2013/Lease execution. (Due to ongoing negotiations, the SMU Agreement may not be finally signed until August 31, 2013.) Further, the User Agreements cannot be materially amended without City approval. User Agreements are to have a minimum 5 year term.

Tenant shall pay any and all taxes or assessments in any way related to the Golf Course, including but not limited to ad valorem taxes on the Premises, if any.

If Tenant is unable to secure tax exempt status and a tax abatement or other incentive is not available, the City as Lessor will pay the City ad valorem taxes, if possible. Lessee shall be responsible for and pay all other taxes due to the other taxing jurisdictions, if any.

Tenant shall procure and maintain at Tenant’s expense the insurance as herein required.

Tenant shall procure and pay for any utilities necessary or convenient to the operations of the Golf Course.

Premises: Real property located in the vicinity of Great Trinity Forest Blvd (Loop 12) and Elam Road, comprised of former landfill(s) and other City property as generally depicted on the attached **Exhibit A**.

Uses: The parties acknowledge that it is the fundamental intent and purpose of this arrangement to develop a world-class golf course. Tenant’s permitted use of the Premises shall be solely for the establishment and operation of the Golf Course and associated dining and hospitality

activities.

The Golf Course will be available for charity tournaments, educational and youth programs, and the public, such that at least 25% of the annual rounds of golf are played or available for coordinated public play. Use by the members of the SMU golf teams and First Tee shall not count towards this 25% requirement.

Details concerning fair and reasonable usage rules and scheduling as well as reporting were developed for implementing the 25% public play requirement including benchmark of 300 specific public play rounds per year for Dallas residents is required as part of the public play requirement.

Tenant shall establish, equip, staff and operate the Golf Course and related facilities. Tenant shall be responsible for all operating and maintenance costs of the Golf Course and shall be entitled to all revenues related in any respect to the Golf Course. Tenant agrees that any net profits (less capital and future operating reserves) from operation of the Golf Course shall be reinvested into Tenant's operations, infrastructure, capital improvements, maintenance, golf and event programs and charitable giving, at the discretion of Tenant.

To the extent included within the Premises, the Trinity Trail Phase 3 portions of the Premises shall be accessible at substantially all times for the use and benefit of the public as part of the City's park and trail system.

No portion of the Trinity Trail is located within the Premises so all portions of the Trail will be accessible to the public.

Tenant shall be responsible for obtaining and maintaining all permits, licenses, zoning and consents necessary for the Golf Course and any other activities of Tenant on the Premises, except those which are the responsibility of the City as stated below. The City will make commercially and legally reasonable efforts to assist Tenant regarding any such matters.

**Tenant
Improvements/
Commitments:**

Total costs for development of phase I of the Golf Course (including Landlord Improvements) are approximately \$33 million, including predevelopment, site remediation, design and construction of all public infrastructure and private improvements. The City's commitment of funding for development of the Premises, including the Landlord Improvements, shall not exceed \$12 million. Tenant shall be responsible for all other costs for development and construction of the Premises, including the Golf Course.

Final listing of Tenant Improvements and Landlord Improvements are detailed in Exhibits B and C to the Lease. The City's total of funding can and may be less than the \$12 million cap.

“Tenant Improvements” shall include (1) the design and construction of an 18-hole championship golf course, practice range, clubhouse, tournament facilities, short course, SMU academy, First Tee teaching facility (used to support Dallas youth), ~~the Trinity Trails Phase 3 Commitment~~, necessary infrastructure and perimeter fencing and screening for all maintenance buildings and support facilities and amenity structures, and (2) the activities and items listed below under the heading “Tenant Improvements/Commitments.” Tenant shall endeavor to start construction by ~~April 30, 2013~~ October 31, 2013, and complete the Tenant Improvements by October 1, 2016 (subject to force majeure),

Trinity Trails Phase 3 Commitment is in a separate agreement with AT&T. The First Tee clubhouse may be completed on or after the bulk of the tenant improvements, but not more than 6 months later.

Tenant shall manage the construction of the Landlord Improvements and the Tenant Improvements.

The City has elected to manage most of the contracts for the Landlord Improvements.

Tenant shall design, fund and construct all water and wastewater lines (except the looped water main and any irrigation facilities also serving Trinity Audubon Center) required to support the Golf Course development and irrigation needs, including pumping systems, ponds, internal irrigation systems and any other public water and wastewater improvements required as a part of such systems.

The general listing of Tenant Improvements is presented as a Preliminary Conceptual Plan and Budgets and is attached to the Lease as Exhibit B. Further engineering analysis showed that joint irrigation facilities between the golf course and Trinity Audubon Center would be cost efficient and of benefit to both organizations and, therefore, has been moved to the Landlord improvements.

Tenant shall prepare the fill plans (including mitigation plans) and prepare the plans and specifications for the internal roadways and driveways.

Tenant shall prepare the Subchapter T Plans, including the portion of the site remediation plans related to the final closure/landfill cover of

applicable parts of the Premises, and shall otherwise cooperate with the City in the preparation of remediation plans.

Tenant has primary responsibility for the methane and groundwater monitoring and the cap inspection monitoring, but the City maintains right to also monitor for compliance with TCEQ requirements if it elects to do so. See Lease - Sections 7.24 and 7.25.

Tenant shall modify a portion of the City's Trinity Trails Phase 3 plans to accommodate the new alignment. Not included in Lease since no longer applicable.

Tenant shall pursue all necessary permits, applications or other approvals with any pertinent federal, state or local entity involved with the Golf Course, except for those that are a City responsibility as stated below. The City will make all commercially and legally reasonable efforts to assist Tenant regarding any such permits, applications and approvals.

Tenant shall also accommodate Special Tree Mitigation Area identified in Exhibit A-1 to the Lease and PD.

Anti-discrimination requirements for membership and operations at the Golf Course was added.

**Landlord
Improvements/
Commitments:**

The City's commitment shall not exceed \$12 million. The City's commitment would only be used for the costs related to the preliminary site work (rough grading), surveying, platting, landfill remediation, wetland and floodplain mitigation, certain water, wastewater and other public infrastructure improvements, and other specified expenses that qualify as public works. Such public infrastructure improvements will include, but not be limited to, Highway 12 access to the Premises; improvements to the water main loop system from the Premises to the nearest existing or relocated water line and water and wastewater improvements; design and construction of roads, intersection, and signal improvements; and other public works improvements supporting development of the Golf Course (the "Landlord Improvements").

The City's expenditures may come in less than the \$12 million cap. The final listing of Landlord Improvements is attached to the Lease as Exhibit C.

If required by TCEQ, the City will order a survey as needed to secure a new base aerial map with topography, and a full constraint analysis for the entire site. As part of this work, the City shall also provide a boundary survey and plat of the Premises, showing all property lines, easements and right-of-ways.

The City and Tenant shall coordinate development of the project with existing easements in favor of the City or on the Premises to the extent reasonably practicable to facilitate the development while preserving and protecting the integrity of easements and the uses being made of same.

Remediation of the Premises shall be completed in compliance with the Subchapter T permit from the Municipal Solid Waste Group with TCEQ and any other approvals required from TCEQ.

The City shall publicly bid the Landlord Improvements and award such construction contracts to the lowest responsible bidder and may, at City's election, assign same to Tenant, as City's construction manager, for all purposes including inspection, supervision and coordination of all construction work. All construction costs in excess of the City's commitment of \$12 million shall be paid by Tenant. The City and Tenant shall cooperate with each other throughout the public bid process to insure that no contract is assigned to Tenant that is not reasonably acceptable to Tenant.

The City has elected to manage most of the contracts for the Landlord Improvements.

The City will use all commercially reasonable efforts to assist Tenant with and support requests for other federal and state permits, grants or incentives for infrastructure, parks, trails, and other improvements which may benefit the Golf Course and the neighboring areas of the City and reduce costs for the project.

~~The City shall obtain all permits and approvals for the construction of the portion of the Trinity Trails Phase 3 project that Tenant will construct. The City shall be responsible for any and all mitigation work required and for the on-going maintenance of the trails.~~

Not included in lease as no longer applicable.

If Tenant does not attain property tax-exempt status, City staff will present to City Council an incentive for ad valorem tax abatement equal to 90% of the maximum abatable property taxes for ten years for this project. Any such incentive shall be subject to state law and future City Council approval and shall be supported by additional consideration including local job creation commitments or other such economic development benefits to the community as required by law and the City's policies under its Public Private Partnership Programs and Guidelines.

Construction – Generally: Tenant shall submit plans, specifications, construction schedules, and budgets for all Tenant Improvements and Landlord Improvements to City for review and approval before performing any such activity.

The City shall have the right to review and approve the Tenant Improvements and Landlord Improvements to exist on the site upon the completion of phase I of the Golf Course, with such approval not being unreasonably withheld, delayed or conditioned. All construction activity shall be performed in a good and workmanlike manner, in conformity with the approved plans, specifications and schedules and in accordance with all applicable federal, state and local laws and regulations (including but not limited to building codes, ADA requirements, and any and all applicable environmental, health and safety requirements).

Replaced detailed review and approval of all plans and specifications for Tenant Improvements with general Conceptual Plans and Preliminary Course Layout and Design including Budget for Tenant Improvements (attached as Exhibit B to the Lease). Details left to the Tenant.

Tenant shall be liable for and promptly pay costs of development and construction, including cost overruns, in excess of the City's commitment.

Tenant shall use good faith efforts to abide by the City's Business Inclusion and Development policies for the completion of all Tenant Improvements and Landlord Improvements.

In no event shall Tenant allow any liens (that are not bonded over) to be affixed to the Premises, the improvements made, equipment installed, and/or any interest in this Lease prior to the transfer of possession of such facilities to Tenant pursuant to the Lease.

Tenant shall secure and maintain payment and performance bonds and insurance (with City as co-insured and co-obligee) at least equal to that required on similar City construction projects and otherwise acceptable to City. Tenant shall use the City's form of construction contracts and bonds for all Landlord Improvements to be performed on the Premises subject to Tenant's reasonable approval.

In lieu of payment and performance bonds on Tenant Improvements, Tenant must raise \$20 million in cash or provide an irrevocable letter of credit in this amount to cover the costs of the Tenant Improvements by August 31, 2013.

Construction Management Committee:

Comprised of two representatives of Tenant and two representatives of City to meet quarterly during construction of the Landlord Improvements and the Tenant Improvements and at least annually during the remaining term of the Lease agreement to discuss M/WBE, construction and operational matters material to the City.

Board of Directors:

Tenant shall establish a Board of Directors for the to-be-formed nonprofit with approximately 12 members with full fiduciary and governing powers over the Tenant. The Mayor shall appoint at least one member of the Board of Directors to serve throughout the term of the Lease Agreement, including any renewal periods.

The proposed structure was simplified. The City will contract directly with CTFG, the Golf Course operator, in lieu of a separate intermediary nonprofit. The certificate of incorporation and the Bylaws of CTFG provide for the creation of an advisory board to be called the Board of Governors of CTFG. The Board of Governors shall consist of 9 members as follows: A Chairman (selected by the Board after approval by the Mayor and the Tenant); 2 Mayor Appointed Members; 1 SMU Appointed Member; 1 Salesmanship Club Appointed Member; 1 First Tee Appointed Member; 1 Tournament Sponsor Appointed Member; and Two Golf Course Appointed Members.

The Board of Governors shall: (a) review proposed amendments to the User Agreements; (b) verify Lessee's compliance with the Lease, including, without limitation, the public play requirement; (c) review Lessee's financial statements; and (d) make recommendations to Lessee concerning the operation of the Golf Course facilities.

CTFG's organizational documents cannot be amended as to Board of Governors without the City's consent.

The Board of Governors does not affect the City's ability to independently enforce the Lease, and the City retains all remedies at law and equity.

Maintenance and Routine Repair And Major Repairs:

After completion of the Landlord Improvements and Tenant Improvements, Tenant shall fund and provide all maintenance, routine repairs and capital improvements for the Golf Courses including, without limitation, all fencing, screening, buildings, lighting and fixtures, irrigation and janitorial and landscaping services (including maintenance of the ground below the Loop 12 underpass that is used by the Golf Course).

Tenant shall fund and provide all maintenance and repair of all major structural components (foundation, roof, foundation and exterior walls),

major equipment and systems (electrical, mechanical, HVAC and plumbing) and parking lot paving.

The City shall have no obligation to fund any operating or maintenance expenses or future capital improvements for the Golf Course upon completion of the Landlord Improvements.

Security: Tenant shall provide security for the Premises, including any security systems and monitoring of such systems.

Utilities: Upon completion of the Landlord Improvements, Tenant will be responsible all utility costs with respect to the Golf Course, including telecommunication system expenses and any taxes or assessments.

In no event shall City in its capacity as lessor be liable to Tenant for loss or disruption of utility services.

HVAC/Lighting/Irrigation: Tenant shall bear the cost of accommodating any unique, specialized or differing heating, cooling, humidity, lighting or irrigation requirements that Tenant may have (whether involving level, nature and/or hours of service).

Termination: The parties contemplate terminating discussions with respect to the project if Tenant is unable to proceed with due diligence to fund, develop and operate the Golf Course and satisfy one or more the following conditions:

1. Tenant is unable to secure the SCD Agreement; or
2. Tenant is unable to receive commitments to contribute at least \$20 million by December 31, 2014; or

Funding deadline has been accelerated to August 31, 2013. The City has the option to terminate Lease if Lessee is unable to raise at least \$20 million in cash or provide an irrevocable letter of credit in this amount to cover Tenant's share of the costs to develop the Golf Course.

3. Tenant is unable to secure the SMU Agreement. Target deadline is May 15, 2013, but final signing no later than August 31, 2013, the funding deadline. Negotiations with SMU still proceeding.

The parties contemplate that the Lease may be terminated by either party if Tenant or the City commits a material default under the Lease. Both parties shall have the opportunity to cure such default within 90 days (or longer reasonable time, if necessary to cure) after having received notice

of such default.

Insurance and Taxes:

Tenant shall maintain casualty, liability, and workers compensation insurance in form, and on such terms approved by the City. Such insurance shall be comparable to industry standard insurance coverage for a golf course of comparable quality.

Tenant shall be responsible for all taxes at the Project including but not limited to sales and ad valorem, if any. The City acknowledges that Tenant intends to seek tax exempt status. The City agrees not to take any actions inconsistent with such tax treatment for Tenant.

Major Casualty Loss:

The parties will negotiate market major casualty provisions that are consistent with the City's policies.

Additional insurance provisions

Tenant will agree to defend, indemnify, and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any persons or persons, that may arise out of or be occasioned by the Tenant's use, occupancy and maintenance of the Premises or Tenant's installations and improvements within the Premises, from any act or omission of any representative, agent, resident, and/or employee of Tenant, by Tenant's breach of any of the terms or provisions of the Lease, or by any negligent or strictly liable act or omission of Tenant, its officers, agents, associates, employees or subcontractors in the use, occupancy and maintenance of the Premises or Tenant's installations and improvements within the Premises; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both Tenant and the City, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**Assignment/
Sublease:**

Assignment ~~and subleases~~ only with City consent, except that City must be reasonable and timely in responding to requests for assignment. Tenant may sublease portions of the Golf Course to SMU, or to First Tee. All assignments and subleases are subject to the terms of the Lease with City. Notwithstanding the foregoing, Tenant may utilize as subcontractors and general contractor(s) affiliate and third party contractors without City consent.

Lease provides greater freedom to sublet but such subleases are still subject to and must terminate with Lease.

No encumbrances or liens without City consent.

Miscellaneous Provisions:

Tenant shall provide City with periodic financial statements or other reports as City deems appropriate to document the public uses at the Golf Course.

Included Tenant providing audited financial statements to the Board of Governors, and for review by the Mayor, the City's Chief Financial Officer and the City Manager.

City shall have the right to audit Tenant's financial records relevant to Tenant's compliance under the Lease.

Tenant shall screen all maintenance buildings/areas.

Tenant shall cooperate with the City and allow City staff access to the Premises at reasonable times to monitor the remediation on the Premises.

Upon completion of the Landlord Improvements, or earlier, Tenant will take the Premises "AS IS, WHERE IS; WITH ALL FAULTS". Tenant disclaims and waives any and all warranties or representations, express or implied, concerning the Premises, including without limitation its suitability or fitness for any particular purpose and/or its commercial habitability.

Tenant will take the Premises subject to all matters of record in the real property records of Dallas County, Texas applicable thereto and all existing zoning.

The parties acknowledge that the terms outlined above are based on preliminary plans and estimates and that the final installation and placement of water and infrastructure improvements and the layout of the Golf Course will be determined at a later date.

The use of terms such as "agree" and "shall" and "will" (and similar terms) are not meant to (and do not) obligate either party in this letter of intent to be compelled to take any action and do not in any respect override the fact that this letter of intent is nonbinding in all respects on both parties to this letter of intent.

The City plans to present the terms outlined above for the Lease during a City Council Briefing on December 5, 2012, and to City Council for final approval by December 12, 2012. Please confirm your understanding and acceptance of these terms by signing a copy of this letter as indicated below and returning to me.

Sincerely,

CITY OF DALLAS
Mary K. Suhm
City Manager

APPROVED AS TO FORM
Thomas P. Perkins
City Attorney

By: _____
Assistant City Attorney

ACCEPTED BY:
CTFG Partners, LLC

By: _____

Attachments:

Exhibit A – Map of the Premises

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**LEASE AGREEMENT
FOR THE TRINITY FOREST GOLF COURSE**

This Lease Agreement ("Agreement" or "Lease") is entered into by and between CITY OF DALLAS, a Texas municipal corporation, acting through its authorized officials ("City," "Landlord," or "Lessor") and THE COMPANY OF TRINITY FOREST GOLFERS, INC., a Texas nonprofit corporation ("CTFG," "Tenant," or "Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of approximately 400 acres of real property located in the City of Dallas, Texas in the vicinity of Great Trinity Forest Blvd (Loop 12) and Elam Road, and adjacent to the Trinity Audubon Center and the Texas Horse Park; and

WHEREAS, Lessor has caused portions of the property to be enrolled in the Texas Commission on Environmental Quality's ("TCEQ") Voluntary Cleanup Program ("VCP" or "VCP No. 2210") to conduct certain remediation of and endeavor to obtain regulatory closure for certain existing environmental conditions; and

WHEREAS, in connection with such remediation, subject to the terms hereof, Lessee has agreed to assist in any excess costs of such work and further to have said real property developed into a championship golf course (the "Golf Course") and related facilities (collectively the "Project"); and

WHEREAS, Lessor and Lessee wish to have the Project held by a non-profit entity such as Lessee in accordance with this Agreement; and

WHEREAS, on December 12, 2012, Dallas City Council approved a Letter of Intent by Resolution No. 12-3066 for the Project and directed the City Manager to advance and to finalize negotiations with Lessee for the lease of city-owned property for development and operation of such a facility; and

WHEREAS, on May 15, 2013, by Resolution No. 13-_____ (attached) Dallas City Council authorized its City Manager to enter into a lease agreement with Lessee for the lease of city-owned real estate for development, operation and maintenance of the contemplated Project substantially as provided herein.

NOW, THEREFORE, Lessor and Lessee, for and in consideration of the mutual covenants, terms, and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do agree as follows:

ARTICLE I PARTIES; DEFINED TERMS

Section 1.01. Lessor. City of Dallas, a Texas municipal corporation is Lessor. Unless otherwise expressly provided in this Agreement or required by applicable law, ordinance, charter provision, or City of Dallas policy, Lessor will be acting by and through its City Manager, or his/her designee, in all matters provided for herein.

Section 1.02. Lessee.

(a) The Company of Trinity Forest Golfers, Inc., a Texas nonprofit corporation, is Lessee as of the Effective Date. Lessee represents and warrants unto Lessor that it is duly organized and in good standing as a Texas non-profit corporation. Lessee will maintain said status during the term of this Agreement.

(b) The management of the Lessee is vested in a board of directors, as provided in the organizational documents of Lessee; provided, however, the certificate of incorporation of Lessee (the "Certificate") and Section 9.06 of the Bylaws of Lessee (the "Bylaws") provide for the creation of a Board of Governors (the "Board of Governors") of Lessee, which Board of Governors shall have the authority described in Schedule 1.02(b) of this Lease.

(c) A true and correct copy of Lessee's certificate of formation (the "Certificate") and Section 9.06 of Lessee's Bylaws are attached hereto as Schedule 1.02(c). **Lessee covenants and agrees that clause III of the Supplemental Provisions/Information of its Certificate, and section 9.6 of its Bylaws, shall not be amended or modified without the prior written consent of Lessor, such consent not to be unreasonably, withheld, conditioned or delayed.**

Section 1.03. Defined Terms. An index of defined terms used in this Agreement is attached as Schedule I.

ARTICLE II PREMISES; LETTING

Section 2.01. Premises; Letting. For and in consideration of the Lessee's covenant to pay rental and other sums as herein provided and perform the obligations of Lessee in this Agreement, upon and as of the Delivery Date (hereinafter defined), Lessor does lease to Lessee and Lessee does lease from Lessor the approximately 400 acres of real property located in the City of Dallas, Texas more fully described in **Exhibit A**, together with all improvements located thereon and all appurtenances belonging to or in any way pertaining to said real estate (such real estate, improvements and appurtenances sometimes jointly and separately as the context requires

referred to as the "Premises"). This Lease is entered into as of the Effective Date (hereinafter defined) with possession to vest in Lessee as provided in Section 4.01 below.

Section 2.02. Tree Mitigation Area. The portion of the Premises shown as "Lot 2" on **Exhibit A-1** attached hereto has been subjected (or will be made subject to) certain restrictions and limitations on the removal or intentional destruction of existing trees located in such area pursuant to the Great Trinity Forest Planned Development District [Ordinance No. _____] covering the Premises (the "PD"). Lessee covenants and agrees that, except for the removal of such trees and vegetation in such area as is reasonably necessary for erecting and maintaining fencing and security along the perimeter of the Premises, Lessee shall not intentionally remove, damage or destroy any trees or existing vegetation in the Mitigation Area in violation of the requirements of the PD and other applicable law.

Section 2.03 Net Lease. It is the intention of Lessor and Lessee that the rental and other payments payable under this Lease, and all taxes, assessments and other costs related to Lessee's use or operation of the Premises under this Lease shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such costs due by Lessee under this Lease (other than amounts as may be required to be paid (directly or indirectly) by Lessor pursuant to specific provisions of this Lease).

ARTICLE III TERM; MATERIAL DATES

Section 3.01. Initial Term. This Agreement is effective and binding on the parties on the date that this Agreement is executed by both Lessor and Lessee ("Effective Date"), and the term of this Lease shall run for a period of forty (40) years from the completion of construction as described herein below ("Completion Date") and ending on the 40th annual anniversary of said Completion Date, subject to renewal or earlier termination as herein provided.

Section 3.02. Renewal. Lessor, at its option, may renew and extend this Agreement for up to four (4) successive ten (10) year periods by providing written notice of its election to so renew and extend (an "Extension Notice") to Lessee at least 36 months before, but not sooner than 60 months before, the expiration of the then current term. Any such renewal and extension shall be on the then-current covenants, terms and conditions of this Agreement unless otherwise agreed by the parties in writing. The Initial Term, together with any renewals or extensions, may be referred to herein as the "term" or "Term."

Section 3.03. Nonappropriation. With respect to any monetary obligations of Lessor under this Lease, other than for Lessor Improvements up to but not exceeding the Lessor Funding Limit, Lessor has the right to terminate this Lease on the last day of the then current fiscal year in the event of non-appropriation of funds by Lessor's City Council. Lessor agrees to notify Lessee of such non-appropriation at the earliest practicable time prior to the end of Lessor's fiscal year. Notwithstanding the foregoing, Lessee may avoid such termination by agreeing to bear the cost of and pay any such monetary obligations of Lessor for the fiscal year in question.

Section 3.04. Lessee's Commitment to Fund the Golf Course. Lessee shall use commercially reasonable efforts to raise at least Twenty Million Dollars (\$20,000,000.00) in cash (as evidenced to Lessor's satisfaction) or to provide an irrevocable letter of credit for this amount (in a form and of substance satisfactory to Lessor), which cash and/or letter of credit shall be readily available to Lessee and Lessor to cover Lessee's share of the costs of its development of the Project (the "Funding Commitment") by no later than **August 31, 2013**. If Lessee fails to provide evidence, reasonably satisfactory to Lessor, that the Funding Commitment has been satisfied by such date, Lessor shall thereafter have, until such time as the Funding Commitment is satisfied, the right and option to terminate this Lease by providing written notice of such termination to Lessee (a "Funding Termination"). Termination will be effective 30 days after such written notice, at which time the parties will have no further rights or obligations hereunder.

Section 3.05. Material Dates. Time is expressly declared to be of the essence in this Agreement and each and every material covenant hereunder. Without limiting the foregoing, unless extended by written agreement signed by Lessor and Lessee, Lessee shall, subject to force majeure, complete each of the following in conformance with the interim dates detailed below:

- (1) As of the Effective Date of this Agreement, Lessee shall represent and certify to Lessor that it has obtained and entered into written User Agreements (as described in Section 5.05).
- (2) As set forth in Section 5.02, the first annual rental payment shall be paid on or before (i) 10 days after Lessor notifies Lessee that the Lessor Improvements have been completed or (ii) **May 31, 2015**, whichever shall first occur (the "Rental Commencement Date").
- (3) Subject to Section 3.04, Lessee shall satisfy the Funding Commitment and demonstrate its financial ability to fund the total construction costs for the Project pursuant to the provisions of Section 3.04 and Section 7.12 on or before the date that a Funding Termination occurs.
- (4) Lessee shall complete construction, obtain, a final certificate of occupancy for any improvements on the Project for which such certificates are required, and deliver to Lessor a copy of a certificate of substantial completion from the Project architect or engineer by **October 1, 2016**, (the "Completion Date").

ARTICLE IV POSSESSION AND USES

Section 4.01. Possession. Lessee shall have possession and control of the Premises during the Term commencing on the Delivery Date. As used herein, "Delivery Date" shall be the date on which Lessor notifies Lessee in writing that it has confirmed the Funding Commitment has been satisfied and that Lessee is entitled to take and assume possession of the Premises in accordance with the terms of this Lease. Notwithstanding the delivery of such possession, Lessor shall

continue to have access to the Premises to perform Lessor Improvements and thereafter subject to the terms herein provided.

Section 4.02. Permitted Uses. The Premises may be used solely for the design, development, construction, maintenance and operation of a championship golf course and training facility and associated dining and hospitality activities, including tournaments, competitions and other golf- and outdoor recreational events and activities. The Premises shall not be used for any other purpose without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 4.03. Scope/Conceptual Plans. The parties acknowledge that it is the fundamental intent and purpose of this Agreement to ensure that the Premises be developed and operated as a championship golf course, with other related facilities and features that may be built from time-to-time, constructed in substantial conformance with the conceptual plans with accompanying narrative description, approved by Lessor and attached hereto as **Exhibit B** (the "Approved Conceptual Plans"). The Project shall be constructed in substantial conformance with the Approved Conceptual Plans. Conformance to the Approved Conceptual Plans is a material element of this Agreement. Any material modifications to the Approved Conceptual Plans must be submitted to Lessor for advanced review and approval. If done in substantial conformance with the Approved Conceptual Plans, as approved and modified from time to time, and the terms of this Agreement, Lessee shall have control over the planning, design, engineering, and construction of the Lessee Improvements and overall development of the Project (other than Lessor Improvements not assigned to Lessee).

Section 4.04. Prohibited Uses. Lessee shall not permit or allow any portion of the Premises to be used or occupied in any manner that (collectively "Prohibited Uses"):

- (1) is contrary to any federal, state or local statute, rule, order, ordinance, requirement, or regulation applicable thereto;
- (2) would violate any certificates of occupancy, license, or permit affecting same;
- (3) would reasonably be expected to cause material damage to the structural integrity, utility, or regulatory compliance of any structures, liners, fill, or any other materials used or constructed to obtain regulatory closure from TCEQ or another local, state, or federal environmental agency (provided, however, the foregoing shall not limit or affect the rights of Lessee hereunder to make repairs, perform maintenance, or make alterations, as otherwise permitted hereunder, if done in compliance with applicable laws);
- (4) would cause damage to or impair the utility of any surrounding amenities, including but not limited to the urban forest and nature preserve, the Texas Horse Park, the Trinity Audubon Center, and the Trinity Trails system;
- (5) would constitute a public or private nuisance or waste;

- (6) would be immoral or obscene or create a threat to the health, safety, and welfare of the general public,
- (7) would render the insurance to be maintained by Lessee as herein provided void or the insurance risk materially more hazardous than typical in the industry,
- (8) would intentionally remove, damage or destroy any trees or existing vegetation in the Mitigation Area in violation of the requirements of Section 2.02 of this Lease, the PD and other applicable law,
- (9) would constitute an act of public or private discrimination, limitation of use, or exclusion from the Premises on the basis of race, color, religion, gender, age, national origin, citizenship, disability, or sexual orientation, or
- (10) would violate the terms of the following documents, unless otherwise approved by the City (and TCEQ, if appropriate) to (i) the Response Action Plan ("RAP"), dated March 7, 2013, written by Terracon Consultants, Inc. and submitted to TCEQ; (ii) the April 3, 2013 letter from Mark R. Riggle, P.G., of TCEQ, to Lori Frauli Trulson, P.G., REM, approving the RAP; and (iii) the April 11, 2013 letter from Dwight G. Russell, P.E., of TCEQ, to Lori Frauli Trulson, P.G., REM, acknowledging the City's pending request to disturb the final cover of the South Loop and Elam Landfill.

ARTICLE V RENTAL; OTHER CONSIDERATION

Section 5.01. Initial Rental. Lessee shall pay Lessor an initial rental amount of One Thousand and No/100 Dollars (\$1,000.00) within fifteen (15) days after the Effective Date.

Section 5.02. Annual Rental. Lessee shall pay Lessor an annual rental amount of Ten Thousand and No/100 Dollars (\$10,000.00) per year, in advance, throughout the term of this Lease. The first such annual rental payment shall be paid not later than the Rental Commencement Date, as provided in Section 3.05(2). Subsequent annual payments shall be made on or before each subsequent annual anniversary of the Rental Commencement Date.

Section 5.03. Additional Rental. As additional rental, Lessee shall:

- (1) from and after the Delivery Date, pay any and all charges for utilities used on the Premises (other than those necessary to and utilized in the construction of Lessor Improvements by Lessor), including but not limited to water, wastewater, electric, gas, solid waste disposal, telecommunications, storm water/drainage, and other utility services as provided in this Agreement;

(2) from and after the Delivery Date, pay any and all taxes, including without limitation ad valorem taxes, and assessments of any nature applicable or attributable to the Premises or any use thereof or activity thereon as provided in this Agreement; and

(3) from and after the Delivery Date, pay for and maintain the insurance coverages provided for in this Agreement.

Section 5.04. Additional Consideration. As additional consideration for this Agreement and subject to the terms hereof, Lessee shall:

(1) perform or cause to be performed a minimum of \$20 Million in design, development, and construction of the Project (but not including the amount of Lessor Funding Limit) as provided in this Agreement; and

(2) perform or cause to be performed a minimum of \$2.5 Million in design, development, and construction of the Trinity Trails System – Phase 3 (and other Trinity Trails projects); and

(3) provide or cause to be provided the Public Play as provided in Section 8.04 below; and

(4) obtain the User Agreements as provided in Sections 3.05 and 5.05 of this Agreement.

Section 5.05. Byron Nelson, SMU And First Tee User Agreements. Lessee shall secure and, subject to force majeure, maintain (and use commercially reasonable efforts to maintain) during their respective terms all of the following (collectively the “User Agreements”):

(1) a legally binding and effective agreement with the Salesmanship Club of Dallas to relocate the Byron Nelson Championship to the Golf Course no later than 2019 and to continue for an initial minimum term of not less than 5 years (the “SCD Agreement”); and

(2) a legally binding and effective agreement with Southern Methodist University (“SMU”) to designate and use the Golf Course as the home course for the SMU inter-collegiate golf teams and for inter-collegiate golf tournaments hosted by SMU for an initial minimum term of not less than 5 years (the “SMU Agreement”); and

(3) a legally binding and effective agreement with First Tee of Greater Dallas to provide youth programs at the Golf Course for an initial minimum term of not less than 5 years (the “First Tee Agreement”).

The User Agreements are a material element of this Agreement. Lessee hereby represents and warrants to Lessor that the User Agreements have been entered into by Lessee and the respective users on or prior to the Effective Date, and prior to the Effective Date, Lessee has made available true and correct copies of such User Agreements for Lessor’s review and inspection. The User

Agreements are subject to the requirements set forth in this Agreement, including Section 8.02 below.

Section 5.06. No Abatement Or Setoffs. Rental, including additional rental, if any, and other consideration by Lessee shall be paid or performed without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Lessee for same shall in no way be released, discharged, or otherwise affected except as expressly provided in this Agreement.

ARTICLE VI CONDITION OF THE PREMISES

Section 6.01. Title Exceptions; Minerals Reserved by Lessor.

(a) This Agreement and the leasehold estate granted is made and accepted subject to any and all covenants, conditions, reservations, restrictions, exceptions, encroachments, parties in possession, easements, right-of-ways, mineral interests, mineral leases, or other instruments or matters of record in the Official Real Property Records of Dallas County, Texas, effective as to all or any part of the Premises (and to the extent the same are valid, subsisting and in fact affect the Premises), or that would be apparent from an inspection of the Premises, or that would be disclosed by a current on the ground title survey of the Premises. Lessor has obtained a boundary survey of the Premises and has provided a copy to Lessee; however, Lessor makes no representations and gives no assurances as to the accuracy or completeness of same. Lessee agrees to satisfy itself in that regard. Lessee has been advised by Lessor to secure at or prior to the Effective Date, a policy of title insurance insuring its leasehold estate, and to satisfy itself as to the matters that would be disclosed by same. Lessor shall have no liability with respect to the boundary survey provided and shall have no obligation and bear no costs with respect to any title policy obtained or desired by Lessee. However, Lessor will reasonably cooperate with Lessee's efforts to obtain a leasehold title policy, including but not limited to execution and delivery of customary closing and curative documents, to the extent allowed by law and so long as there is no cost or liability to Lessor.

(b) This Lease does not cover any minerals in, on or under the Premises and Lessor shall remain free to lease, develop or otherwise exploit said minerals; provided, however, that Lessor and its successors and assigns will not have the right of ingress and egress over the surface of the Premises for the purpose of mining, drilling, storing, transporting, exploring, or developing the oil, gas, or other minerals, but Lessor and its successors and assigns shall be entitled to produce the oil, gas, or other minerals that are under the Premises from wells located and bottomed on other land or by means of one or more wellbores drilled directionally into the subsurface of the Premises from other land so long as the wellbore enters the subsurface of the Premises at a depth at least 2500 feet beneath the surface.

Section 6.02. Physical Condition. Lessee has been given satisfactory access to the Premises and all records in Lessor's possession relating to the Premises (including all records and permits concerning efforts to obtain TCEQ final closure/landfill cover approvals) for inspection prior to the Effective Date of this Agreement. Lessee has had ample opportunity

to review any documents regarding the Premises in the possession of TCEQ. Lessee shall take possession of the Premises and accept the Premises for Lessee's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis. Lessee acknowledges and agrees that Lessor has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (1) the value, nature, quality, or condition of the Premises, including without limitation, the title, soil, hydraulics, zoning, platting, and utilities, (2) the income to be derived from the Premises, (3) the suitability of the Premises for any and all activities and uses which Lessee may conduct thereon, (4) the compliance of improvements located at the Premises (or their operation) with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (5) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, (6) the manner or quality of the construction or materials, if any, incorporated into improvements to the Premises, (7) the manner, quality, state of repair or lack of repair of the improvements made to the Premises, and (8) any other matter with respect to the Premises.

Lessee specifically acknowledges that the Premises include a portion of the South Loop 12 and Elam Landfill (the "Landfill") on the Simpkins tract (as generally shown on Exhibit A-1 attached hereto) Lessee further acknowledges (i) existence of a Notice of Violation ("NOV") on the Simpkins Tract and (ii) Lessor's ongoing work with the TCEQ, including work relating to the ground cover and collection of potential methane from the Landfill. Lessee further acknowledges that portions of the Premises are currently enrolled in TCEQ's VCP No. 2210 for the purpose of remediation of site conditions related to the former use as a landfill and obtaining regulatory closure. Lessor has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises of Hazardous Substances.

Lessee further acknowledges and agrees that, having been given the opportunity to inspect the Premises, Lessee is relying solely on its own investigation of the Premises and not on any information provided or to be provided by Lessor and agrees to accept the Premises for use and waives all objections or claims against Lessor arising from or related to the Premises or for any Hazardous Substances, solid waste, or other materials located on it. Lessee further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that Lessor makes no representations as to the accuracy or completeness of such information. Lessor is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Premises, or the operation thereof, furnished by it or any real estate broker, agent, employee, servant, contractor, or other person.

ARTICLE VII DESIGN AND CONSTRUCTION

Section 7.01. Preliminary Design and Engineering Matters; Designation of Representatives; Other Construction Participants.

(a) As described in Section 6.01(a) above, Lessor has obtained a boundary survey and base map with topography and, if applicable, full constraint analysis of the Premises including property lines, easements and right-of-way alignments. The current base map and boundary survey ("Preliminary Mapping") have been provided to Lessee prior to the Effective Date. Lessor assumes no liability for the accuracy of the Preliminary Mapping provided to Lessee.

(b) From and after the Effective Date and prior to the Delivery Date, Lessor shall give Lessee and Lessee's agents, representatives, contractors and designees, upon prior notice to Lessor, access to the Premises in order to make such inspections, surveys, test borings, soil analyses and other tests thereon as Lessee shall deem advisable. The cost and expenses of Lessee's investigation shall be borne solely by Lessee. Lessee shall indemnify and hold Lessor harmless for any property damage or injury caused by Purchaser in connection with such inspections and tests, and this provision shall survive the termination of this Agreement.

(c) Within ten days after the Effective Date, Lessor and Lessee shall each appoint a representative to act on its behalf in connection with construction matters as provided in Section 7.06 below. Lessee may engage a third-party to manage the development of the Project (the "Development Manager"). Lessee may also, or alternatively, engage a third-party to act as a construction manager for the Project (the "Construction Manager"). Lessee, Development Manager or Construction Manager shall engage the Project Engineer (as provided in Section 7.05 below).

Section 7.02. Lessor Improvements.

(a) *General.* Subject to the Lessor Funding Limit (defined below), Lessor will perform, cause to be performed and/or fund Preliminary Mapping, other surveying, re-zoning and platting (including presenting such re-zoning and platting to City Planning Commission for consideration); landfill remediation; certain water, wastewater and other public infrastructure improvements; and other specified expenses that qualify as public works. Such public infrastructure improvements will include, but not be limited to, Highway 12 access to the Premises and the access way under Highway 12 connecting the north and south parcels of the Premises; improvements to the water main loop system from the Premises to the nearest existing or relocated water line and water and wastewater improvements; design and construction of Elam Road from Pemberton Hill Road to the Premises (including any required easements), intersection, and signal improvements; and other public works improvements supporting development of the Golf Course and trails. This work is detailed and described in **Exhibit C** (collectively the "Lessor Improvements").

(b) *Funding Limit.* Lessor does commit and has available an amount not to exceed \$12 Million ("Lessor Funding Limit") from Lessor's funds ("Lessor's Funds"), subject to the public procurement requirements noted below, for design, development and construction of Lessor Improvements. If at any time before or during design, development, or construction, the costs for the Lessor Improvements exceed the Lessor Funding Limit, so long as Lessee has been

provided a reasonable opportunity to review and approve the plans, specifications and contracts for such Lessor Improvements, Lessee shall be responsible for and pay any and all such additional costs. Lessor will notify Lessee of any anticipated overage as promptly as practicable and will undertake reasonable consultation with Lessee in a good faith effort to avoid as much overage as possible without compromising the Lessor Improvements; provided, however, Lessor's determination as to the necessity of any overage shall be final and conclusive. Notwithstanding any other provision of this Agreement, Lessor shall have no obligation to perform, provide, or pay for any Lessor Improvements or any portion of the Lessor Funding Limit amount unless and until the requirements of Sections 5.05 and 7.12 have been satisfied to Lessor's reasonable satisfaction, said sections being express conditions precedent to any obligation of Lessor with respect to the Lessor Improvements and payment of any portion of the Lessor Funding Limit amount. To the extent Lessor pays out any Lessor's Funds for the Lessor Improvements prior to the satisfaction of the conditions precedent herein state, it does so at its own risk that the conditions may not be satisfied and this Agreement may terminate. Such payment, however, shall not constitute or otherwise be deemed a waiver, acknowledgement of the satisfaction, or abandonment of said conditions and Lessor shall have no obligation to fund any further amounts unless and until the conditions are satisfied. Any amounts paid prior to satisfaction of the conditions shall nevertheless be counted against and applied to the Lessor Funding Limit.

(c) *Public Procurement Required.*

- (i) Lessee acknowledges that the Lessor's Funds to be used for Lessor Improvements supporting the Project (both on and off the Premises) are public funds. Consequently, to procure the construction contracts for any portion of the Lessor Improvements that are to be funded by the Lessor's Funds ("Publicly Bid Lessor Improvements"), unless statutory exemptions are specifically applicable, Lessor must comply with the public procurement procedures outlined in Sections 252.043(d-1) and 271.116 of the Texas Local Government Code. Lessee will require that Development Manager reasonably cooperate with Lessor to facilitate compliance with such requirements.
- (ii) Texas procurement law requires that no particular contractor be favored or given an undue advantage over other contractors at the commencement of the procurement process. Accordingly, any construction contractor who has been engaged to assist in the design, scheduling, or preliminary estimating on the project in any way shall not be eligible to submit a bid or proposal on any portion of the Publicly Bid Lessor Improvements.

(d) *Separate Plans And Specifications.* The parties anticipate that Lessor shall prepare the plans and specifications for bid or competitive sealed proposals and manage the construction work for all the Lessor Improvements, except as specifically designated on Exhibit C or as may otherwise be agreed in writing by Lessor and Lessee. With respect to any portion of the Lessor Improvements that are assigned by Lessor to Lessee or its designee for construction management, Lessee or such designee shall require that any construction plans and specifications prepared that include the Lessor Improvements be submitted to Lessor so that Lessor may

prepare and procure public bids for such Publicly Bid Lessor Improvements. The construction plans and specifications for the Publicly Bid Lessor Improvements shall be in a form acceptable to Lessor and delivered in a manner and time to allow Lessor a reasonable opportunity to review and approve such materials. Lessee shall require that the architectural or engineering firm engaged by Lessee or Development Manager prepare its plans and designs consistent with the agreed-upon scope of the Project and with due consideration of the amount of Lessor Funding Limit. In addition, Lessee will require such architectural or engineering firm to perform the Engineering Work (defined below) with respect to the Lessor Improvements it is administering in a manner that provides for alternates for nonessential elements of construction, so as to allow for reductions in the scope of construction in the event bids for the Lessor Improvements exceed the Lessor Funding Limit. If (i) all of the qualifying bids for the Lessor Improvements exceed the Lessor Funding Limit (an "Overbid Amount"), and (ii) Lessor and Lessee are unable to agree on changes in the Engineering Work that would eliminate the Overbid Amount, then, unless Lessee thereafter agrees in writing to pay or cause to be paid the Overbid Amount, this Agreement will terminate, in which event the parties shall have no further obligation hereunder.

(e) *Construction Manager; Payment Requests.* For the Publicly Bid Lessor Improvements, Lessor shall award the construction contract (the "Lessor Improvements Contract") to the lowest bid proposer that is a qualified bidder as provided in this Section 7.02(e), and thereafter may, if Lessee has been given a reasonable opportunity to review and approve the plans, specifications and contracts, assign such contract to Lessee (or such other entity as Lessee may designate), or Lessee's Construction Manager for all purposes, including inspection, supervision, testing, quality control, approval of shop drawings, utility coordination, obtaining utility clearances from all utility companies, staging and coordinating all utility-related work with the construction contractor, general coordination, and completion of all construction work. **Lessor shall not be responsible for any costs in excess of the Lessor Funding Limit.** Following such award and assignment, Lessee or the Construction Manager shall ensure that such Publicly Bid Lessor Improvements be completed in a timely manner (subject to force majeure), in accordance with the applicable Lessor Improvements Contract, including all final plans and specifications approved by Lessor.

If a contract for Lessor Improvements has been assigned to Lessee or its designee, Lessee shall require the Development Manager to prepare, in cooperation with the Project Engineer (hereinafter defined), all monthly and final payment requests for costs incurred in connection with the Lessor Improvements (a "Payment Request") and to submit such Payment Requests to Lessor for review, processing and payment through Lessor's Trinity Watershed Management Department.

Each Payment Request will include such supporting documentation as Lessor may reasonably require, including a break-out of the costs allocable to (i) work completed under the Lessor Improvements Contract and (ii) otherwise related to completion of the Lessor Improvements. All payments for Publicly Bid Lessor Improvements performed under the Lessor Improvements Contract shall be made by Lessor to Lessee, Lessee's Construction Manager, or Development Manager, as applicable, from the funds appropriated for that purpose.

Lessor shall not be obligated to make any payment under a Payment Request unless Lessee or the Development Manager has certified that, based on the determination of the Project Engineer, (i) the services, goods or materials that are covered by such Payment Request have been satisfactorily completed or delivered, (ii) the information included in such Payment Request is true and correct to the best of his information and belief, (iii) the work or services have been measured and verified to be substantially in accordance with the Lessor Improvements Contract, (iv) that all fees and expenses in managing the Lessor Improvements Contract have been properly documented, and (v) that all Lessor Improvements Contract preconditions to payment have been met.

Lessor reserves the right to perform inspections, measurements or verifications of the estimates or work quantities as it deems necessary. Final payment to a construction contractor for the Publicly Bid Lessor Improvements done by it shall not be made until (i) all preconditions to final payment for the work set forth in such Lessor Improvements Contract have been performed, (ii) such Publicly Bid Lessor Improvements have been finally completed (as verified by Lessee's Designee, Lessee's Construction Manager, the Project Engineer, and Lessor's Designee) in accordance with the Lessor Improvements Contract, including the plans and specifications, and (iii) Lessor has accepted such Lessor Improvements.

Section 7.03. Construction Documents Provided To Lessor.

(a) *Copies To Lessor.* On Lessor Improvements being administered by Lessee, Lessee shall require the Development Manager to provide at least five (5) sets of construction documents to Lessor on or before the date of distribution of the documents to potential contractors. The general conditions for any contract for the construction of the Lessor Improvements shall be at a minimum substantially equivalent to: (1) City of Dallas General Conditions for Building Construction (hereinafter called the "General Conditions") as amended by Lessor and (2) Lessor's Standard Specifications for Public Works Construction (Fourth Edition, 2004), as amended (hereinafter called the "Standard Specifications"). Lessee shall require the Development Manager to provide Lessor with a set of approved reproducible drawings prior to commencement of construction of the Lessor Improvements covered thereby, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas, and approved by the Construction Manager. Any material changes to the final plans and specifications shall require prior written approval of Lessor. Lessee shall also furnish or cause to be furnished Lessor with complete as-built drawings of the Lessor Improvements administered by Lessee within sixty (60) days after construction is complete.

(b) *Ownership.* Any architectural drawings, renderings, plans and specifications for the Lessor Improvements are and shall be owned by Lessor. Any architectural drawings, renderings, plans and specifications for any improvements to the Premises or parts of the Project (including but not limited the Golf Course design) constructed by or on behalf of Lessee under this Lease are for use solely with respect to the Project and/or the specific improvements contemplated by this Agreement, and Lessor shall have and receive ownership of these documents contemporaneously with ownership of said improvements as provided in this Agreement. Lessee shall include or cause to be included provisions in the agreements related thereto whereby such items will be assigned, at Lessor's election, to Lessor, in the event this Agreement is terminated.

Section 7.04. All Other Funding From Lessee; Ability to Change the Scope of Project.

Lessee shall be solely responsible for all other costs of design, development, construction, operation, and maintenance for the Project, including the Golf Course and Lessor Improvements in excess of the Lessor Funding Limit. The total cost of the Project (including, but not limited to, finish-out and furniture, fixtures and equipment (“FF&E”), professional fees, testing, permit fees and contingencies) is currently estimated at approximately \$33,000,000.00 (which amount will be reduced by the amount by which the costs of the Lessor Improvements are less than \$12,000,000) (as the same may be reduced, the “Minimum Construction Budget”). Subject to the terms of this Agreement, the Project must be completed substantially in accordance with the Approved Conceptual Plans and the Minimum Construction Budget, and Lessee will make or will cause to be made improvements to the Premises of at least \$20,000,000.00 (not counting the Lessor Improvements). So long as (i) the Project will be completed substantially in accordance with the Approved Conceptual Plans and Minimum Construction Budget (with Lessee having discretion to make reasonable re-allocations of items within such budget), (ii) Lessee makes or cause to be made improvements to the Premises of at least \$20,000,000 and consistent with the successful completion of the Project, and (iii) material changes involving Lessor Improvements are not made without Lessor’s prior written, Lessee may make (or allow to be made) such other changes to plans, specifications, budgets, contracts, or agreements for the Project as Lessee may determine are in the best interest of the successful completion of the Project, but no such changes shall relieve Lessee of its obligations under this Agreement.

Section 7.05 . Project Design and Engineering.

(a) *General.* Lessee shall engage or shall require Development Manager to engage a registered professional engineering or architectural firm (the “Project Engineer”) to perform all other design, engineering, and architectural for the development and construction of the Project that has not previously been done by Lessor, including without limitation (collectively the “Engineering Work”):

- (1) preliminary design estimates, construction plans and specifications, along with other customary engineering services for the design and operation of the Project (including necessary golf-related infrastructure and fencing and screen for all maintenance buildings and support facilities and amenity structures) as generally described in **Exhibit B**;
- (2) the design of all on-site water lines and Golf Course irrigation needs, including pumping systems, ponds, internal irrigation systems and any other improvements required as a part of such systems; and
- (3) the fill plans (including tree mitigation plans) and construction plans and specifications for all the internal roadways and driveways, including all required information for applying for a fill permit and any environmental permits or other authorization from local, state, or federal environmental agencies, including but not limited to TCEQ and TCEQ authorizations and written instructions pursuant

to 30 TAC Chapter 330, Subchapter T and 30 TAC Chapter 350 (the VCP regulations).

Subject to Lessor's right to review and approve as to Lessor Improvements, all such design and engineering shall be the sole responsibility of Lessee. All design and construction shall conform to applicable City codes, ordinances, regulations, design criteria, building standards and specifications. Lessee shall be solely responsible for payment of all fees and costs to provide the Engineering Work (other than that applicable to Lessor Improvements and not exceeding the Lessor Funding Limit when combined with Lessor's other expenditures). No clause providing for binding arbitration shall be included in any Lessee contract for the Engineering Work.

(b) *Lessor Review And Approval of Plans.* Lessee shall submit plans and specifications, construction schedules, and budgets (preliminary and final) to Lessor for review and approval before performing any such activity and before Lessor advertises and bids those portions requiring public bidding and assigned to Lessee by Lessor for management; provided, however, with respect to any portions of the Project other than the Lessor Improvements such review shall be limited to conformance with the Approved Conceptual Plans and Minimum Construction Budget. Within fifteen (15) days after receipt of plans and specifications for approval, Lessor shall, in writing, either approve or disapprove the plans and specifications or, with respect to plans for the Lessor Improvements, inform Lessee of the additional time required to complete the review thereof. All material revisions to approved plans and specifications shall likewise be submitted to Lessor for prior written approval. Lessor's review of any plans or specifications is solely for Lessor's own purposes, and Lessor does not make any representation or warranty concerning the appropriateness of any such plans or specifications for any purpose. Lessor's approval of (or failure to disapprove) any such plans and specifications shall not render Lessor liable for same, and Lessee assumes and shall be responsible for any and all claims arising out of or from the use of such plans and specifications. Information provided to Lessor pursuant to this paragraph is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

Section 7.06. Design and Engineering -- Additional Mutual Commitments.

(a) *Existing Easements.* Lessor and Lessee shall make reasonable good faith efforts and endeavor to coordinate development of the Project within existing easements in favor of Lessor or on the Premises to the extent reasonably practicable to facilitate the development while preserving and protecting the integrity of existing easements and the uses being made of same.

(b) *Joint Cooperation; Access For Planning And Development.* The parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to the Project. Promptly following the Effective Date, Lessor and Lessee shall each designate a representative (the "Lessor Designee" and the "Lessee Designee", respectively) who shall be the principal contact and day-to-day decision-maker for such party for all matters related to the initial development of the Project. Each party shall be entitled to rely upon any decision made or consent or approval provided by the other's designee in connection with such construction matters; provided, however, this shall not apply to any action, decision, or authorization reserved to or within the purview of the Dallas City Council pursuant to this Agreement or applicable law.

Prior to the Effective Date, Lessee has been granted reasonable access to the Premises to facilitate planning and the preparation of plans and specification for the intended construction of the Project. Lessor will allow Lessee and its consultants' reasonable access to Lessor's records related to the Premises, during normal business hours, upon advance notice and scheduling with Lessor's designated personnel. On the same basis, Lessee will allow Lessor's assigned personnel reasonable access to non-privileged construction documents and plans developed by Lessee, its consultants and contractors, related to Lessee's obligation under this Agreement with respect to development and construction of the Project. Information provided to Lessor pursuant to this paragraph is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

Section 7.07. Construction of the Project.

(a) *General Undertaking.* Subject to all laws and regulations and in accordance with the terms of this Agreement, Lessee shall be responsible for all material, labor, facilities, furniture, fixtures and equipment, signage, and any other activities necessary to begin and fully complete the construction of the Project. All work shall be performed in a good and workmanlike manner, substantially in accordance with the Approved Conceptual Plans and the Minimum Construction Budget, and otherwise in conformance with all applicable federal, state, and local laws, codes and regulations. Notwithstanding anything to the contrary herein, neither Lessor nor Lessee shall have any obligations with respect to construction or completion of the Project herein unless and until the Funding Commitment has been satisfied and the Construction Commencement Date has occurred. To the extent Lessee or any other party pays out any funds or incurs any expense prior to such events, it does so at its own risk that the conditions may not be satisfied and this Agreement could terminate.

(b) *Timing.* Lessee will use commercially reasonable efforts to satisfy all contingencies for construction commencement set forth herein and to start construction of the Project on or before **October 31, 2013**. Once construction has commenced, Lessee will, subject to force majeure, complete (i) the Project described in **Exhibit B** (other than the First Tee facilities contemplated in the First Tee Agreement) on or before **October 1, 2016**; and (ii) the First Tee facilities contemplated in the First Tee Agreement on or before six months after completion of the portion of the Project described in clause (b)(i) above.

(c) *Construction Contracts.* Subject to this Article 7, Lessee will have exclusive authority, control and rights in selecting, terminating and replacing the general contractors for the portions of the Project other than the Lessor Improvements. Lessee may require that Development Manager take assignment of certain of the publicly bid contracts as provided in Section 7.02(f) above and/or enter into (in its own name) and perform all contracts (both publicly and privately bid) necessary to complete the Project substantially in accordance with the Lessor Improvements Contract, the Approved Conceptual Plans and the Minimum Construction Budget. Without limiting the terms of Section 7.09 hereof, contracts entered into by Lessee for the design, development, and construction of the Project are subject to the following:

- (1) all such contracts shall require the contractor to use good faith efforts to abide by the City of Dallas Business Inclusion and Development policies for the completion of all Project improvements;
- (2) all such contracts shall contain language subordinating and subjecting such contract to the terms of this Agreement and exculpating Lessor from any obligations and liability thereunder;
- (3) all such contracts shall contain insurance requirements for coverages and limits not less than those which are customarily required by Lessor of its like contractors, naming Lessor and its officers and employees as additional insureds;
- (4) all such contracts shall contain language indemnifying Lessor and its officers, agents and employees against any costs or liabilities thereunder; and
- (5) all contracts shall be solicited based upon contractor qualification requirements sufficiently broad so as not to exclude minority contractors as a class, and general contract specifications sufficiently broad so as not to favor a single contractor.

(d) *No Lessor Liability.* Lessor shall have no liability for any claims that may arise out of the design or construction of the Project, and Lessee shall cause all of its contractors, consultants, and subcontractors to agree in writing that they will not look to Lessor for payment of any costs and valid claims associated with the Project except to the extent they constitute an approved Lessor Improvement and the Lessor Funding Limit has not been or will not be exceeded (cumulatively and as reasonably anticipated).

(e) *Protect Environmental Remediation Work.* Lessee shall at all times remain aware and ensure that all contractors are aware of the site remediation work related to the final closure/landfill cover of the applicable parts of the Premises and endeavor to minimize impacts on the Mitigation Area as provided in Section 2.02 above. If any such portion of the Premises is disturbed during Lessee's construction activities, Lessee shall remediate or cause to be remediated such damage in accordance with applicable regulations or any other successor agency, the U.S. Environmental Protection Agency ("USEPA") and any other local, state or federal authority or agency including the specific requirements of the TCEQ with respect to the then-applicable VCP and Subchapter T approvals for the Premises.

Section 7.08. Zoning and Platting; Permits And Other Approvals.

(a) *Zoning And Platting.* Lessor and Lessee shall reasonably cooperate with one another to obtain zoning, platting and subdivision approvals for the Premises as necessary for the Project. The parties acknowledge that Lessor, in direct consultation with Lessee, has taken the lead in securing zoning and plat approval for the initial phase of the Project; provided, however, Lessor assumes no liability for the accuracy, completeness or sufficiency of same. Lessee must satisfy itself in such regards. Lessee shall be responsible for obtaining and maintaining all development plans, permits, licenses, zoning and consents necessary for the ongoing operation and development of the Project and any other activities of Lessee on the Premises, except those

which have been expressly undertaken by Lessor as noted herein. Lessor cannot limit the discretion of the City Council, the City Plan Commission or any other regulatory bodies, but will make legally reasonable efforts to assist Lessee regarding any such matters.

(b) *Permits and Other Approval; Grants.* Lessee shall be responsible for obtaining, as and when required by applicable laws, ordinances, or regulations, all building permits, certificates of occupancy, permits, (including, if applicable, fill permits, notice of intent under storm water regulations promulgated pursuant to the Federal Clean Water Act, and other required permits), licenses, permissions, consents, and approvals (whether from government agencies or third parties, as applicable) in connection with construction, occupancy and uses of any improvements, and any repairs, replacements, or renovations to the Project. Upon request by Lessor's Designee, Lessee shall furnish Lessor evidence thereof. Lessor will use reasonable efforts to assist Lessee with and support requests for federal and state permits, grants or incentives for infrastructure, parks, trails, and other improvements which may benefit the Project and the neighboring areas of the City of Dallas or that would otherwise reduce costs for the Project.

(c) *Easements; Dedications; Great Trinity Forest Blvd Connector.* In order to develop the Premises for the Project, it may be necessary or desirable that (i) street, water, sewer, drainage, gas, power lines, setbacks lines and other easements or similar rights be granted or dedicated over or within portions of the Premises or (ii) existing streets, utility easements, setback lines or similar rights over or within portions of the Premises be vacated or abandoned. In addition, Lessor and Lessee agree that, as described in Section 7.02(a), a dedicated legal right of access from the Texas Department of Transportation ("TxDOT") and physical connection, across, over or under Great Trinity Forest Boulevard, of the northern tract of the Premises with the southern tracts of the Premises is desirable for the development and operation of the Project. During the term of this Lease, Lessor will cooperate with Lessee in obtaining such connection rights from TxDOT and in such other efforts, including but not limited to joining with Lessee in executing and delivering appropriate documents and pursuing necessary abandonment and other processes; provided, however, Lessee shall bear all responsibility for and cost of such efforts and Lessor makes no guaranty or warranty regarding the successful outcome of such efforts. Notwithstanding the foregoing, Lessee acknowledges that such efforts may require and be subject to action by Dallas City Council, Dallas City Planning Commission or other city-bodies and that Lessor cannot guarantee approvals or any particular outcome before said bodies. The outcome of such actions is Lessee's risk. In no event does Lessor have any obligation to acquire or subject to Lessee's use property rights beyond the Premises or relinquish title as to any part of the Premises or other lands owned by it.

Section 7.09. Lessor-Required Bonds; Insurance; Mechanic's Liens.

(a) For the construction of the Lessor Improvements that have been assigned to Lessee or its designee, Lessee shall require the construction contractor(s) for such work to furnish performance and payment bonds issued in accordance with Chapter 2253, Texas Government Code, as amended, by a corporate surety or sureties licensed to issue surety bonds in Texas, authorized to do insurance business in Texas, listed on the United States Treasury List of Sureties Authorized to Issue Bonds for Federal Jobs, and otherwise acceptable to Lessor. The

bonds shall be issued on forms substantially similar to those attached hereto as **Exhibit D** or otherwise approved by Lessor, and shall name Lessee and Lessor as joint obligees. The bonds shall be maintained during the full term of the applicable construction contract. Lessee shall require the construction contractor to secure a replacement surety in the same manner as required above in the event the original surety becomes insolvent.

(b) For any other construction contracts for the Project, Lessee agrees that it will not pay or allowed to be paid any statutory retainage amount unless and until final completion of the work has occurred and Lessee is in receipt of releases or waivers of liens from the construction contractor and any subcontractors used.

(c) In addition, Lessee agrees to require the construction contractor on any improvement project under this Agreement to provide evidence of insurance in types, coverages and amounts as would be carried or required by a prudent property owner for similar projects in the Dallas, Texas area (or otherwise be included within a Project-insurance program acceptable to Lessor).

(d) NOTHING HEREIN IS INTENDED TO PERMIT OR ALLOW ANY CONTRACTOR OR SUBCONTRACTOR OF LESSEE OR ANY OTHER PERSON OR ENTITY TO HAVE, CLAIM OR ASSERT ANY TYPE OF MECHANIC'S OR MATERIALMEN'S LIEN AGAINST THE PREMISES, LESSOR'S INTEREST IN THE PROJECT, ANY IMPROVEMENTS CONSTRUCTED THEREON, OR THIS LEASE. Lessee will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises (including any improvements, whether the property of Lessor or Lessee hereunder) in connection with any construction, improvements, maintenance or repair thereof made by Lessee or any contractor, agent or representative of Lessee. Lessee shall cause any such claim of lien to be fully discharged or bonded no later than thirty (30) days after receiving written notice of the filing thereof.

Section 7.10. Conditions To Commencing Construction. Notwithstanding anything herein to the contrary, all of the following must occur prior to the commencement of construction of the Project (the "Construction Conditions"):

- (1) approval by Lessor and Lessee of any substantial changes to or deviation from the Approved Conceptual Plans that are attached as Exhibit B hereto;
- (2) all building permits, zoning, certificate of appropriateness, and other approvals required for the commencement of construction (including any necessary VCP and Subchapter T approvals) shall have been obtained or subject only to administrative conditions for issuance;
- (3) confirmation, acceptable to Lessor, of compliance with the provisions of Section 5.05 (User Agreements) and Section 7.12 (Financial Ability);
- (4) Lessor and Lessee shall each have been provided with true and correct copies of any Lessor Improvements construction contracts that are to be administered by Lessee or its designee and that were entered into prior to such date;

- (5) Lessor shall have been provided true and correct copies of all policies (and endorsements, if any) of required insurance with respect to the Project; and
- (6) all general contractors under Project construction contracts that have been entered into prior to the Effective Date shall have provided (to the extent allowed by law) lien waivers with respect to the Lessor Improvements.

Upon confirmation of satisfaction of these contingencies, Lessor and Lessee shall jointly execute a notice to commence construction and the date of such execution shall be the "Construction Commencement Date". Lessee shall not commence construction without receiving said notice.

IN THE EVENT THAT LESSOR AND LESSEE HAVE NOT AGREED IN WRITING THAT ALL OF THE CONSTRUCTION CONDITIONS HAVE BEEN SATISFIED (UNLESS WAIVED IN WRITING BY LESSOR AND LESSEE) BY WITHIN 60 DAYS AFTER THE FUNDING COMMITMENT HAS BEEN SATISFIED IN ACCORDANCE WITH SECTION 3.04 AND SECTION 7.12, THEN LESSOR AND LESSEE SHALL, NO LATER THAN FIVE BUSINESS DAYS AFTER SUCH DATE, EACH DELIVER TO THE OTHER A WRITTEN NOTICE SETTING FORTH THE CONSTRUCTION CONDITIONS THAT SUCH PARTY DOES NOT BELIEVE HAVE BEEN SATISFIED. IN THE EVENT THAT LESSOR AND LESSEE DO NOT SUBSEQUENTLY AGREE IN WRITING THAT ALL OF THE CONSTRUCTION CONDITIONS HAVE BEEN SATISFIED (UNLESS WAIVED IN WRITING BY LESSOR AND LESSEE) BY THE DATE THAT IS 90 DAYS AFTER THE FUNDING COMMITMENT HAS BEEN SATISFIED, THEN EITHER LESSOR OR LESSEE MAY TERMINATE THIS AGREEMENT BY PROVIDING WRITTEN NOTICE TO THE OTHER.

Section 7.11. Accounts. Lessee shall establish (or require Development Manager to establish) a construction account ("Construction Account") at a federally insured depository institution within the city limits of Dallas, Texas for the purpose of accumulating the Funding Commitment for all development and construction work on the Project for which payment and performance bonds are not required hereunder. Such account shall be established solely for the benefit of the Project and to ensure that sufficient funds are available to complete the Project. As a condition to satisfying the Funding Commitment, Lessee, the financial institution that is the holder of the account and Lessor shall enter into such arrangements as may be reasonably required by Lessor to make the funds in the Construction Account accessible by Lessor for the payment of Lessee's construction and development obligations under this Lease, in the event Lessee fails to make such payments. During construction of the Project, Lessee shall furnish to Lessor a quarterly report of the amount of the costs of the Project paid from such account, and Lessor, shall have, upon written notice to Lessee, the right to audit such account. Information provided to Lessor pursuant to this paragraph is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

Section 7.12. Financial Ability Of Lessee. Before Lessor has any obligation to begin any construction activity on the Premises or expend any Lessor Funds, Lessee shall provide evidence reasonably satisfactory to Lessor that the Construction Account has not less than Twenty Million

Dollars (\$20,000,000.00) in cash on deposit available solely for the payment of costs of the Project development. In lieu of cash, Lessee may provide an irrevocable letter of credit satisfactory to the Lessor in an amount of not less than Twenty Million Dollars (\$20,000,000.00) for the costs of the Project. Although Lessor has proceeded with the bidding process for certain of the Lessor Improvements and has scheduled the contract award for a portion of the Lessor Improvements for City Council approval on May 22, 2013, the Lessor may, at its sole discretion, hold such bids until Lessee has demonstrated its ability to satisfy the Funding Commitment. If the Lessee is unable to satisfy the Funding Commitment by the Funding Deadline, Lessor may cancel any such contracts for the Lessor Improvements and, subject to the terms of Section 3.04, terminate this Agreement. Except as may be expressly permitted herein, in no event shall Lessee allow any liens to be affixed to any portion of the Premises, the improvements made at the Premises, the equipment installed, any interest in this Agreement, or the deposited funds/Construction Account. No expenditure of Lessor Funds by Lessor prior to the satisfaction of this condition shall constitute a waiver of this condition nor require additional expenditures of Lessor Funds unless and until the condition is satisfied. Any such early expenditure shall nevertheless count towards the Lessor Funding Limit.

Section 7.13. Lessor Right To Observe And Inspect. Lessor shall have the right (but not the obligation) to observe and inspect work performed by Lessee or any contractor(s) on the Project. Lessor inspections shall be coordinated with Lessee's contractor(s), construction manager or engineer or through Lessee's Designee. Lessor shall perform such inspections in an expeditious manner calculated to minimize inconvenience and delay. Lessee will require the Development Manager or Project Engineer to be accessible to Lessor's Designee at all reasonable times, and shall require that the Development Manager provide sufficient on-site representatives, construction administrators and/or inspectors to assure that the Project will be completed in accordance with the Approved Conceptual Plans. Lessor shall be entitled to receive notice of and for the Lessor's Designee to attend all construction meetings involving the Project at which a representative of Lessee shall be present, and, if requested, shall be provided with copies of minutes of all such meetings by Lessee's engineer or construction manager regardless of Lessor's presence.

Section 7.14. Site Security And Securing Construction Materials. Lessor shall have no responsibility for construction site security, worker health and safety matters, and securing construction tools, equipment, supplies and materials; provided, however, the foregoing is not intended to limit or reduce any police, fire or other safety services generally provided by Lessor in the City of Dallas.

Section 7.15. Lessor's Good Faith Effort Plan/Precertification Process. For all Project improvements, Lessee shall make good faith efforts to comply with the M/WBE (defined below) process and goals established by Lessor in its Business Inclusion and Development Plan and with Lessor's Fair Share goals. Specifically, Lessee's goals shall be 25% participation by M/WBE firms for all construction work including those contracts that are privately bid and related to the Project. Lessee shall award the contracts for the construction of the Project to the best value proposer as reasonably determined by Lessee through a private bid process established and administered by Lessee. Before bid solicitation, Lessor's Business Development and Procurement Service staff, Lessee's Designee and the Development Manager will solicit

involvement in the bid process by minority/women business enterprises (“M/WBE”). Staff will hold informational meetings and Lessee shall require Development Manager to provide the following: (1) an overview of the bid to the prospective contractors and (2) an opportunity for prospective contractors to meet one-on-one with the Development Manager.

Section 7.16. Construction Field Changes. All “material” (as that term is defined in Section 8.11 below) field changes that affect (i) all or any portion of the Lessor Improvements or (ii) substantial conformity of the Project to the Approved Conceptual Plans or would result in a proposed decrease in the overall amount of the Minimum Construction Budget (with respect to the remainder of the Project) shall be submitted for approval in advance to Lessor’s Designee. Within fifteen (15) business days after receipt of plans showing material field changes for approval, Lessor’s Designee shall either approve, disapprove or advise Lessee that more time is needed to review the change, or that the review and approval of another government body or agency, including but not limited to TCEQ, is required in connection with such change. If, within the fifteen (15) business day period, Lessor’s Designee fails either to disapprove the proposed material field changes or to advise Lessee that more time is needed to review the change, Lessor shall be deemed to have approved the plans and specifications for such proposed material field changes as submitted. If Lessor’s Designee disapproves such change, Lessor’s Designee, Lessee’s Designee and Development Manager will attempt in good faith to resolve expeditiously such disapproval.

Section 7.17. Construction And Materials Testing. Any construction and materials testing of the Project, as may be agreed to by Lessor and Lessee, shall be performed by certified independent laboratories approved in advance by Lessor’s Designee. Lessee shall require Development Manager to furnish Lessor’s Designee with certified copies of the results of all tests. Lessee shall have the right to submit to Lessor a list of certified independent laboratories for advance approval, and Lessor agrees to notify Lessee promptly whether any laboratories on this list are not approved.

Section 7.18. Repair and Restoration During Construction. During construction, Lessee shall require that all damage to any property or facilities of Lessor or any other entity caused by any acts or omissions of Lessee, its engineers, construction manager, contractors and subcontractors, be timely repaired, replaced or corrected to Lessor’s reasonable satisfaction. All costs thereof shall be borne by Lessee, Development Manager or its contractors, and shall not be a charge against Lessor. If Lessee fails to begin timely repair, replacement or correction of such damage (or to require such action) within 30 days after the occurrence of such damage, Lessor may undertake same, but shall not be obligated to so act. The reasonable cost of such repairs, replacements or corrections made by Lessor on account of damage caused by such acts or omissions of Lessee, its engineers, construction manager, contractors and subcontractors, shall be reimbursed to Lessor by Lessee.

Section 7.19. Lessor’s Governmental Authority Not Impaired. Notwithstanding any term of this Agreement, Lessee recognizes and acknowledges the authority of Lessor under its charter, ordinances and state law to exercise its regulatory and police powers to protect the public health, safety, and welfare. Such powers extend to Lessee’s, Development Manager’s or their respective contractor’s construction activity on the Premises, and Lessee’s, or Operator’s (hereinafter

defined) operation of the Project. Nothing herein is intended to limit Lessor's authority to take appropriate enforcement and regulatory actions to provide such protection.

Section 7.20. Lessor Inspection Upon Substantial Completion; Final Completion. Subject to the terms of this Agreement, Lessee shall perform the work contemplated by this Agreement or cause it to be performed in a good and workmanlike manner and in compliance with the applicable Lessee's plans and specifications and the Approved Conceptual Plans, as approved herein, and all applicable building and zoning codes and other legal requirements including but not limited to VCP and Subchapter T approvals from TCEQ. Upon substantial completion of the Lessor Improvements administered by Lessee, Lessor shall review, comment on and approve the punch list, and any items reasonably identified by Lessor shall be added to the punch list at Lessor's request. After (1) the punch list items on the Lessor Improvements are performed to meet plans and specifications, (2) Lessor receives certification of final completion of the remainder of the Project by the Project Engineer or the Development Manager that is in a form and of a substance reasonably acceptable to Lessor, (3) certificate of occupancy or other similar documents have been issued to certify compliance with applicable City ordinances for the various components of the Project, and (4) satisfactory documentation that Lessee has expended or caused to be expended not less than the \$20 Million committed by it to developing the Project, Lessor shall issue a letter of final acceptance, confirming completion of construction of the Project. Any Lessor Improvements that are public infrastructure and not part of the Premises shall become the responsibility of Lessor, and Lessor shall, following acceptance of such Lessor Improvements, thereafter maintain and repair such facilities as public infrastructure in accordance with applicable City of Dallas standards. In all other events, any warranty obligations of the contractor(s) or obligations to correct defective work shall not, by such acceptance, become the responsibility of Lessor. Lessee or its construction manager shall, upon request of Lessor, provide Lessor with copies of all building systems, training, operation, and maintenance manuals for the Project.

Section 7.21. Fee Simple Title To Lessor. The parties acknowledge that fee simple title to the Premises and the Lessor Improvements when made thereto during the pendency of this Agreement shall automatically vest in Lessor without any further action by either party hereto, free and clear of all liens and other encumbrances arising by, through or under Lessee, other than the leasehold interest created by this Agreement and subleases permitted hereunder, and Lessee agrees to take no action before, during or after construction that would prejudice Lessor's clear fee simple title. Any other fixtures or improvements to the Premises shall be and remain the property of Lessee, or any sublessee, as applicable, until the expiration or earlier termination of this Lease, at which time fee simple title to such fixtures or improvements shall automatically vest in Lessor without any further action by either party hereto.

Section 7.22. Fixtures, Equipment, And Personal Property. Any personal property, moveable fixtures, artwork and equipment used in the conduct of activities by Lessee (as distinguished from fixtures and equipment affixed to the land or improvements) and placed by Lessee, its subtenants, contractors, agents, employees or invitees on or in the Premises, shall not become part of the real property, but shall retain their status as personal property ("personalty"). Such personalty may be removed at any time, so long as no damage is caused to the Premises by such removal and so long as such personalty was not publicly funded. Any permanent fixtures,

equipment and improvements constructed, installed, or placed upon the Premises that cannot readily be removed without material injury or diminution in value to the Premises, shall be deemed to become part of the real property and shall, become the sole and exclusive property of Lessor, free of any and all claims of Lessee or any person or entity claiming by or through Lessee. In the event personalty that is permitted to be removed pursuant to this section is not removed from the Premises within ten (10) days following the termination of the Agreement, Lessor may treat said personalty as abandoned and retain the personalty and treat it as part of the Premises or have the personalty removed and stored or disposed at Lessee's expense. Lessee shall promptly reimburse Lessor for any damage caused to the Premises by the removal of personalty whether removal is by Lessee or Lessor or any cost or expenses incurred by Lessor for the storage or disposal of such personalty.

Section 7.23. Construction Warranties. Following completion of the Lessor Improvements the contracts for which were assigned to Lessee, Lessee shall formally assign to Lessor any interest of Lessee in and to all warranties and warranty obligations of the contractor(s) and equipment manufacturers relating to such improvements; provided, however, correction of defective work shall not by such assignment become the responsibility of Lessor, but shall (subject to Section 7.20 above) remain the responsibility of Lessee and its contractor(s). Lessee shall administer or cause to be administered said warranties during the Term of this Agreement.

Section 7.24. TCEQ, VCP No. 2210, COC for Certain Portions of the Premises. Lessee understands and agrees that the entirety of the Premises is currently enrolled in the TCEQ VCP No. 2210 for the purpose of obtaining regulatory closure by obtaining a conditional certificate of completion ("CCOC"). Lessor agrees that, on or prior to the Rental Commencement Date, Lessee, Development Manager and other parties who may acquire an interest as subtenant in or operator on the Premises prior to the issuance of the CCOC, may, at their cost and expense and subject to TCEQ's direction, be added as an additional applicant under VCP application No. 2210 if otherwise so allowed by said program. Lessee further understands that development of the Premises into the Golf Course may impact the current response action design for the final landfill cover with respect to the Landfill, including but not limited to course cover, contouring, and drainage. Lessee shall require that all Engineering Work comply with all applicable TCEQ rules and be consistent with Lessor's efforts to obtain a CCOC under TCEQ VCP No. 2210, as provided herein. To the extent required under the VCP No. 2210, Lessor and Lessee have and shall continue to reasonably cooperate to coordinate all design, development, construction, and operation on the Premises with TCEQ to ensure compliance with all applicable TCEQ VCP regulations and the Texas Risk Reduction Program ("TRRP") (TRRP - 30 TAC Chapter 350) regulations. In particular, to the extent not completed by Lessor as part of the Lessor Improvements, Lessee shall or shall cause Development Manager to:

(1) design and construct the golf course and ancillary facilities located on the Premises in accordance with all applicable TCEQ regulations, including those regarding VCP remediation, Subchapter T, and TCEQ guidance for Remedy Standard B response actions; and

(2) coordinate all design and construction with Lessor's environmental consultant and the City's Office of Environmental Quality to ensure: (i) the development design is consistent with the RAP, dated March 7, 2013, written by Terracon Consultants, Inc. and submitted to

TCEQ (and any TCEQ-approved revisions to the RAP) and TCEQ's requirements for Remedy Standard B TRRP response actions; and

(3) comply with the design and specifications submitted in the approved RAP, and ensure that any modifications to the design or specifications are approved by Lessor and TCEQ prior to implementation as may be required by law; and

(4) reasonably cooperate with the City and its consultant to prepare and receive TCEQ approval for the Response Action Completion Report ("RACR") after construction of the Project is completed; and

(5) prepare, and send to City for review and approval, annual Post Response Action Care Reports ("PRACRs") after RACR approval, which shall be submitted to TCEQ after City review and approval; and

(6) ensure that all future Project operations comply with the Post-Closure Care and Monitoring Program outlined in the RAP and any TCEQ-approved RACR; and

(7) conduct (or if requested by Lessor, allow Lessor to conduct all or part of) the post-closure care and monitoring activities in accordance with the Post-Closure Care and Monitoring Program agreed upon with the TCEQ; and

(8) complete all actions necessary (and in compliance with applicable TCEQ regulations) to obtain a CCOC under the VCP for VCP No. 2210, ensure that the CCOC is obtained, and ensure compliance with the terms of the CCOC for the duration of this Agreement.

(9) conduct cap inspections as required in the April 3, 2013 letter from Mark R. Riggle, P.G., of TCEQ, to Lori Frauli Trulson, P.G., REM, approving the RAP, unless otherwise directed by the City and TCEQ.

In the event Lessor's consent or approval is required with respect to any of the foregoing items or the items set forth in Section 7.25 or Section 7.26 below, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

Section 7.25. Compliance With MSW Subchapter T Regulations. It is the intent of the parties to this Agreement that all of Lessee's work and operations on the Premises shall be conducted in accordance with applicable TCEQ regulations, including but not limited to TCEQ Subchapter T regulations (30 TAC § 330, Subchapter T) pertaining to the development of properties over closed Municipal Solid Waste ("MSW") landfills. Lessor and Lessee shall reasonably cooperate and cause to be prepared the TCEQ Subchapter T plans, including the portion of the site remediation plans related to the final closure/landfill cover for those applicable portions of the Premises, in coordination with the City's Office of Environmental Quality. In particular, Lessee shall design and construct the portions of the Project that will be located over the closed landfills on the Premises or in the vicinity of the closed landfills where methane gas has the potential to be present in accordance with the applicable Subchapter T regulations, and also consistent with the Subchapter T Authorization Request (30 TAC § 330.960), Simpkins

Redevelopment Project, Closed Elam and South Loop Landfill Sites, Dallas, Texas, prepared by SCS Engineers for the City of Dallas, dated March 8, 2013, and submitted to TCEQ, along with any subsequent revisions or additional tasks approved or required by TCEQ (unless otherwise authorized by the City). In addition, Lessor and Lessee shall cooperate to cause to be prepared (subject to prior review and approval of the City) and submit to TCEQ for approval an engineer's report, as required by TCEQ in the April 11, 2013 letter from Dwight G. Russell, P.E., of TCEQ, to Lori Frauli Trulson, P.G., REM, acknowledging the City's pending request to disturb the final cover of the South Loop and Elam Landfill.

Section 7.26. Methane Mitigation Systems. Lessee acknowledges and agrees that waste cells in the Landfill within the Premises may be actively generating methane. Consequently, in conjunction with construction of any buildings on the Premises, Lessee shall retain or cause to be retained a qualified engineer to evaluate said situation in order to evaluate and make recommendations as to which methane mitigation approach (vapor barrier with passive venting, interceptor trench, or other commercially reasonable system from time to time) would be most practicable (in light of the proposed improvements and their intended use). Lessee shall submit or cause to be submitted such mitigation plans for Lessor's review and approval prior to any building construction, which approval shall not be unreasonable withheld, conditioned or delayed. All sublessees constructing buildings on the Premises shall be advised of and comply with this section and also Subchapter T and any TCEQ approval or comment letters pursuant to Subchapter T.

Section 7.27. Election to Discontinue Project. If, during the course of construction of the Golf Course Lessee discovers or learns of any condition in, on or about the Premises (including, without limitation, the discovery of any environmental condition on the Premises that had not previously been known, or could have been known with the exercise of reasonable due diligence, to Lessee) that Lessee reasonably determines (i) would cause the estimated costs to complete the Golf Course and the Lessor Improvements to exceed by more than \$3,000,000 the then-projected costs of such work or (ii) would make the construction or operation of the Premises as a championship golf course impossible or unfeasible, then Lessee may, upon 30 days written notice to Lessor elect to discontinue the Project, in which event Lessee shall, at its cost and expense, in a good and workmanlike manner, promptly restore the Premises to a safe and attractive condition (including but not limited to restoring any disrupted landfill caps, etc.), re-assign or cause to be re-assigned to Lessor any Lessor Improvements contracts being administered by Lessee or its Development Manager, pay all bills and other amounts owed with respect to Lessee's activity on the Project prior to termination, and upon completion of such restoration, this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

ARTICLE VIII OPERATION OF THE GOLF COURSE

Section 8.01. Lessee's Management And Operation Of The Premises. From and after the completion of the Project improvements (including the Lessor Improvements), Lessee shall do or cause to be done all things and take or cause to be taken all actions necessary and appropriate for

the continuous and ongoing operation, maintenance and management of the Project and Premises, including without limitation, major structural repairs, the post-closure care and monitoring of the Landfill, capital improvements for the Project and its facilities including, without limitation, all fencing, screening, buildings, lighting and fixtures, irrigation and janitorial and landscaping services in accordance with this Agreement. **Lessor shall have no obligation whatsoever to fund or contribute to any operating or maintenance expenses or activities or any future capital improvements for the Project.** Without limiting the generality of the foregoing, Lessee shall, at its expense:

- (1) provide all maintenance and repair of all components, equipment, facilities and improvements for the Project and the Premises;
- (2) be responsible for any unique, specialized or differing utility, parking, traffic control, and irrigation requirements that Lessee may have;
- (3) pay all management, maintenance, repair, and operating expenses relating to the Project and the Premises, including without limitation, all costs of grounds maintenance and irrigation;
- (4) secure and maintain any and all utilities necessary, appropriate and adequate to the operation of the Project and the Premises, including but not limited to water, wastewater, electricity, gas, solid waste disposal, storm water disposal and drainage, and telecommunication, and in no event shall Lessor in its capacity as lessor be liable to Lessee for loss or disruption of any such utility services;
- (5) commence, defend and settle in good faith such legal actions or proceedings concerning the management and operation of the Project and the Premises as are necessary or required in the opinion of Lessee;
- (6) equip, employ, pay, supervise and discharge all personnel or contractors that Lessee determines to be necessary for the management, operation and maintenance of the Project and the Premises;
- (7) provide reasonable screening of all maintenance buildings/areas that are in view of the Trinity Audubon Center;
- (8) maintain the Premises and all improvement and facilities located thereon, in a good, safe, efficient, attractive, and sanitary condition at all times, normal and ordinary wear and tear excepted, and in a manner consistent with highest industry standards and practices;
- (9) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Project and the Premises;
- (10) maintain any and all landfill cap area on the Premises in accordance with applicable TCEQ regulations and the terms of this Agreement;

- (11) ensure that all future Project operations comply with the Post-Closure Care and Monitoring Program outlined in the RAP and RACR, including maintenance and protection of the structure and integrity of landfill gas wells, groundwater monitoring wells, and other similar structures that exist or may exist in the future on the Premises ;
- (12) conduct cap inspections and report to TCEQ as required in the April 3, 2013 letter from Mark R. Riggle, P.G., of TCEQ, to Lori Frauli Trulson, P.G., REM, approving the RAP, unless otherwise directed by the City and TCEQ;
- (13) fund and conduct the post-closure care and monitoring activities in accordance with the Post-Closure Care and Monitoring Program agreed upon with the TCEQ (including, without limitation methane, groundwater and cap inspection monitoring), and, additionally, comply with the terms provided in **Exhibit F** relating to Hazardous Materials (provided, however, Lessor may elect, upon written notice to Lessee, to assume responsibility to conduct the methane and groundwater monitoring, in which event Lessor shall have no further liability for such activities, unless or until Lessor notifies Lessee);
- (13) provide security for the Project and the Premises, including any security systems and the monitoring of such systems;
- (14) notify Lessor of and, subject to Lessor's demand and approval, respond to any regulatory inquiries regarding the former operations of the Landfill;
- (15) furnish to Lessor the reports and other information concerning the management, maintenance, use and operation of the Project set forth on Section 8.12 below as may be reasonably requested from time to time by Lessor;
- (16) subject to force majeure, operate the Project in a continuous, consistent, and uninterrupted manner and not allow the closure of any substantial facility comprising a part of same (provided, however, the foregoing shall not prevent the periodic closure of some or all of the Premises, including the Golf Course, for periodic course maintenance, repair, capital improvements, re-design and re-seeding); and
- (17) operate the Project and all activities on the Premises in a safe, efficient and professional manner consistent with the highest industry standards and procedures.

Section 8.02. User Agreements.

- (a) Lessee shall perform or require Operator to perform in a commercially reasonable and prudent manner under the User Agreements, enforce such documents, and make all

commercially reasonable efforts to maintain and continue such contractual relationships during the term of this Lease.

(b) Subject to any applicable requirements with respect to the Board of Governors set forth in Schedule 1.02(b) and Section 8.02(e) below, Lessee may modify or amend the terms of any User Agreement in Lessee's discretion. WITH RESPECT TO ANY PROPOSED AMENDMENT OF A USER AGREEMENT SUBJECT TO SECTION 8.02(e), ANY SUCH AMENDMENT WILL BE SUBJECT TO THE PRIOR WRITTEN APPROVAL OF LESSOR (WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED). THE DETERMINATION OF THE BOARD OF GOVERNORS WITH RESPECT TO SUCH AMENDMENT SHALL NOT BE BINDING UPON LESSOR.

(c) On or before the expiration of the initial minimum term of any User Agreement, Lessee shall endeavor and make all commercially reasonable efforts to enforce, maintain and continue such relationship, or, failing same, use commercially reasonable efforts to secure similar type arrangements throughout the term of this Lease.

(d) The User Agreements shall require the users to promptly provide to Lessor copies of any notices of default or other similar type communications provided to Lessee.

(e) Lessor has the right to approve (with such approval not to be unreasonably withheld, delayed or conditioned), and Lessee shall not make, without such approval, any proposed amendments with respect to User Agreements that is a Material Amendment as described on Schedule 8.02(e) attached hereto and incorporated herein (each, a "Material Amendment").

(f) In order to enable Lessor the ability to consider any proposed Material Amendment described in this Section 8.02(e) above, Lessee shall (x) with respect to a proposed Material Amendment to either the SCD Agreement or the First Tee Agreement, provide Lessor with written notice of such proposed amendment, and Lessor for a period of 30 days after receipt of such notice, shall be entitled to review at Lessee's office during normal business hours such proposed amendment for compliance with the requirements of this Lease, and (y) provide Lessor for its retention a copy of any proposed Material Amendment to the SMU Agreement. Information provided to Lessor pursuant to this Section 8.02 is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

Section 8.03. Lessor Access. Lessor reserves and shall have the right to enter and inspect the Premises during normal business hours to monitor and ensure compliance with the terms of this Agreement, to monitor and assess any tree mitigation work and to monitor and assess the ongoing protection of the Landfill closure (or at any time in the event of an emergency) and shall endeavor to not unreasonably interfere with the operations of the Premises.

Section 8.04. Parking And Access. Lessee shall be responsible for on-site traffic and parking related to and supporting normal operations of the Golf Course. Lessor and Lessee shall cooperate in good faith to develop traffic management and parking plans to facilitate the ingress and egress of traffic to and from and parking for special events at the Golf Course. Lessor shall make reasonable good faith efforts to cooperate to make other Lessor-owned or -controlled properties available for parking for tournaments and other special events at the Golf Course;

provided, however, Lessor shall not be obligated to incur any cost or expense related to same and does not commit to any specific availability of any such parking. In no event shall Lessee charge for parking on Lessor-owned or -controlled properties (other than the Premises) without the prior written consent of Lessor.

Section 8.05. Golf Course Public Play.

(a) Lessee shall require that the Lessee or Operator develop and implement fair and reasonable usage rules and scheduling procedures to ensure that the Golf Course will be available for charity tournaments, educational and youth programs and other public play to meet the following test for each calendar year during which the Golf Course is in operation during the Term (the "Public Play Requirement"):

(i) The following definitions shall apply to the Public Play Requirement:

(A) The term "Public Play Round" means any round of golf played at the Golf Course by an individual who is not (I) a member (or accompanying guest) of an SMU intercollegiate golf team; (II) a member (or accompanying guest or Relative) of Lessee; (III) a participant (or accompanying guest) in the First Tee program; or (IV) a participant/competitor in any professional (including but not limited to the Byron Nelson Championship) or intercollegiate tournament. Notwithstanding the parenthetical in clause (II) above, the term Public Play Round includes a round of golf at a charitable or corporate golf tournament or other charitable or corporate event played by an individual that is not listed in any of clauses (I)-(IV) above, even if a member of Lessee is included in the pairing in which such individual is playing.

(B) The term "Denominator Round" means the sum of (I) any Public Play Round; and (II) any other rounds of golf played at the Golf Course by other than (i) members (or accompanying guests) of an SMU intercollegiate golf team, (ii) a participant (and accompanying guests) in the First Tee program, or (iii) a participant/competitor in any professional (including but not limited to the Byron Nelson Championship) or intercollegiate tournament.

(C) The term "Carryover Round" means, for any calendar year, the number of Public Play Rounds in excess of the minimum necessary for condition (A) of the Public Play Requirement to be met for such calendar year.

(D) The term "Specific Public Play Round" means a round of golf played or available for play at the Golf Course by an individual who is a resident of the City of Dallas and is not a member of Lessee (or accompanying guest) that is available to the general public through a lottery system or first-response system (or other similar system). With respect to Specific Public Play Rounds, the green fee and other charges shall be comparable to such fees the Golf Course generally charges non-accompanied guests of members.

(E) The term "Specific Carryover Round" means, for any calendar year, the number of Specific Public Play Rounds in excess of the minimum necessary for condition (B) of the Public Play Requirement to be met for such calendar year.

(F) The term “Relative” means, with respect to an individual, relations to the third degree of consanguinity and the second degree of affinity.

(ii) The Public Play Requirement is met, for a particular calendar year during which the Golf Course is in operation during the Term, if each of the following two conditions are met for such year: (A) the sum of (I) the number of Public Play Rounds during such calendar year, plus (II) the number of Carryover Rounds from the immediately preceding calendar year *equals or exceeds* twenty-five percent (25%) of the number of Denominator Rounds for such calendar year and (B) the total number of Specific Public Play Rounds for such calendar year plus the Specific Carryover Rounds from the immediately preceding calendar year *equals or exceeds* 300. If either component parts A or B of the Public Play Requirement is not met in any particular calendar year the deficiency must be made up by like-kind rounds in the immediately following year. The rounds used to make up said deficiency shall not be counted as Public Play Round or Specific Public Play Round, as applicable, for said subsequent year.

(iii) Lessee shall provide, or cause to be provided, to Lessor a report as described in Section 8.11 of this Lease, with information reasonably sufficient to determine whether the Public Play Requirement for each relevant year is met. For purposes of determining whether the Public Play Requirement has been satisfied, periods of time during which the Golf Course is closed for maintenance repairs or events reasonably beyond the control of Lessee or Operator shall not be considered in calculating the actual amount of Specific Public Play Rounds (for example, if the Golf Course is closed for one-third of a calendar year, then the required Specific Public Play Rounds for such year would be 200 ($2/3 \times 300$)).

(iv) Lessee shall not discriminate against the Public Play by imposing unreasonable restrictions or conditions on such rounds, including but not limited to relegating it to less favorable or convenient periods of the day or seasons of the year (it being understood that limiting Public Play to certain days of the week shall not be considered discriminatory under this Section 8.05).

(b) Notwithstanding anything to the contrary herein, unless there has been a Public Play Violation, Lessor shall have no right to terminate or seek the termination of this Lease solely for the failure of Lessee to satisfy the Public Play Requirement, but Lessor shall be entitled to equitable remedies therefor, including an action for specific performance or injunctive relief. Lessee acknowledges that the Public Play Requirement is a fundamental and essential term of and consideration for this Lease, but for which Lessor would not have entered into this Agreement and will (or will cause Operator) to diligently comply with same. The term “Public Play Violation” means a circumstance in which: (i) there has been a final, nonappealable judgment or order by a court of competent jurisdiction that Lessee has breached the Public Play Requirement; and thereafter, (ii) there is a subsequent final, nonappealable judgment by a court of competent jurisdiction that Lessee failed to comply with the judgment or order referred to in clause (i) above within the time frame required by the relevant court.

Section 8.06. Contracts Related To Management And Operation.

(a) *Lessee's Obligation.* Subject to the terms of this Agreement, Lessee, at no cost to Lessor, shall have the exclusive right, from time-to-time, to engage or approve the engagement of a manager and operator of the Golf Course (the "Operator") with full control and discretion in, the operation, occupancy, direction, management, and supervision of the Premises and its staff.

(b) *Required Terms.* Any management or operating contract or sublease entered into by Lessee for the operation and management of the Premises shall:

- (1) require the contracting party comply with the terms of this Lease, including but not limited to use good faith efforts to comply with Lessor's Good Faith Effort Plan,
- (2) terminate upon termination of this Agreement unless Lessor, at its sole option, elects to assume the specific management contract, or unless Lessor has expressly agreed otherwise,
- (3) provide the right to Lessor to assume the contract upon termination of this Agreement without liability for any obligation arising prior to said assumption,
- (4) if applicable, contain insurance requirements for coverages and limits not less than those which are customarily required by Lessor of its like contractors, naming Lessor and its officers and employees as additional insureds,
- (5) require the contracting party to indemnify and hold harmless Lessor from and against any and all loss, cost, claim, liability, expense or damage, including without limitation attorney's fees and court costs, in any way related to or arising from its activity at the Premises substantially similar to the Lessee's indemnification of Lessor found herein,
- (6) if applicable, contain vendor qualification requirements sufficiently broad so as not to exclude minority vendors as a class and general contract specifications sufficiently broad so as not to favor a single vendor, and
- (7) contain the following provision (or substantially similar wording approved by Lessor) in bold print, underlined and uppercase lettering:

"THIS AGREEMENT IS SUBJECT TO THE TERMS AND PROVISIONS OF THE LEASE AGREEMENT BETWEEN THE CITY OF DALLAS AND THE COMPANY OF TRINITY FOREST GOLFERS, INC. FOR THE TRINITY FOREST GOLF COURSE (THE "LEASE AGREEMENT"), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE TO THE CITY OF DALLAS, IN THE EVENT OF THE TERMINATION OF SAID LEASE AGREEMENT, UNLESS THIS AGREEMENT IS ASSUMED OR EXTENDED BY AN AUTHORIZED WRITING EXECUTED BY THE

CITY OF DALLAS. THE CITY OF DALLAS SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY UNDER THIS AGREEMENT, AND THE PARTIES HERETO RELEASE THE CITY OF DALLAS FROM LIABILITY FOR ANY CLAIMS, SUITS, OR JUDGMENTS IN CONNECTION WITH THIS AGREEMENT UNLESS THE CITY OF DALLAS, AS LESSOR UNDER THE LEASE AGREEMENT, ASSUMES THIS AGREEMENT.

(c) *Copies And Review.* Lessor shall be entitled to receive copies (with economic or other proprietary or confidential information redacted) of and review the contracts for compliance with the requirements of this section.

Section 8.07. Public Relations, Promotions And Marketing. Lessee shall, at its sole cost and expense, plan, prepare, implement, coordinate and supervise all advertising, marketing, sponsorships, naming rights, public relations and other promotional programs for the Golf Course. Lessee shall also require the Operator to negotiate, execute (in its own name and not the name of Lessor) and perform all promotions and contracts concerning the sale, promotion, marketing and use of trademarks, trade-names, logos and similar intellectual property rights relating to the Premises (but in no event or circumstances shall any such materials include the official "Dallas", "City of Dallas", "Dallas Park and Recreation Department" logos or other city logos without express written consent of Lessor, and any such usage is in all respects subject to applicable copyright, trademark and trade-name laws). All contracts negotiated and executed pursuant to this section shall contain language exculpating Lessor from any obligation or liability thereunder, and each such agreement shall contain a primary term not to exceed the Term. Lessee agrees, upon Lessor's request, to use (or require Operator to use) good faith efforts to (i) include in their printed materials an acknowledgment of the support and participation of Lessor in the Project and (ii) provide Lessor a reasonable opportunity to review and approve in advance the form of such acknowledgements and materials for compliance with this section (with economic or other proprietary or confidential information redacted). Information provided to Lessor pursuant to this paragraph is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

Section 8.08. Management Committee. The parties shall establish a four-member committee initially comprised of two representatives appointed by Lessee and two representatives appointed by Lessor ("Management Committee"). The Management Committee shall meet quarterly throughout the construction of the Project and annually thereafter (or more frequently if deemed necessary or appropriate) at a time and place mutually acceptable to all its members. The Management Committee shall act only by majority vote of all its members. Members of the Management Committee may be removed, with or without cause, by the party that appointed such member at any time, and the party who appointed the member for whom the position becomes vacant shall choose a successor within ten (10) days of such vacancy. The Management Committee is intended to act as an advisory board whose sole purpose will be to discuss and provide input to Lessee on M/WBE, construction and operational matters material to Lessor and not otherwise within the scope of the role of the Board of Governors.

Section 8.09. Fees, Charges And Revenues; Net Profits to Be Reinvested. Lessee may specify and control any and all fees, rents, deposits, charges, other revenues, and consideration for memberships, goods, services, admissions, use, advertising, sponsorship, naming rights, or any other designated purposes involving the Premises provided that they are commercially reasonable and consistent with industry standards and good industry practices. It is expressly understood and agreed that any and all net proceeds (revenues received less payment or provision for all costs and expenses with respect to the Premises that are the obligation of Lessee hereunder and less amounts set-aside for reasonable capital and future operating reserves) from operation of the Project, as comprised from time to time, shall be (i) reinvested into the Premises and the Project, for Lessee's operations, infrastructure, capital improvements, including expansion and additions, and routine maintenance; (ii) used to host or sponsor events; (iii) applied to educational, youth, and other programming; and (iv) directed to charitable giving. All service, concession, employment, management or similar contracts and arrangements, as well as staff salaries, compensation, perquisites and benefits (including any of the foregoing with related or affiliated parties), shall be commercially reasonable and consistent with good practice and industry standards for similar facilities.

Section 8.10. Repairs.

(a) *Lessee's Repairs And Operation.* At all times following the Delivery Date and during the Term of this Agreement or any extension thereof, Lessee shall neither cause nor permit any waste to the Premises. From the start of its construction, Lessee shall, at Lessee's sole cost and expense, keep and maintain the Premises and all facilities appurtenant thereto in good order and repair and, in a safe, clean, sanitary, and attractive condition. Lessee shall make any and all additions to or alterations or repairs in and about the Premises that may be required by this Agreement in a good and workmanlike manner, and shall otherwise observe and comply with all public laws, ordinances, and regulations that from time to time are applicable to the Premises.

(b) *Condition At End Of Agreement.* Upon termination of this Agreement for whatever reason, Lessee shall leave the Premises in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Agreement, reasonable wear and tear excepted, and shall peaceably surrender the same to Lessor. If the improvements are not in substantial conformity with this Agreement, Lessor may, at its option and in addition to any other remedies under this Agreement, direct Lessee to remove non-complying improvements constructed by Lessee on the Premises and return that portion of the Premises to its condition existing on the Effective Date, and Lessee shall be obligated to promptly comply at its sole cost and expense or, alternatively, repair same in which event Lessee shall immediately pay to Lessor the cost of same.

(c) *Lessor's Repairs.* Lessor, its agent and employees, shall have the right, at any time and from time to time, to enter the Premises for the purpose of inspection or making any repairs or alterations to the Premises, or any improvements thereon, of every kind or nature which may be required or are required of Lessee under this Agreement but which Lessee has failed to perform after having received written notice from Lessor at least thirty (30) days prior to such entry; and Lessee shall not offer any obstruction, or hindrance to any such repairs or alterations; provided, however, that nothing contained in this paragraph shall be deemed to impose on Lessor

any obligation to actually make any changes, alterations, additions, improvements, or repairs in, on or about the Premises, or any part thereof, during the Term of this Agreement or any extension thereof.

Section 8.11. Changes, Renovations, And Additions.

(a) At any time and from time to time during the Term, Lessee may make, at Lessee's sole cost and expense, changes, renovations, and additions to the Premises, improvements thereon, or any parts thereof so long as such changes and additions are not "material." For purposes of this section, changes, renovations, and additions to the Premises are "material" if said change or addition or any series or group of changes or additions: (1) entail the demolition or removal from usage for more than 3 months (or, in the case of re-seeding, re-construction or re-design of some or all of the fairways of the Golf Course, 12 months) of a component part of the Project, (2) changes the character of all or part of the Project and the Premises from that outlined and described in the Approved Conceptual Plans, or (3) will material and adversely affect the landfill cap and any mitigation features relating to the Premises. Material changes, renovations, and additions may be made only with the prior written consent of Lessor and shall be subject to Lessor's advance review and approval of the plans and specifications for same.

(b) All additions, future improvements and renovations (material or not) shall, upon the expiration or termination of this Lease, become the property of Lessor, free and clear of all liens. The contractor(s) performing the work in connection with any material contract involving the Premises shall provide insurance coverage, indemnification provisions and in the case of Lessor Improvements construction bonds consistent with those that Lessor requires of its contractors on like projects, with Lessor to be named as an additional insured, indemnitee, and obligee, respectively. Any and all such activity shall comply with the construction provisions of this Agreement.

Section 8.12. Records And Reports. Lessee shall keep and maintain, or cause Operator to keep and maintain, complete and accurate records for the Premises and the constituent operational components of the Project, separate and identifiable from its other records, for three years following the last day of the fiscal year during which the record was generated. Lessor shall be entitled to inspect Lessee's, and/or Operator's records relevant to this Agreement (at their respective offices upon not less than 24-hours' notice and at all reasonable times). In addition, Lessee shall furnish or cause Operator to furnish to Lessor and the Board of Governors within ninety (90) days after the close of each of Lessee's fiscal years:

- (1) a report, certified to by an officer of Lessee or the Operator (and, if requested by Lessor, a certified public accountant), setting forth the prior year's (A) total gross revenues, (B) total operating expenses, (C) the total amounts of any capital improvements, (D) the total amounts set-aside for of any capital improvement or operating reserves, and (E) the amounts of any charitable or non-profit contributions;
- (2) summaries of play reasonably detailed to determine the calculation of the Public Play Requirement, certified to by an officer of Operator or Lessee (in no event

shall Lessee or Operator be required to disclose (i) any information regarding a player that it is prohibited by law from disclosing or (ii) the names or other confidential information of any player); and

- (3) a narrative report regarding programming, including but not limited to First Tee and SMU operations and activities, at the Premises during the prior calendar year.

In addition, Lessee or Operator shall cause to be prepared and provided to the Board of Governors audited balance sheet, statement of operations and other financial reports customary to the industry ("financial statements") prepared by a certified public accountant in conformity with Generally Accepted Accounting Principles for each fiscal year within 90 days of said fiscal year end. Upon request from Lessor, Lessor's Controller, City Manager and Mayor (or their respective designees) shall have the right to inspect these financial statements at Lessee's offices upon not less than 24-hours' notice and at all reasonable times. Lessor shall at all times have the right to audit Lessee's financial records relevant to Lessee's compliance with the terms of this Lease. Notwithstanding anything to the contrary herein, neither Lessee nor Operator shall be required to disclose or provide the identity of or any personal information regarding any player, guest or user of the Golf Course, and may, in its reasonable discretion, redact or exclude from the reports provided hereunder any information that is or may be proprietary, privileged or subject to legal or contractual confidentiality restrictions. Information provided to Lessor pursuant to this paragraph is or may be subject to the terms of Section 15.26 (without limiting the scope or generality of such section).

ARTICLE IX TAXES AND ASSESSMENTS

Section 9.01. Taxes. The term "taxes," as used herein, shall mean all ad valorem taxes, sales taxes, income taxes and other government charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Premises and/or any occupant's use and enjoyment thereof, excluding "assessments" as defined below. Lessee shall pay when due all taxes commencing with the year of the Effective Date and continuing throughout and including the last year of the term hereof.

Section 9.02. Assessments. The term "assessments," as used herein, shall mean all governmental assessments for public improvements or benefits which during the term shall be assessed, levied, imposed on, or become due and payable, or a lien upon the Premises, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Lessee shall not cause or suffer the imposition of any assessment upon the Premises, without the prior written consent of Lessor. In the event any assessment is proposed that affects the Premises, Lessee shall promptly notify Lessor of such proposal after Lessee has knowledge or receives notice thereof. Any assessment on the Premises shall be made in compliance with all applicable statutes. Lessee shall pay the total amount of all assessments levied with respect to the Premises and/or the leasehold estate created hereby. In no event shall Lessor be obligated to pay any assessment or any portion thereof levied or created during the term hereof, irrespective of whether such assessment or any portion thereof was specifically allocated to the Premises or Lessor's reversionary interest therein. No assessment shall be payable in installments without

Lessor's prior written consent, which Lessor may condition upon the posting by Lessee of a satisfactory bond guaranteeing the payment of such installments as they become due.

Section 9.03. Payment Date And Proof. All payments by Lessee of taxes and/or assessments shall be made by Lessee on or before thirty (30) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Lessee shall promptly furnish to Lessor receipts or other appropriate evidence establishing the payment of such amounts.

Section 9.04. Failure To Pay. In the event Lessee fails to pay any of the expenses or amounts specified in this Article, Lessor may, but shall not be obligated to do so, pay any such amount and the amount so paid shall immediately be due and payable by Lessee to Lessor and shall thereafter bear interest at the rate specified herein below.

Section 9.05. Right To Contest. Lessee shall not be required to pay any tax, assessment, tax lien, or other charges upon or against the Premises, or any part thereof, or the improvements situated thereon, so long as it shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceeding which shall have the effect of preventing the collection of the tax, assessment, tax lien, or other charges so contested; provided that, pending any such legal proceeding it shall give Lessor such security as may be deemed reasonably satisfactory to Lessor to insure payment of the amount of tax, assessment, tax lien or other charges, and all interest and penalties thereon. Lessor shall cooperate with Lessee's efforts; provided, however, Lessor shall not have to expend any out-of-pocket funds or bring or join in any suit regarding same, and Lessee shall indemnify and hold Lessor harmless against and from any loss, liability, or expense resulting from such efforts.

Section 9.06. Abatement. The parties acknowledge that Lessee intends to seek tax-exempt status and, to the extent allowable under applicable law, Lessor agrees not to take any actions inconsistent with such position asserted by Lessee. If Lessee does not attain property tax-exempt status, however, Lessor's Staff will present to Dallas City Council an incentive for ad valorem tax abatement equal to 90% of the maximum abatable property taxes for ten years for the Project. Any such incentive shall be subject to state law requirements and future Dallas City Council approval (which approval is not and cannot be committed or assured by Lessor) and shall be supported by additional consideration from Lessee, including local job creation commitments or other such economic development benefits to the community as required by law and Lessor's policies under its Public Private Partnership Programs and Guidelines then in effect. Securing of such favorable tax treatment, incentives or abatement is strictly Lessee's responsibility and at its risk.

In the event tax exempt status is not achieved and an abatement is not granted, Lessor will be responsible for and pay the "Excepted City Property Taxes" as that term is defined for purposes of this Lease, to the extent said payment is allowed by law and permissible for Lessor. The term "Excepted City Property Taxes" means the product of (a) 0.90 multiplied by (b) the property taxes imposed by the and payable to City on the Premises and any improvements thereon or leasehold interest therein for the Elected Ten Year Period (defined below). The term "Elected Ten Year Period" means that consecutive ten-year period beginning on January 1 of the year

elected by Lessee in writing to Lessor, provided that such written election must be made within 30 days before the first of the Elected Ten Year Period. If for any reason Lessor is not lawfully allowed or able to pay the Excepted City Property Taxes as provided herein, Lessee shall be responsible for and pay said amount.

ARTICLE X INSURANCE AND INDEMNIFICATION

Section 10.01. Insurance. Lessee shall, from and after the Delivery Date, obtain and maintain casualty, liability, workers compensation and other insurance as described in **Exhibit E**. Such insurance shall secure the full replacement cost for the Project. Lessee shall further require its architect/engineer and construction contractor/manager to obtain and maintain insurance as described in **Exhibit E**. True and correct copies of any policies and any applicable endorsements required herein shall be provided to Lessor by Lessee.

Section 10.02. Indemnification. Lessee does hereby covenant and agree to defend, indemnify, and hold Lessor, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, administrative proceedings of any kind, notices of violation, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons or governmental agency, that may arise out of or be occasioned (1) by Lessee's use, occupancy, construction, operation, and maintenance of the Premises or Lessee's installations and improvements within the Premises, (2) from any act or omission of any representative, agent, resident, and/or employee of Lessee, (3) by Lessee's breach of any of the terms or provisions of the Lease, (4) by any negligent or strictly liable act or omission of Lessee, its officers, agents, associates, employees, contractors or subcontractors in the use, occupancy and maintenance of the Premises or Lessee's installations and improvements within the Premises, (5) from any violation of environmental laws on the Premises during the term of the Lease occurring after the Delivery Date; or (6) the presence of any condition(s) on the Premises that comprise a threat to human health or the environment first introduced or becoming such a threat after the Delivery Date; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Lessor, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both Lessee and Lessor, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to Lessor under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE XI DAMAGE AND DESTRUCTION

Section 11.01. Effect Of Damage Or Destruction. Beginning with the commencement of construction, in the event of any damage to or destruction of the Premises or any improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to Lessor.

Lessee shall promptly rebuild, repair or restore (hereinafter, called “restore” or “restoration”) the Premises and improvements to its condition immediately prior to such damage or destruction or, if during construction of Premises, to the contemplated, improved or renovated conditions. All such restoration shall be performed in accordance with the construction provisions of this Agreement. Lessee’s duty to restore any damage or destruction of the Premises or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds to Lessee from which the cost of restoration may be paid. Any of Lessee’s insurance proceeds payable by reason of such damage or destruction shall be made available to pay the cost of such restoration; provided, however, in the event Lessee is in default under the terms of this Agreement (beyond any applicable notice and cure periods) at the time such damage or destruction occurs, Lessor may elect to terminate this Agreement and Lessor shall thereafter have the right to receive and retain all insurance proceeds payable as a result of such damage or destruction. Insurance proceeds in excess of the cost of such restoration shall be treated as revenue from the Premises. This subsection does not apply to insurance or self-insurance reserves maintained by Lessor.

Section 11.02. Precondition To Restoration. Before Lessee commences any restoration involving an estimated cost of more than One Million and No/100 Dollars (\$1,000,000.00), plans and specifications for same shall be submitted to Lessor for approval (such approval being limited to conformity with the Approved Concept Plans) and Lessee shall furnish to Lessor: (1) an estimate of the cost of the proposed work; (2) satisfactory evidence of sufficient contractor’s comprehensive general liability insurance covering the Premises, builder’s risk insurance, and workers’ compensation insurance; (3) a performance and payment bond or cash deposit or other proof of financial ability satisfactory in form and substance to Lessor (to the extent such would be required for original construction of such damaged improvements); and (4) such other security as Lessor may require to insure completion of or payment for all work free and clear of liens. Lessee shall diligently pursue the restoration in a good and workmanlike manner, using only high quality workers and materials, and in conformity with the plans and specifications and all applicable laws, regulations, ordinances and codes.

Section 11.03. Failure To Rebuild. If the restoration can be completed within 550 days, and if Lessee (1) fails to begin the restoration of the improvements within a period of 120 days after damage or destruction by fire or otherwise, (2) permanently ceases to do so after commencing or (3) fails to complete the same within 550 days from the date of commencement of such restoration, then, in addition to whatever other remedies Lessor may have either under this Agreement, at law or in equity, Lessor shall receive the insurance proceeds, or the balance thereof remaining, as security for the continued performance and observance by Lessee of the Lessee’s covenants and agreements hereunder, or Lessor may terminate this Agreement and then receive said amount as partial liquidated damages resulting from the failure of Lessee to comply with the provisions of this Article. If the restoration cannot reasonably be expected to be completed within 550 days or if the casualty occurs after the 30th anniversary of the Completion Date, Lessee may elect (i) to restore the Premises as provided in Section 11.01 above or (ii) to terminate this Agreement, in lieu of Lessee performing said restoration, in either case by giving written notice to Lessor of such termination within 120 days after the casualty occurs. In the event Lessee elects to terminate this Lease, this Lease shall terminate as of the date specified in such notice and Lessee shall tender to Lessor the insurance proceeds available as a result of such

damage shall be paid to and the property of Lessor. If Lessor and Lessee cannot agree on whether the restoration can reasonably be expected to be completed within 550 days after the damage, then Lessee shall pay for an independent architect reasonably acceptable to Lessor, who shall make that determination.

ARTICLE XII CONDEMNATION

Section 12.01. Taking Of The Whole or Effectively Of The Whole. If the whole of the Premises, or any part thereof, shall be taken or condemned for a public or quasi-public use or purpose by any competent authority and as a result thereof the balance of the Premises cannot be used for the same purpose and uses as expressly provided in this Agreement, then rent payable hereunder shall be fully abated from and after the date of taking, the Lease shall terminate, and Lessor and Lessee shall not have any further obligations under this Lease with respect to the Premises except as provided in this Article XII. Any award, compensation, or damage (hereinafter called the “award”) attributable to a whole (or effectively of the whole) taking occurring prior to the Delivery Date shall belong solely to Lessor. Any award attributable to a whole (or effectively of the whole) taking occurring after the Delivery Date shall be split between Lessee and Lessor based upon a mutually agreed upon formula, utilizing the following concepts: (i) Lessor’s share of such award shall be based upon (x) the value of the fee simple title of the land as remediated but otherwise unimproved (“fee title amount”) and (y) the remaining amount of the total award (after deduction for the fee title amount) multiplied by a fraction, the numerator of which is the expired years under the Lease term and the denominator of which is the original 40 year terms (the amortized amount) and (ii) Lessee’s share shall be based on the remaining amount of the total award (after deduction for the fee title amount) multiplied by a fraction, the numerator of which is the remaining unexpired years under the Lease term and the denominator of which is the original 40 year terms (the unamortized amount); provided, however, in the event of a condemnation by or at the direction of Lessor, the foregoing concepts shall not apply to the determination of the amount or allocation of the award, but shall be determined on a fair and equitable basis.

Section 12.02. Partial Taking After Construction Commences. If after construction commences only a portion of the Premises shall be so taken or condemned, such that the balance of the Premises can be used for the substantially the same purpose as expressed in Article IV, this Agreement shall not terminate and Lessee, at its sole cost and expense, shall repair and restore the Premises to an operational whole. Lessee shall, promptly and diligently proceed to restore the functionality and utility of the remainder of the Premises and affected improvements, complying with the construction procedures set forth in Article VII. For such purpose Lessor shall receive and shall hold in trust the amount of the award relating to the improvements and leasehold and shall disburse such award to apply to the costs (including any additional costs or activities required due to such taking) of restoration. If Lessee does not complete such restoration within a reasonable period after such taking or condemnation, (but in any event the later of completion of the Project or within one hundred eighty (180) days after the taking), then, in addition to whatever other remedies are available to Lessor under this Agreement, Lessor may receive and retain the entire award or the balance thereof, as partial liquidated damages resulting

from the failure of Lessee to comply with the provisions of this Paragraph. Any portion of such award not expended for such repair or restoration shall be paid to Lessor. Any award amount attributable to the fee title of the real estate taken shall be paid over directly to Lessor.

Section 12.03. Partial Taking Before Construction Commences. If before construction commences only a portion of the Premises shall be so taken or condemned, Lessor shall receive all proceeds applicable to the fee title. Such proceeds shall be used by Lessor to restore the remaining facilities to a functional whole. If the remaining proceeds are not sufficient to so restore to the reasonable satisfaction of Lessor and Lessee, either party may terminate. Lessor's duty to restore is limited to the amount of remaining available condemnation proceeds. If the balance of the Premises can be used for the same use and purpose as expressed in this Agreement, Lessor shall have no duty or obligation to repair or restore the Premises; provided, however, in the event of any such partial taking should Lessor elect not to restore the Premises to an operational whole, Lessor or Lessee may terminate this Agreement by written notice of said termination delivered prior to commencement of construction.

Section 12.04. Date Of Taking. The term "date of taking" shall mean the date on which title to the Premises or a portion thereof passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor. Lessor shall control any all negotiations and litigation involving any taking and Lessee does hereby appoint Lessor as its agent and attorney in fact for such purpose, said appointment being coupled with an interest therein.

Section 12.05. Settlement of Proceedings. Lessor shall control any and all negotiations and litigation involving a total taking and Lessee does hereby appoint Lessor as its agent and attorney in fact for such purpose, said appointment being coupled with an interest therein; provided, however, neither Lessor nor Lessee shall make any settlement with the condemning authority in any condemnation proceedings nor convey or agree to convey the whole or any portion of the Premises or the Project to such authority in lieu of condemnation without first obtaining the written consent of the other party.

Section 12.06. Efforts to Prevent Taking. To the extent allowed by law, Lessor shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any condemnation proceedings or exercising any other powers of eminent domain with respect to the Premises, or any part thereof or any interest therein, during the Term of this Lease.

ARTICLE XIII ASSIGNMENT AND SUBLETTING

Section 13.01. Assignment. Lessee shall not hypothecate, mortgage, assign, transfer, or otherwise alienate this Lease (including any improvements) or any interest therein or sublet all or substantially all the Premises to a single sublessee, without the prior written consent of Lessor, and any purported such action without consent of Lessor shall be void and not effective. The consent of Lessor to any one assignment or sublease shall not constitute a waiver of Lessor's

right to approve subsequent assignments or subleases, nor shall consent of Lessor to any assignment relieve any party previously liable as Lessee from any obligations under this Lease. The acceptance by Lessor of the payment of rent following an assignment shall not constitute consent to any assignment, and Lessor's consent to an assignment or sublease shall be evidenced only in writing.

Section 13.02. Right To Sublet. Lessee shall have the right to sublet any part or parts of the Premises, and to assign, encumber, or renew any sublease as long as:

- (1) Each sublease shall contain a provision requiring the sublessee to attorn to Lessor if Lessee defaults under this Lease and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to Lessor or designated person as provided in this Section;
- (2) Lessee shall provide any such subtenant with a copy of this Lease and require such subtenant to acknowledge that its rights under its sublease are subject to the terms hereof;
- (3) Lessee shall not accept directly or indirectly more than one (1) months' prepaid rent from any sublessee;
- (4) Each sublease is expressly subordinate to the interests and rights of Lessor in the Premises and under this Lease, and requires the sublessee to take no action in contravention of the terms of this Lease;
- (5) Each sublease is of a duration less than the term of this Lease; and
- (6) As additional security for the performance of Lessee's obligations hereunder, Lessee hereby grants to Lessor a security interest in and to all of Lessee's right to receive any rentals or other payments under such subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of Texas. Lessee shall execute such financing statements as may be reasonably required to perfect such security interest.

Section 13.03. Notice and Cure Rights for Sublessees.

- (a) At any time during the Term, Lessee may notify Lessor in writing that Lessee has entered into a sublease (or that a Sublessee has entered into a Sub-Sublease) of the Premises, and may furnish Lessor at the same time with the address to which Sublessee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices sent to Lessee by Lessor pursuant to this Lease. Lessor hereby agrees that it will thereafter deliver to such Sublessee, at the address so given, duplicate copies of any notices of default and notices of termination which Lessor may from time to time give or serve upon Lessee under and

pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Lessor against Lessee, as applicable.

- (b) Sublessee may during the same cure periods as apply to Lessee, pay any of the rental due hereunder, procure any insurance required hereunder, pay any taxes required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Lessee by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to cure the default and prevent the termination of this Lease. All payments so made and all things so done and performed by any such Sublessee shall be as effective to cure the default as if performed by Lessee.
- (c) Unless Lessor and Sublessee shall enter into a new and direct lease (at each party's sole and absolute discretion), no Sublessee shall be or become personally liable to Lessor as an assignee of this Lease, for the payment or performance of any obligation of Lessee unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from said actions. Similarly, Lessor shall not be or become personally liable to any Sublessee by reason of accepting such curative actions by Sublessee on behalf of Lessee nor shall Sublessee acquire any rights under this Lease other than to cure on Lessee's behalf, Lessee's default as provided in this Section.

Section 13.04. SMU Provisions.

[to be completed]

**ARTICLE XIV
DEFAULT, TERMINATION AND OTHER REMEDIES**

Section 14.01. Lessee's Default And Lessor's Remedies.

(a) *Lessee's Default.* A "Lessee Default" shall mean the occurrence of one or more of the following events:

- (1) failure of Lessee to pay when due any monetary amount due to Lessor or rental amount, and the continuation of the failure without cure for a period of ten (10) days after Lessor notifies Lessee of the failure in writing in accordance with the notice provisions under this Agreement;
- (2) failure of Lessee to maintain any of the insurance or bonds provided for herein and the failure by Lessee to cure such failure within five days after Lessor notifies Lessee in writing of the failure to comply in accordance with the notice provisions under this Agreement;

- (3) failure of Lessee to comply with any other term, covenant, or provision of this Agreement, and the failure by Lessee to cure (or commence and thereafter diligently work to cure) the failure within ninety (90) days after Lessor notifies Lessee in writing of the failure to comply in accordance with the notice provisions under this Agreement;
- (4) a User Agreement is terminated due to Lessee's default under such User Agreement, and Lessee fails to obtain a substitute or replacement user agreement reasonably acceptable to Lessor within 90 days following such termination; and
- (5) appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to its insolvency, bankruptcy, or reorganization act; or if Lessee makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days.

Any written notice and opportunity to comply/cure provided herein shall not be required of Lessor if the same or a substantially similar event has occurred and been the subject of written notice within the previous twelve (12) months.

(b) *Lessor's Remedies.* Upon the occurrence of a Lessee Default, Lessor may pursue any legal or equitable remedy or remedies, including without limitation specific performance, suit for damages, and termination of this Agreement; provided, however, that, in the event of a Lessee Default (and not with respect to any other termination rights of Lessor set forth herein), Lessor shall have no right to terminate this Agreement unless Lessor delivers to Lessee a second notice that Lessor will terminate this Agreement within 30 days if the default is not addressed as herein provided. Termination or non-termination of this Agreement upon a Lessee Default shall not prevent Lessor from pursuing its other remedies. Upon termination by Lessor, Lessor may occupy the Premises, and Lessee shall assign to Lessor, to the extent requested by Lessor, any of Lessee's interest in and to contracts and agreements relating to the Premises, the Golf Course, and fixtures installed therein, and the operation thereof. All such contracts not assigned to Lessor shall terminate upon termination of this Agreement. Lessor is not obligated to assume any of the above-mentioned contracts. **All of Lessee's material contracts and agreements for the use of all or any part of the Premises must include a clause stating that if the contract is not assumed by Lessor it shall terminate immediately upon termination of this Agreement.** Lessee does hereby appoint Lessor as its agent and attorney in fact for purpose of effecting said assignment(s) and/or termination, said appointment being coupled with an interest therein.

(c) *Landlord's Lien.* To assure payment of all sums due under this Lease and Lessee's faithful performance of all other covenants hereunder, Lessee hereby contractually grants to Lessor an express contractual lien on and security interest in and to all improvements owned by Lessee which may be placed on the Premises, the Construction Account, and upon all proceeds of any insurance or condemnation which may accrue to Lessee by reason of any such property or this Agreement. Lessee shall execute appropriate financing statements and any extension thereof necessary to perfect this lien. Lessor shall have the rights and remedies of a secured party under the Texas Business and Commerce Code and this lien and security interest may be foreclosed by

operation of law. Any statutory landlord's lien applicable hereto is not waived, the contractual security interest herein granted being in addition and supplementary thereto. Notwithstanding the foregoing, Lessor hereby waives all landlord's liens that Lessor might hold, statutory other otherwise, to any of Lessee's (or any Sublessee's or Operator's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on the Premises.

Section 14.02. Lessor Default And Lessee's Remedies. A "Lessor Default" shall mean failing to comply with any material provision of this Agreement within sixty (60) days after written notice of said specific non-compliance and the cure action requested. Lessee's sole and exclusive remedy for a Lessor Default shall be to terminate the Agreement. In no event shall Lessor ever be liable to Lessee for construction costs or exemplary or punitive damages. In no event shall Lessor ever be liable for consequential, exemplary or punitive damages by reason of any Lessor Default.

ARTICLE XV GENERAL PROVISIONS

Section 15.01. Quiet Enjoyment; Recordation. Lessor covenants and agrees that Lessee, upon making the payments and performing the other covenants and agreements of this Lease on its part to be performed, shall have peaceful and quiet possession of the Premises during the Term. Upon the Delivery Date, the parties shall execute and record in the official real property records of the county where the Premises are located a memorandum of the existence of this Agreement in the form of Exhibit G attached hereto (and in the event any legal description prepared in connection with an on-the-ground survey of the Premises obtained by Lessee includes minor differences or discrepancies or more accurately defines the Premises (but in all events describes substantially the same land as that described on Exhibit A), then the parties shall use such on-the-ground survey description for the memorandum, and the Lease shall be deemed amended thereby.) Upon termination or expiration of this Lease for any reason, the parties shall execute and file a further memorandum noting such termination or expiration and Lessee does hereby appoint Lessor as its agent and attorney in fact for such purpose, said appointment being coupled with an interest therein.

Section 15.02. Successors And Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and, except as otherwise provided in this Agreement, their assigns.

Section 15.03. Compliance With Laws. Lessee and every officer, employee, or agent under Lessee's control shall abide by, conform to, and comply with all laws of the United States and the State of Texas, and all ordinances, rules or regulations of Lessor applicable to the remediation, construction, operation, maintenance, and management of the Premises.

Section 15.04. Nondiscrimination. Lessee agrees that no person shall be denied membership in, admission to or use of the Premises or the Golf Course or any related facilities or programs because of race, color, sex, age, sexual orientation, religion, national origin, physical handicap, or disability. Lessee further agrees to comply with applicable laws and to not discriminate

against any applicant for employment on the basis of race, color, sex, religion, national origin, or non-job related handicap or disability. Lessee shall comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended.

Section 15.05. Place Of Performance Of Obligations And Venue. All obligations of the parties under the terms of this Agreement reasonably susceptible of being paid or performed in Dallas County, Texas, shall be payable and performable in Dallas County, Texas, and venue for any legal actions arising out of this Agreement shall lie exclusively in Dallas County, Texas.

Section 15.06. Texas Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Section 15.07. Captions. The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

Section 15.08. Notices. Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified return receipt requested and postage prepaid, and addressed to the party to be served at the last address given by that party to the other party under the provisions of this Article. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

LESSOR:
City of Dallas – City Manager’s Office
1500 Marilla, 4th Floor
Dallas, Texas 75201
Attn: City Manager

LESSEE:
The Community of Trinity Forest Golfers, Inc.
2100 McKinney Avenue
Suite 1401
Dallas, Texas 75201

With copy to:
City of Dallas
City Attorney’s Office
1500 Marilla 7ES
Dallas, TX 75201
Attn: _____

With a copy to:

Section 15.09. 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, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein.

Section 15.10. No Implied Waiver. The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

Section 15.11. Cumulative Remedies. Each right, power, and remedy of Lessor provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by Lessor of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers, or remedies.

Section 15.12. Force Majeure. None of the parties hereto shall be held responsible for delays in the performance of its obligations hereafter when caused by strikes, lockouts, work stoppages, labor disputes, acts of nature, inability to obtain labor or materials or reasonable substitutes thereof, public enemy or hostile government action, war, civil commotion, fire or other casualty, and other similar causes beyond its reasonable control.

Section 15.13. Offset. Notwithstanding anything to the contrary herein, Lessor may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to Lessor from Lessee, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to such party has been reduced to judgment by a court.

Section 15.14. Notice Of Contract Claim. This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Lessee shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

Section 15.16. Relationship Of The Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of lessor and Lessee.

No term or provision of this Agreement or act of Lessee, its architect, construction manager, contractor, subcontractors, officers, agents and employees or any person under the control of Lessee in the performance of this Agreement shall be construed as making them the agent, servant or employee of Lessor, or making them eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Lessor provides its employees.

Section 15.17. Conflict Of Interest Of City Employees. The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Agreement, to-wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sales to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

Section 15.18. Gift To Public Servant. Lessor may terminate this Agreement immediately if Lessee has offered or agreed to confer any benefit upon a City employee or official that said City employee or official is prohibited by law from accepting. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, Lessor may require Lessee to remove any employee of Lessee from the project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Lessee as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

Section 15.19. Holdover. This Lease shall terminate without further notice at the expiration of the term. Any holding over by Lessee without the express written consent of Lessor shall not constitute a renewal or extension of this Lease or give Lessee any rights in or to the Premises, and such occupancy shall be construed to be a tenancy from month to month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month

tenancy, except that the annual rent as described in Section 5.02 shall increase to an amount equal to the lesser of \$40,000.00 per month and the then existing fair market rental on a triple net lease for a championship golf course and other facilities (as may be then located at the Premises) as determined by three independent appraisers, with one such appraiser being promptly selected by each of the parties and the third selected by the two party-selected appraisers. Until a different rate is determined by the appraisal procedure, Lessee shall pay the \$40,000.00 per month amount. Said holdover rent shall be due and payable in monthly installments on the first of each month of said hold over.

Section 15.20. Late Fee And Interest. In the event Lessee is more than five (5) days late in making any rental payment to Lessor, Lessee shall incur and pay a late fee equal to 10% of the late amount. If Lessor pays or advances any moneys on behalf of Lessee under this Agreement Lessee shall reimburse Lessor immediately upon demand. Any rental payments or other amounts not paid shall accrue and Lessor shall pay interest on said amount from the due date of said rental or the day of Lessor's payment or advance of such sum until paid at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by applicable law. Notwithstanding any provision in this Agreement to the contrary, interest on any amounts owed hereunder shall never exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under law. Any interest in excess of that maximum amount, after due application of the spreading doctrine and all rules of construction and presumptions against the contracting for, taking, reserving, charging or receiving of excessive interest, will be credited to the principal of any debt or, if that has been paid, refunded.

Section 15.21. Conveyance By Lessor. In the event Lessor or any successor to same shall convey or otherwise dispose of the Premises, then that lessor shall thereupon be released from all liabilities and obligations under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Premises.

Section 15.22. Brokerage. Lessee warrants that it has had no dealings with any broker or agent in connection with this Lease. Lessee covenants to pay, hold harmless and indemnify Lessor from and against any and all costs, expenses or liability for any compensation, commissions, or charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

Section 15.23. Language. The terms used herein, shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The words "persons" and "parties" whenever used shall include individuals, firms, associations, and corporations. Lessor and Lessee have freely negotiated this Agreement and its terms. Separate legal counsels have represented both parties. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly against a party by reason of authorship.

Section 15.24. Entire Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the

parties that relate to the subject of this Agreement. This Agreement cannot be modified or amended without written agreement of the parties. Any Exhibits attached to and referred to in this Agreement are incorporated in this Agreement as a part of this Agreement for all purposes.

Section 15.25 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time upon not less than thirty (30) days' prior written request by the other Party, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee hereunder (as the case may be), (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the rental amounts described in Sections 5.02 and 5.03 and any other charges have been paid, and (d) that, to the best knowledge of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

Section 15.26 Confidentiality of Information. With respect to any information, documents, agreements and financial statements provided or made available to Lessor by Lessee pursuant to this Agreement, Lessor and Lessee agree that such information may, from time to time, be proprietary and confidential, and the disclosure of such information may be detrimental to the success of the Project and Lessor's and Lessee's interests therein. Lessor shall use commercially reasonable good faith efforts to limit disclosure of such information to its representatives who reasonably need to know such information. Lessor further covenants and agrees that if it is requested (orally or in writing) in connection with any request or legal proceeding to disclose such confidential or proprietary information, Lessor will provide Lessee with prompt notice in advance of such disclosure so that Lessee may seek such disclosure exemptions, protective orders or other appropriate remedy, and/or waive compliance with this Agreement, and Lessor agrees to cooperate with Lessee in pursuing any such course of action.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

EXECUTED and effective as of the _____ day of May, 2013 (the "Effective Date").

LESSOR:

LESSEE:

CITY OF DALLAS
Mary K. Suhm, City Manager

THE COMPANY OF TRINITY FOREST GOLFERS, INC.
a Texas non-profit corporation

By: _____
Name: _____
Assistant City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
Thomas P. Perkins, Jr.
City Attorney

By: _____
Name: _____
Assistant City Attorney

ATTEST:

By: _____
City Secretary

ATTACHMENTS:

- Resolution No. 13-_____
- Schedule 1.02(b)** – Board of Governors
- Schedule 1.02(c)** – Certificate of Formation and Section 9.6 of Bylaws
- Schedule 1.03** – Index of Defined Terms
- Schedule 8.02(e)** – Material Amendments to User Agreements
- Exhibit A** – The Premises
- Exhibit A-1** -- Landfill and Tree Mitigation Area
- Exhibit B** – Approved Conceptual Plans and Preliminary Budget
- Exhibit C** – Lessor Improvements
- Exhibit D** – Payment and Performance Bond Forms
- Exhibit E** – Insurance Requirements
- Exhibit F** -- Hazardous Substances
- Exhibit G** – Memorandum of Lease

Schedule 1.02(b)

Lessee's Board of Governors

S.1 *Board of Governors.*

S.1.1 Purpose. Lessee shall have a Board of Governors (the "BofG"), whose sole purpose shall be to (a) review proposed amendments to the User Agreements; (b) verify Lessee's compliance with the Lease, including, without limitation, the Public Play Requirement in Section 8.05 of the Lease; (c) review Lessee financial statements provided pursuant to Section 8.12 of the Lease; and (d) make recommendations to Lessee concerning the operation of the Facilities. The powers of the BofG are expressly limited to the matters listed in this Schedule 1.2(b), it being understood that the BofG does not possess any of the powers of the Board except to the extent expressly provided in this Schedule 1.2(b).

S.1.2 Initial Members of the BofG. The number of members of the BofG (each, a "BofG Member") shall be nine. BofG Members need not be residents of Texas. The initial BofG Members shall be as follows:

- (a) A BofG Chairman;
- (b) Two Mayor Appointed BofG Members;
- (c) One SMU Appointed BofG Member;
- (d) One Salesmanship Club Appointed BofG Member;
- (e) One First Tee Appointed BofG Member;
- (f) One Sponsor Appointed BofG Member; and
- (g) Two Company Appointed BofG Members.

S.1.3 Terms. The initial BofG Members shall serve staggered terms of one, two and three years as follows:

(a) Each initial Class A BofG Member shall have his or her term expire on the third anniversary of the date of formation of Lessee; and each successive Class A BofG Member have his or her time expire every three years thereafter.

(b) Each initial Class B BofG Member shall have his or her term expire on the second anniversary of the date of formation of Lessee; and each successive Class B BofG Member have his or her time expire every three years thereafter.

(c) Each initial Class C BofG Member shall have his or her term expire on the first anniversary of the date of formation of Lessee; and each successive Class C BofG Member have his or her time expire every three years thereafter.

(d) Each BofG member shall hold office until the annual meeting when his or her term expires and thereafter until her or her successor shall have been elected and qualified, or until his or her earlier death, resignation or removal.

S.1.4 Election.

(a) Each initial BofG Member shall be appointed on or before the Delivery Date.

(b) Each BofG Member (and his or her successor) shall be elected as follows:

(i) Subject to Section S.1.4(b)(viii) below, each Mayor Appointed BofG Member shall be appointed by the Mayor.

(ii) Subject to Section S.1.4(b)(viii) below, each SMU Appointed BofG Member shall be appointed by Southern Methodist University.

(iii) Subject to Section S.1.4(b)(viii) below, each Salesmanship Club Appointed BofG Member shall be appointed by the Salesmanship Club of Dallas.

(iv) Subject to Section S.1.4(b)(viii) below, each First Tee Appointed BofG Member shall be appointed by The First Tee of Greater Dallas.

(v) Subject to Section S.1.4(b)(viii) below, each Sponsor Appointed BofG Member shall be appointed by the then primary sponsor of the most prominent professional golf tournament held at the Facilities on a yearly basis, and if no such sponsor exists, the successor Sponsor Appointed BofG Member shall be appointed by Lessee.

(vi) Subject to Section S.1.4(b)(viii) below, each Company Appointed BofG Member shall be appointed by Lessee.

(vii) Subject to Section S.1.4(b)(viii) below, the initial BofG Chairman shall be appointed jointly by the Mayor and the Company, and each successor BofG Chairman shall be appointed by a majority of the BofG Members (and if there is a tie, then appointed by the Mayor); provided that in all cases the Mayor shall have the right to veto any such appointee.

(viii) Notwithstanding the foregoing, if the individual or entity that is required to select the appointment of a BofG Member fails or refuses to make such selection within seven days after being requested to do so, and such

failure or refusal shall have continued for ten days following a written request by the Chairman or any other BofG Member, then such BofG Member shall be selected by a majority of the BofG Members (and if there is a tie, then appointed by the Mayor, and if not appointed by the Mayor within 7 days after written request therefor, by Lessee), it being understood that the refusal or failure of an individual or entity to timely select the appointment of a BofG Member shall not eliminate such individual or entity's right to select the appointment of the person to fill future openings arising upon the expiration of the relevant BofG Member's term. Notwithstanding the foregoing, if the Mayor fails to timely appoint a Mayor Appointed BofG Member and such member is appointed by a majority of the other BofG Members, then the Mayor at any time may replace such appointed BofG Member with a member of his or her choosing.

(ix) If at any time the SMU User Agreement is no longer in effect, then the SMU Appointed BofG Member shall automatically resign and be replaced with an individual appointed by a majority of the other BofG Members.

(x) If at any time the First Tee User Agreement is no longer in effect, then the First Tee Appointed BofG Member shall automatically resign and be replaced with an individual appointed by a majority of the other BofG Members.

(xi) If at any time the SCD Agreement is no longer in effect, then each of the Sponsor Appointed BofG Member and the Salesmanship Club Appointed BofG Member shall automatically resign and be replaced with an individual appointed by a majority of the other BofG Members.

S.1.5 *User Agreements.*

(a) Prior to approving any amendment of any User Agreement, Lessee shall deliver a copy of such proposed amendment to the BofG Members.

(b) If, and only if, each of the following occur: (i) a majority of the BofG Members (i.e., at least 5 BofG Members) determine, in their sole discretion, within 14 days after receiving such proposed amendment that the proposed amendment is not in the best interest of the City with respect to its interest as lessor of the property subject to the Lease (irrespective of whether the proposed amendment complies with the Lease), and (ii) the Chairman notifies (within 18 days after receiving such proposed amendment) Lessee in writing of such determination and the reasons therefor, then Lessee shall not approve of such proposed amendment. Otherwise, Lessee is entitled to enter into such proposed amendment (e.g., because a no vote was taken or fewer than 5 BofG Members voted that the proposed amendment was not in the best interest of the City with respect to its interest as less or the property subject to the Lease or because the written notice by the Chairman to Lessee did not include the report described above).

(c) In addition, each of the BofG Members shall determine whether he or she believes that such proposed amendment complies with the Lease. If any BofG

Member believes that such proposed amendment does not comply with the Lease, then such BofG Member shall notify (within 14 days after receiving such proposed amendment) in writing each of the City and Lessee and the reasons therefor.

(d) No BofG Member shall provide the City or any other individual or entity a copy of any User Agreement or proposed amendment thereto.

S.1.6 *Public Play Requirement.*

(a) Following each calendar year during the Lease, the BofG Members shall determine whether Lessee has satisfied the Public Play Requirement for such calendar year, pursuant to the procedures described below.

(b) Within 30 days following the end of each calendar year during the Lease, Lessee shall deliver to each BofG Member a written report describing Lessee's belief as to its performance with respect to the Public Play Requirement for the immediately preceding calendar year (the "**Public Play Report**"). Such report shall be reasonably detailed.

(c) If any BofG Member believes that the Public Play Report is insufficient, then he or she shall notify in writing Lessee of such asserted deficiencies within ten days after receiving the Public Play Report, and Lessee shall use commercially reasonable efforts to provide the BofG Members the requested information within ten days after receiving such written request.

(d) If any BofG Member believes that Lessee has not met the Public Play Requirement for a particular year, then he or she shall notify in writing Lessor and Lessee of such belief, with such notification including the reason(s) why such BofG Member believes that Lessee did not meet the Public Play Requirement. If such notification is given, then Lessee shall deliver to Lessor the Public Play Report for the relevant year if requested by Lessor in writing. It is not a condition precedent to Lessor asserting that the Public Play Requirement has not been met for a particular year that one or more BofG Members notify Lessor of a belief as to Lessee's failure to meet the Public Play Requirement for such year.

(e) Notwithstanding the foregoing, no BofG Member shall make any determinations as to whether Lessee complies with any court order with respect to the Public Play Requirement.

S.1.7 *Financial Statements.*

(a) Lessee shall deliver such financial statements (the "Financial Statements") to the BofG Members as provided in Section 8.12 of the Lease.

(b) Each of the BofG Members shall determine whether he or she believes that the Financial Statements indicate that Lessee is not in compliance with the Lease. If any BofG Member believes that information in the Lessee Financial Statements indicate that Lessee is not in compliance with any provision of the Lease, then such BofG

Member shall notify in writing each of Lessor and Lessee and the reasons therefor. If, after receiving such written notification, Lessor desires to review such financial statements, it shall notify Lessee, after which Lessee shall provide Lessor with such financial statements (redacted to exclude any proprietary information to the extent such redaction prevents Lessor from assessing whether Lessee is complying with the Lease).

(c) No BofG Member shall deliver a copy of Lessee Financial Statements (or any portion thereof) to any other person or entity.

S.1.8 Recommendations to Lessee. In addition to notices any BofG Member may or shall provide to Lessor and Lessee as described in this Schedule 1.02(b) above, at any time and from time to time, any BofG Member may deliver to Lessee and the City (a) written recommendations as to ways to improve the operation of the Facilities, or any other matter directly relating to the Lease or the Facilities; or (b) a written notice as to such BofG Member's belief as to Lessee's failure to satisfy the terms of the Lease. With respect to matters described in clause (a) above, each of Lessee and the City shall consider such recommendations (it being understood that neither is required to follow such recommendations, and that the BofG Members (or any BofG Member) shall not have any power to take any action on behalf of Lessee or the City in connection with any such recommendation).

S.1.9 Procedural Matters.

(a) Notwithstanding any provision in these Bylaws to the contrary, no BofG Member shall be subject to any conflict of interest provisions applicable to Lessee. However, the indemnification provisions of the Bylaws shall apply to each BofG Member.

(b) The BofG Members shall have a regular meeting each calendar year during the term of the Lease, as scheduled by the BofG Chairman.

(c) Special meetings of the BofG may be called by (i) the BofG Chairman or (ii) any BofG Member to enable the BofG to address any of the BofG Members' duties described in Section S.1.1.

(d) Notice of any meeting of the BofG shall be given at least four days previously thereto by written notice delivered personal or sent by mail, email, or facsimile to each director at his or her address as shown by the records of Lessee. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed with postage thereon prepaid. If notice be given by email or facsimile, notice shall be deemed to be delivered only if and when actually received by the party to be notified. Any BofG Member may waive notice of any meeting in writing. All such written waivers shall be filed with the minutes of such meeting. The attendance of a BofG Member at any meeting shall constitute a waiver of notice of such meeting, except where a BofG Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special

meeting of the BofG Members need be specified in the notice or waiver of notice of such meeting.

(e) A majority of the BofG Members shall constitute a quorum for the transaction of business at any regular or special meeting of the BofG Members; but if less than a majority of the BofG Members are present at said meeting, a majority of the BofG Members present may adjourn the meeting from time to time without further notice. A BofG Member present by proxy may not be counted towards quorum.

(f) Except as otherwise specifically provided herein, in the exercise of any of the powers herein given to the BofG Members, at least five BofG Members present (in person or by proxy) at a meeting of the BofG at which quorum is present shall have authority to make determinations and to act. All actions of the BofG Members shall be taken either by resolution at a meeting or by written record without a meeting. A BofG Member may vote in person or by proxy executed in writing by the BofG Member. A proxy expires three (3) months after the date the proxy is executed, and is revocable unless otherwise provided by the proxy or made irrevocable by law.

(g) Any vacancy occurring with a BofG Member position shall be filled in the same manner as such BofG Member would be replaced upon expiration of his or her term. A BofG Member elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, or until his or her successor qualifies, or until his or her earlier death, resignation, or removal.

(h) Any action required by law to be taken at a meeting of BofG, or any action which may be taken at a meeting of BofG, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the BofG Members. Every written consent of the BofG Members shall bear the date of signature of each person who signs the consent. An email or other electronic transmission by a BofG Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a BofG Member, shall be regarded as signed by the BofG Member for purposes of this Section S.1.9(i). Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document.

(i) A meeting of the BofG may be held by means of a remote electronic communications system, including but not limited to conference telephone, videoconference, or internet, so long as (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system, and (ii) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant. Such participation shall constitute presence in person at the meeting for purposes of a quorum and voting.

(j) Notwithstanding any provision in this Agreement to the contrary, any notice or opinion of a BofG Member relating to any provision in this Schedule 1.02(b) shall not be binding on either Lessor or Lessee or considered as evidence in any court of law or other binding resolution process. Upon receiving a notice from a BofG

Member that such BofG Member believes that Lessee is not complying with a provision or provisions of the Lease, it is incumbent upon Lessor to determine whether it agrees with such BofG Member, and if Lessor believes that such a breach may or has occurred, it may, but is not required to, assert its rights and remedies under this Agreement with respect thereto.

S.1.10 Definitions.

(a) The term "**BofG Chairman**" means the chairman of the BofG, who shall (i) lead all BofG meetings, (ii) carry out the decisions of the BofG, and (iii) advise the City and Lessee of recommendations by the BofG.

(b) The term "**Mayor Appointed Members**" means the second and third directors listed in Section S.1.2 above, and each and every replacement of such members.

(c) The term "**SMU Appointed Member**" means the fourth director listed in Section S.1.2 above, and each and every replacement of such member.

(d) The term "**Salesmanship Club Appointed Member**" means the fifth director listed in Section S.1.2 above, and each and every replacement of such member.

(e) The term "**First Tee Appointed Member**" means the sixth director listed in Section S.1.2 above, and each and every replacement of such member.

(f) The term "**Sponsor Appointed Member**" means the seventh director listed in Section S.1.2 above, and each and every replacement of such member.

(g) The term "**Company Appointed Members**" means the eighth and ninth directors listed in Section S.1.2 above, and each and every replacement of such members.

(h) The term "**Class A Members**" means the BofG Chairman and the Mayor Appointed Members.

(i) The term "**Class B Members**" means the SMU Appointed Member, the Salesmanship Club Appointed Member and the First Tee Appointed Member.

(j) The term "**Class C Members**" means the Sponsor Appointed Member and Lessee Appointed Members.

(k) The term "**City**" means the City of Dallas, Texas.

(l) The term "**Mayor**" means the mayor of the City.

(m) The term **"User Agreement"** means each of the following agreements, as they may be amended from time to time: (i) the Master Agreement between Southern Methodist University or its affiliate and Lessee; (ii) the Usage Agreement between First Tee of Greater Dallas and Lessee; and (iii) the PGA Tour Tournament Facilities Agreement among PGA Tour, Inc., The Salesmanship Club of Dallas, and Lessee.

(n) The term **"Public Play Requirement"** has the meaning given such term in the Lease.

(o) The term **"Financial Statements"** means the annual audited financial statements of Lessee required pursuant to Section 8.12 of the Lease.

(p) The term **"Lease"** means that certain Lease Agreement for the Trinity Forest Golf Course between Lessee, as lessee, and the City, as lessor.

Schedule 1.02(c)

**Lessee's Certificate of Incorporation
and
Section 9.6 of Lessee's Bylaws [Board of Governors]**
[to be attached prior to signing]

Schedule 1.03

Defined Terms

[to be reconciled and finalized prior to signing]

Agreement (Recitals)	Management Committee (§8.07)
Approved Conceptual Plans (§4.03)	material (§7.16, §8.10)
assessments (§9.02)	M/WBE (§7.15)
benefit (§17.18)	Minimum Construction Budget (§7.04)
Carryover Round (§8.04(a)(i)(C))	Monitoring Program (§7.24(7))
City (Recitals)	MSW (§7.25)
COC (§7.24)	NOV (§6.02)
Completion Date (§3.01)	Operational Requirements Plan (§7.25(6))
Construction Account (§7.11)	Operator (§8.05(a))
Construction Conditions (§7.10)	Overbid Amount (§7.02(d))
Construction Manager (§7.01(b))	Payment Request (§7.02(f))
date of taking (§12.03)	personalty (§7.22)
Denominator Round (§8.04(a)(i)(B))	Post-Closure Care (§7.24(7))
Development Manager (§7.01(b))	Preliminary Mapping (§7.01(a))
DPWA (§7.25(2))	Premises (§2.01)
Effective Date (§3.01)	Prohibited Uses (§4.04)
Engineering Work (§7.05(a))	Project (Recitals)
Extension Notice (§3.02)	Project Engineer (§7.05(a))
FF&E (§7.04)	Public Play Requirement (§8.04(a))
First Tee Agreement (§5.05)	Public Play Round (§8.04(a)(i)(A))
General Conditions (§7.03(a))	Publicly Bid Lessor Improvements
Golf Course (Recitals)	(§7.02(c)(i))
Hazardous Materials (§8.01(12))	RACR (§7.24(6))
Hazardous Substances (§6.02)	RAP (§7.24(1))
Landfill (§6.02)	Rental Commencement Date (§5.02)
Landlord (Recitals)	restore (§11.01)
Lease (Recitals)	restoration (§11.01)
Lessee (Recitals)	SCD Agreement (§5.05)
Lessee Default (§14.01(a))	Simpkins Tract (§6.02)
Lessee Designee (§7.06(b))	Site Operations Plan (§7.25(6))
Lessor (Recitals)	SMU (§5.05)
Lessor Default (§14.02)	SMU Agreement (§5.05)
Lessor Designee (§7.06(b))	Standard Specifications (§7.03(a))
Lessor Funding Limit (§7.02(b))	Sublessee (§7.01(b))
Lessor Improvements (§7.02(a))	taxes (§9.01)
Lessor Improvements Contract (§7.02(f))	TCEQ (Recitals)
Lessor's Funds (§7.02(b))	Tenant (Recitals)
Lessor's Good Faith Effort Plan (§7.15)	Term (§3.02)

CTFG (Recitals)
Tree Mitigation Area (§2.02)
TRRP (§7.24)
User Agreements (§5.05)
VCP (Recitals)

Schedule 8.02(e)

Material Amendments to User Agreements Requiring Lessor Approval

For purposes of Section 8.02 of the Lease, "Material Amendments" shall mean:

A. With respect to the SMU Agreement:

1. Any amendment that would result in Section 5.05(2) of this Agreement no longer being met;
2. Any amendment that would materially increase Lessor's obligations to SMU if this Lease is terminated;
3. Any change in the parties to the SMU Agreement;
4. Any amendment to the definition of "SMU Conditions" or "CTFG Conditions" that adds conditions or makes any of the existing conditions more difficult to be met;
5. Any delay in the August 31, 2013 date by which the conditions referred to above must be met;
6. Any material expansion of the grounds of either party to terminate the SMU Agreement;
7. Any amendment to section 2.3 of the SMU Agreement (City Ground Lease Requirement);
8. With respect to Exhibit B of the SMU Agreement, (a) any material change in the definition of "Basic Use Right," "Blocked Times," "Easement Area," "Expanded Use Rights," "SMU Designees," "SMU Designee's Rights," "SMU Golf Team," or "SMU Team Purpose;" (b) the reduction of the term of the Easement and Use Agreement to less than five years; (c) SMU's payment obligations, including, without limitation, maintenance obligations (timing and amount); (d) any change in the requirement that Lessor be a co-insured on any policies of insurance SMU obtains with respect to such SMU Agreement and activities in connection therewith; and (e) any change in the requirement that Lessor be delivered (contemporaneously with the addressee) copies of any notice of default, intention to terminate or actual termination of the SMU Agreement; and
9. Any material change to Exhibit C of the SMU Agreement.

B. With respect to the First Tee Agreement:

1. Any amendment that would result in Section 5.05(3) of this Agreement no longer being met;
2. Any change in the parties to the First Tee Agreement;
3. Any amendment to the definition of “Comparable First Tee Facilities;”
4. Any amendment to the definitions of “First Tee Facilities,” “First Tee Clubhouse,” or “First Tee Outdoor Facilities” that would reduce the quality or scope of such assets.
5. Any reduction of the term of the First Tee Agreement to less than five years;
6. Any material expansion of the grounds of either party to terminate the First Tee Agreement;
7. Any amendment that removes Lessor (or lessens its rights) as an indemnified party;
8. Any material reduction in First Tee’s obligations to provide educational and youth programming at the Project;
9. Any amendment to section 2.5 of the First Tee Agreement (City Ground Lease Provisions);
10. Any change in the requirement that Lessor be a co-insured on any policies of insurance First Tee obtains with respect to the First Tee Agreement and activities in connection therewith; and
11. Any change in the requirement that Lessor be delivered (contemporaneously with the addressee) copies of any notice of default, intention to terminate or actual termination of the First Tee Agreement.

C. With respect to the SCD Agreement:

1. Any amendment that would result in Section 5.05(1) of this Agreement no longer being met (provided that Lessee may agree (without Lessor’s consent) to amend the SCD Agreement to change the name of the golf tournament to another name that continues to include the phrase “Byron Nelson”);
2. Any amendment that would (a) lower the category of professional tournament played at the Golf Course to a category lower than the PGA TOUR tournament, or (b) allow for less than a scheduled 72 hole competition over a four-day period;
3. Any change in the parties to the SCD Agreement;

4. Any change in the definition of "Golf Complex;"
5. Any reduction of the term of the SCD Agreement to less than five years;
6. Any additions of conditions to the SCD Agreement or amendments to the SCD Agreement that make any of the existing conditions more difficult to be met;
7. Any narrowing of the requirement that Lessee have nondiscriminatory membership rules.
8. Any material expansion of the grounds of either party to terminate the SCD Agreement;
9. Any amendment that removes Lessor (or lessens its rights) as an indemnified party;
10. Any amendment to section [] [WILL FILL IN WHEN KNOW WHAT SECTION THE BOLDED LANGUAGE WILL BE ADDED TO] of the SCD Agreement (City Ground Lease Provisions);
11. Any change in the requirement that Lessor be a co-insured on any policies of insurance SMU obtains with respect to the First Tee Agreement and activities in connection therewith; and
12. Any change in the requirement that Lessor be delivered (contemporaneously with the addressee) copies of any notice of default, intention to terminate or actual termination of the SCD Agreement.

EXHIBIT A

PREMISES

BOUNDARY DESCRIPTION OF THE TRINITY CHAMPIONSHIP GOLF COURSE ADDITION, INSTALLMENT I

A 364.95 Acre tract of unplatted land being situated in the City of Dallas, Dallas County, Texas, and lying in the Elizabeth Crockett Survey, Abstract No. 231, Isaac Elam Survey, Abstract No. 443, and the Gideon Pemberton Survey, Abstract No. 1155, and lying in City of Dallas Blocks 6258, 6259, 7972, and being part of the property conveyed to the City of Dallas by deed recorded in Instrument Number 20080250127 of the Official Public Records of Dallas County, Texas and being more particularly described as follows:

NOTE: All coordinates given are Texas State Plane Coordinate System, North Central Zone 4202, North American Datum of 1983, ON GRID values.

LOTS 1 & 2:

BEGINNING at the intersection of the South Right-of-Way line of State Highway Loop 12 / Great Trinity Forest Way with the West line of the Trinity River Audubon Addition, Preliminary Plat (Coordinates: North=6946837.1817, East=2519310.5076):

THENCE Southerly with the East line of said Trinity River Audubon Addition to the Southeast corner of the herein described tract of land:

THENCE Westerly and Northwesterly the following distances and bearings:

South 89°15'11" West a distance of 206.79 feet:
North 45°35'06" West a distance of 199.20 feet:
North 40°07'46" West a distance of 314.87 feet:
North 75°39'34" West a distance of 513.50 feet:
South 86°34'43" West a distance of 422.48 feet:
North 53°52'06" West a distance of 383.82 feet:
South 78°35'09" West a distance of 299.59 feet:
South 23°54'00" West a distance of 375.14 feet:
South 42°51'13" West a distance of 262.34 feet:
South 85°02'52" West a distance of 257.10 feet:
South 70°20'40" West a distance of 506.97 feet:
South 78°26'30" West a distance of 722.12 feet:
North 9°57'00" West a distance of 358.21 feet:
North 34°46'37" West a distance of 96.00 feet:
South 85°34'52" West a distance of 135.57 feet:
South 69°40'33" West a distance of 55.55 feet:
North 26°14'14" West a distance of 121.12 feet:
North 84°12'49" West a distance of 193.11 feet:
North 32°30'42" West a distance of 405.08 feet:
North 56°26'53" West a distance of 271.92 feet:

**BOUNDARY DESCRIPTION
OF THE
TRINITY CHAMPIONSHIP GOLF COURSE ADDITION, INSTALLMENT I**

South 87°07'20" West a distance of 434.93 feet:
North 5°33'30" West a distance of 292.52 feet:
North 37°46'37" West a distance of 633.93 feet:
North 55°53'49" West a distance of 288.43 feet:
North 16°36'25" West a distance of 305.78 feet:
North 1°32'51" West a distance of 278.62 feet to the intersection with the above
reference South line of State Highway Loop 12 / Great Trinity Forest Way
(Coordinates: North=6945810.581, East=2513428.066):

THENCE Northeasterly and Easterly with the said South line of State Highway
Loop 12 / Great Trinity Forest Way to the **POINT OF BEGINNING**, containing
362.70 Acres of land.

Lot 3:

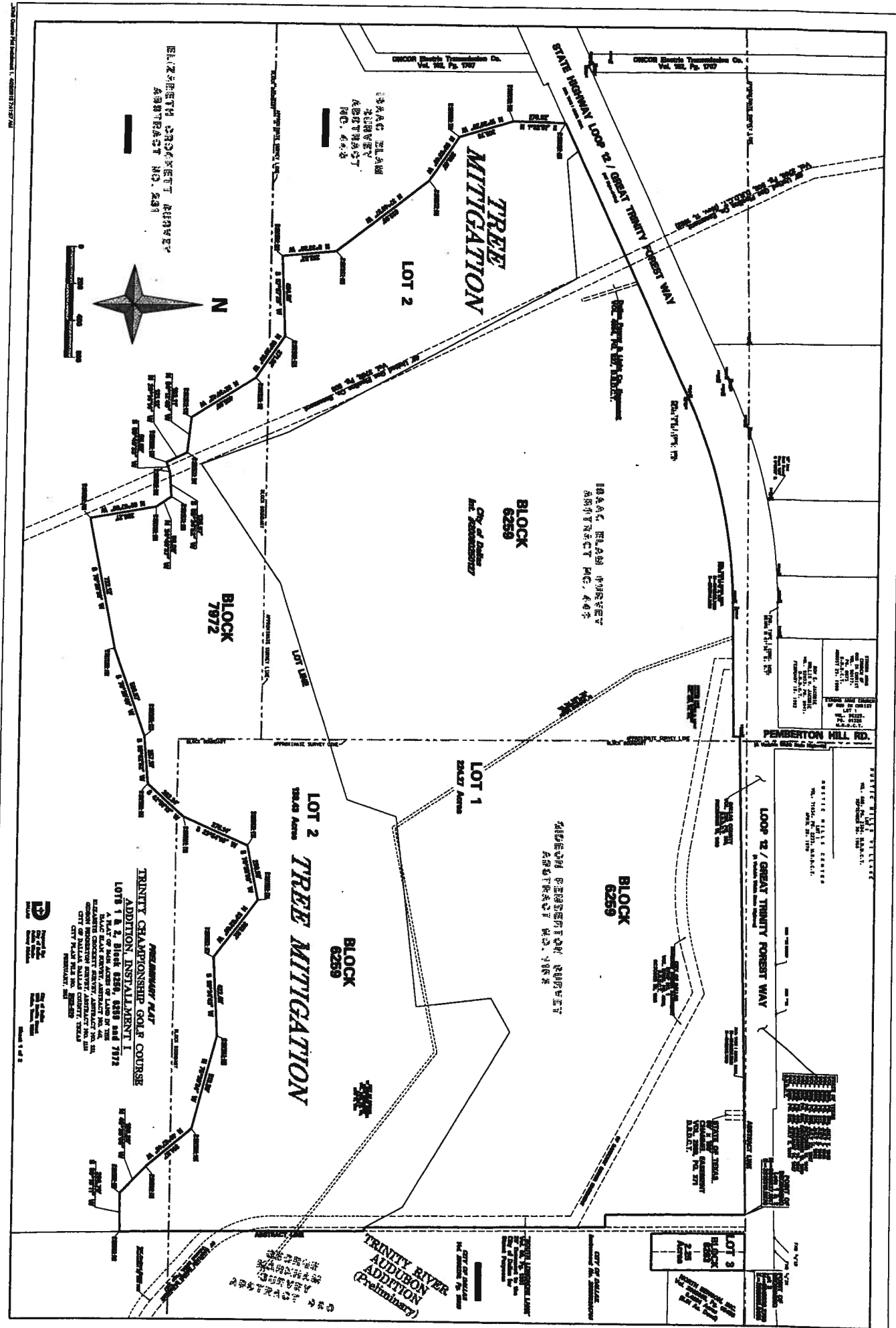
BEGINNING at the Southeast corner of a tract of land conveyed to the City of
Dallas by deed recorded in Instrument Number 201200145747 of the Official
Public Records of Dallas County, Texas, being also an inside corner of the Trinity
River Audubon Center Addition (Preliminary Plat) (Coordinates:
North=6946279.78, East=2519610.54):

THENCE Westerly with the South line of said City of Dallas tract and a tract
conveyed to the City of Dallas by deed recorded in Instrument Number
201200287032 of the Official Public Records of Dallas County, Texas, to an
inside corner of said Trinity River Audubon Addition:

THENCE Northerly with an Easterly line of said Trinity River Audubon Addition to
the intersection with the centerline of State Highway Loop 12 / Great Trinity
Forest Way:

THENCE Easterly with the said centerline of State Highway Loop 12 / Great
Trinity Forest Way to the intersection with the prolongation of the East line of the
above said City of Dallas tract conveyed by Instrument Number 201200145747
of the Official Public Records of Dallas County, Texas:

THENCE Southerly with the prolongation and East line of said City of Dallas tract
to the **POINT OF BEGINNING**, containing approximately 126,861 Square Feet,
or 2.912 Acres of land.



BLANKET CONTRACT AGREEMENT
 ADDENDUM NO. 231



TRINITY CHAMPIONSHIP GOLF COURSE
 ADDITION INSTALLMENT I
 LOTS 1 & 2, BLOCK 6259 AND 7972
 A BLANKET CONTRACT AGREEMENT NO. 231
 TRINITY CHAMPIONSHIP GOLF COURSE
 10000 TRINITY FOREST WAY
 CITY OF DALLAS, TEXAS 75243



TRINITY RIVER
 ADDITION
 (Preliminary)

**BOUNDARY DESCRIPTION
OF THE
TRINITY CHAMPIONSHIP GOLF COURSE ADDITION, INSTALLMENT II**

A 104.60 Acre tract of unplatted land being situated in the City of Dallas, Dallas County, Texas, and lying in the Cornelius Cox Survey, Abstract No. 284, and the Isaac Elam Survey, Abstract No. 443, and lying in City of Dallas Blocks 6258 and 6257, and being part of the property conveyed to the City of Dallas by deed recorded in Instrument Number 20080250127 of the Official Public Records of Dallas County, Texas and being more particularly described as follows:

NOTE: All coordinates given are Texas State Plane Coordinate System, North Central Zone 4202, North American Datum of 1983, ON GRID values.

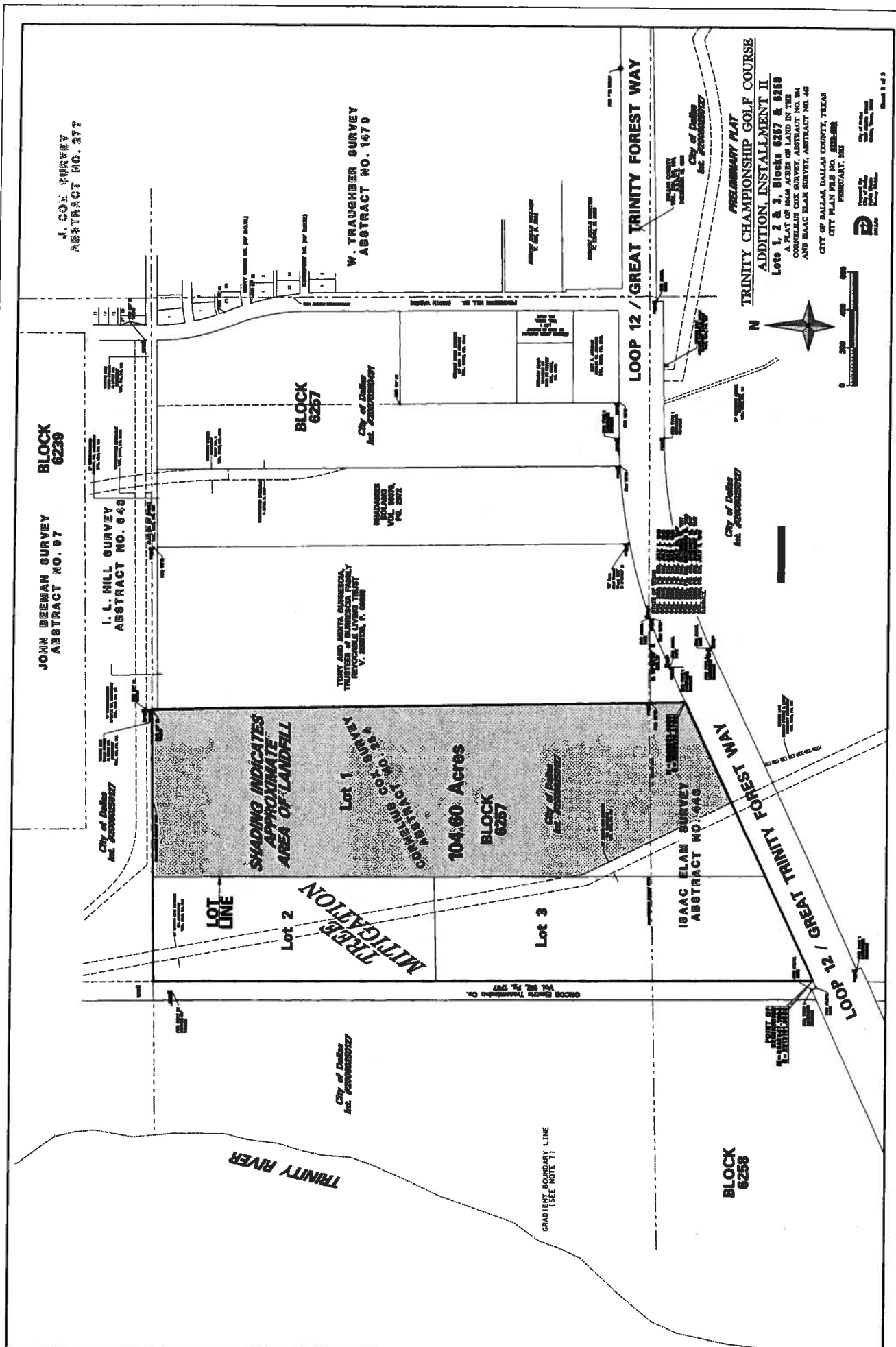
BEGINNING at the intersection of the North line of State Highway Loop 12 / Great Trinity Forest Way, with the East line of a tract of land conveyed to the ONCOR Electric Transmission Company (successor in title to the Dallas Power and Light Company) by deed recorded in Volume 182, Page 1707 of the Deed Records of Dallas County, Texas, being also the Southwest corner of the herein described tract of land (Coordinates: North=6945947.18, East=2513151.06):

THENCE Northerly with the common line between said ONCOR and City of Dallas tracts to the intersection with the South line of the I.L. Hill Survey, Abstract No. 648, being also the Northwest corner of the herein described tract of land:

THENCE Easterly with the common line between said I.L. Hill and Cornelius Cox Surveys to the intersection with the West line of a tract of land conveyed to Burrescia Family Revocable Living Trust by deed recorded in Volume 2005139, Page 898 of the Official Public Records of Dallas County, Texas, being also the Northeast corner of the herein described tract of land:

THENCE Southerly with the common line between said Burrescia and City of Dallas tracts to the intersection with the above said North line of State Highway Loop 12 / Great Trinity Forest Way, being also the Southeast corner of the herein described tract of land (Coordinates: North=6946623.68, East=2514616.37):

THENCE Southwesterly with the said North line of State Highway Loop 12 / Great Trinity Forest Way to the **POINT OF BEGINNING**, containing 104.60 Acres of land.



J. COX SURVEY
ABSTRACT NO. 277

BLOCK 6239

JOHN BEEMAN SURVEY
ABSTRACT NO. 97

I. L. HILL SURVEY
ABSTRACT NO. 646

BLOCK 6257

W. TRAUGHBER SURVEY
ABSTRACT NO. 1479

City of Dallas
Ac. 10/20/2007

MANAGER
VOL. 107A, P. 2077

TRINITY AND ADJACENT SURVEYS
TAKEN BY SURVEYOR
REVEREND LIVING TRINITY
V. DUNN, P. 1008

SHADING INDICATES
APPROXIMATE
AREA OF LANDFILL

Lot 1

104.60 Acres
BLOCK 6257

Lot 3

ISAAC ELAM SURVEY
ABSTRACT NO. 443

BLOCK 6258

LOOP 12 / GREAT TRINITY FOREST WAY

LOOP 12 / GREAT TRINITY FOREST WAY

PRELIMINARY PLAN
TRINITY CHAMPIONSHIP GOLF COURSE
ADDITION, INSTALLMENT II

Lots 1, 2 & 3 Blkts 6257 & 6258
A PART OF SAID ACRES OF LAND IN
CONJUNCTION WITH SURVEY, ABSTRACT NO. 24
AND ISAAC ELAM SURVEY, ABSTRACT NO. 443
CITY OF DALLAS, DALLAS COUNTY, TEXAS
CITY PLAN NO. 100,000
PREPARED BY: [Signature]



Exhibit B

**Approved Conceptual Plans
And Preliminary Construction Budget**

[to be attached]



**TRINITY FOREST
GOLF COURSE**
Preliminary Master Plan
April 2013

**TRINITY FOREST GC
Project Description**

Project Components:

- 18-hole championship golf course designed by Coore & Crenshaw, Inc.
- World-class practice facility built to PGA TOUR specifications including 25 acre driving range, 40,000 square foot putting green(s) and a teaching academy with state-of-the-art swing analysis technology. The teaching academy would include 2 hitting bays built within a 1,500sf building.
- Teaching center for The First Tee of Greater Dallas including a driving range and 3-hole course
- Practice academy for Southern Methodist University golf teams
- Clubhouse facilities would include a foyer, women's and men's locker rooms, a mixed grill and bar, pavilion for special events, pro shop, offices and outdoor patios overlooking the golf course.

Golf Course Characteristics:

The Trinity Forest Golf Course will resemble a links-style layout with rolling hills, tall native grasses and dramatic bunkering and green complexes. The 7,200-yard, par-71 course will be built on a rolling meadow surrounded by the Great Trinity Forest. The subtly rolling meadow and waving native grasses will resemble the great old courses of the Northeast and the more dramatic elevation changes around the edges of the meadow against the forest will produce opportunities for exciting risk and reward decisions.

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Pre-Development					
Legal					
COD Lease Agreement	1	ALL	\$ 75,000	\$ 75,000	
Non-Profit/Partner Agreements	1	ALL	\$ 25,000	\$ 25,000	
Operating/Management Agreements	1	ALL	\$ 10,000	\$ 10,000	
Membership Documents	1	ALL	\$ 50,000	\$ 50,000	
Contractor / Architect Contracts	1	ALL	\$ 15,000	\$ 15,000	
Easements	1	ALL	\$ 15,000	\$ 15,000	
SMU & SCD Agreements	1	ALL	\$ 75,000	\$ 75,000	
Other Pre-Development Legal	1	ALL	\$ 25,000	\$ 25,000	
				\$ 290,000	
Legal SubTotal					
Permits (includes required Engineering & Consultancies)					
Environmental Mitigation (USACE) (Wetlands) (404)	1	ALL	\$ 25,000	\$ 25,000	
COD Fill Permit	2	EA	\$ 6,000	\$ 12,000	
SWPPP	1	ALL	\$ 2,500	\$ 2,500	
Grading (Off Cap - Cap included in RAP & Subchapter T)	1	ALL	\$ 2,500	\$ 2,500	
Highway 12	1	ALL	\$ -	\$ -	By Lessor
Interior Roads			Below		
Utilities - Temporary (Elec, water, sewer, phone)	1	ALL	\$ 2,000	\$ 2,000	
Utilities - Permanent			Below		
Buildings & Structures			Below		
Miscellaneous Permits	1	ALL	\$ 10,000	\$ 10,000	
				\$ 54,000	
Permits SubTotal					
Zoning & CPC	1	ALL	\$ -	\$ -	By Lessor
Mitigation Credits - Off Site Banking	-	CRD		\$ -	
				\$ 344,000	
Pre-Development Total					

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Design, Engineering & Consultancies					
Design					
Irrigation Design (inc design, programming, water balance)	1	ALL	\$ 80,000	\$ 80,000	
Landscape Design	1	ALL	\$ 60,000	\$ 60,000	
Reservoir Design	1	ALL	\$ 15,000	\$ 15,000	
Other Design	1	ALL	\$ 25,000	\$ 25,000	
				\$ 180,000	
Design SubTotal					
Engineering					
Civil Engineering (Lessor Improvements)	1	ALL	\$ -	\$ -	By Lessor
Civil Engineering (Golf & structures inc. Subconsultants)	1	ALL	\$ 100,000	\$ 100,000	
Tree Survey (Misc. work)	1	ALL	\$ 10,000	\$ 10,000	
Wetland/404 Delineation	1	ALL	\$ 20,000	\$ 20,000	
GeoTech at lake excavations	1	ALL	\$ 10,000	\$ 10,000	
Constraints & Easements	1	ALL	\$ 12,500	\$ 12,500	
Site surveying & Field Engineering (Post Remediation)	1	ALL	\$ 40,000	\$ 40,000	
Structures - Site Design & Geotech	1	ALL	Below		
Lighting - Exterior (Streets)	1	ALL	\$ 20,000	\$ 20,000	
Other engineering	1	ALL	\$ 50,000	\$ 50,000	
				\$ 262,500	
Engineering SubTotal					
Consultancies					
Agronomy	1	ALL	\$ 10,000	\$ 10,000	
Other Consultancies	1	ALL	\$ 10,000	\$ 10,000	
				\$ 20,000	
Consultancies SubTotal					
Certifications					
Other Certifications	1	ALL	\$ 10,000	\$ 10,000	
				\$ 10,000	
Certifications SubTotal					
Design, Engineering & Consultancies Total					
				\$ 472,500	

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Construction - Horizontal					
Site Preparation/ Requirements					
Camp site & Site office (Contractor/Subcontractors)	1	ALL	\$ 25,000	\$ 25,000	
Field office (5/13 thru 6/15)	26	MO	\$ 2,500	\$ 65,000	
Safety Administration (May 2013 - December 2014)	20	MO	\$ 10,000	\$ 200,000	
Site Security (May 2013 - December 2014)	20	MO	\$ 25,000	\$ 500,000	
Implement E&S Plan / SWPPP for Lessor improvements	1	ALL	\$ -	\$ -	By Lessor
Construction Entrances					
Highway 12 ramps			Below		
Maintain entrances	3	ALL	\$ 15,000	\$ 45,000	
Abandonments (Utilities) & Relocations	1	ALL	\$ 25,000	\$ 25,000	
Demolition & Removals	1	ALL	\$ 35,000	\$ 35,000	
Easement requirements	1	ALL	\$ 45,000	\$ 45,000	Awaiting easement agreements from CoD
Project/Program Management expenses	22	MO	\$ 5,000	\$ 110,000	
Operations & Maintenance Training	1	ALL	\$ 10,000	\$ 10,000	
Interim Utilities	22	MO	\$ 1,000	\$ 22,000	
				\$ 1,082,000	
Site Preparation SubTotal					
Remediation					
Site Remediation	1	ALL	\$ -	\$ -	By Lessor
Vegetative support layer and other support fill on landfills	1	ALL	\$ -	\$ -	By Lessor
Site engineering & Inspections	1	ALL	\$ -	\$ -	By Lessor
Grubbing & Stripping on all landfills	1	ALL	\$ -	\$ -	By Lessor
Tree Clearing on all landfills	1	ALL	\$ -	\$ -	By Lessor
Establish consistent Cap (+ 2.0' plan)	1	ALL	\$ -	\$ -	By Lessor
Slope remediation	1	ALL	\$ -	\$ -	By Lessor
Pond J remediation	1	ALL	\$ -	\$ -	By Lessor
Surface Waste/Debris removal to landfill	1	ALL	\$ 200,000	\$ 200,000	Includes methane trench(s) (At structures)
Methane mitigation	1	ALL	\$ 40,000	\$ 40,000	
GPS Control / Cap Control for Earthwork & Shaping	1	ALL	\$ 250,000	\$ 250,000	
Tree Mitigation (Trees & Blackland Prairie)	1	ALL	\$ 280,000	\$ 280,000	Payments to be scheduled over time.
Additional Mitigation	1	ALL	\$ -	\$ -	
				\$ 770,000	
Remediation SubTotal					
Golf Course Construction					
Golf Course (inc. PG at Clubhouse)	1	ALL	\$ 6,120,000	\$ 6,120,000	
Practice Academy	1	ALL	\$ 1,680,000	\$ 1,680,000	
Short Game (inc SMU CG & PG)	1	ALL	\$ 1,360,000	\$ 1,360,000	
First Tee	1	ALL	\$ 400,000	\$ 400,000	
Native landscaping	1	ALL	\$ 200,000	\$ 200,000	
Waste Debris Removal	1	ALL	\$ 300,000	\$ 300,000	
				\$ 10,060,000	
Course Construction SubTotal					

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Infrastructure - Utilities (Inc. Tap Fees, if not waived by COD)					
Utilities	1	ALL	\$ 2,350,000	\$ 2,350,000	
Potable Water - Looped system	1	ALL	\$ -	\$ -	By Lessor
Sewer (Elam Road)	1	ALL	\$ -	\$ -	By Lessor
Well Water	1	ALL	\$ -	\$ -	Included in Utilities line above
Lake Development	1	ALL	\$ -	\$ -	Included in Utilities line above
Trinity River Transfer, Pumping Systems & Mains	1	ALL	\$ -	\$ -	By Lessor
Gas	1	ALL	\$ -	\$ -	Included in Utilities line above
Electric	1	ALL	\$ -	\$ -	Included in Utilities line above
Communication	1	ALL	\$ -	\$ -	Included in Utilities line above
Utility Contingency	1	ALL	\$ -	\$ -	Included in Utilities line above
				\$ 2,350,000	
Infrastructure - Utilities SubTotal					
Infrastructure - Other					
Road - All Highway 12 work per concepts provided	1	ALL	\$ -	\$ -	By Lessor
Road - Elam Improvements	1	ALL	\$ -	\$ -	By Lessor
Road - Entry, Parking					
	100,000	CY	\$ 4	\$ 400,000	
	1	ALL	\$ 120,000	\$ 120,000	
Storm Water / Gas Easement					
Structural Fill					
Site Preparation & Structural Fill	30,000	CY	\$ 4	\$ 120,000	
Storm Water	1	ALL	\$ 30,000	\$ 30,000	
Surfacing	9,000	SF	\$ 4	\$ 36,000	
Road - Service & Emergency Evacuation					
Clearing & Site Preparation	1	ALL	\$ 32,000	\$ 32,000	
Structural Fill / Fabric & Stone	110,000	SF	\$ 1	\$ 110,000	
Surfacing	110,000	SF	\$ 1	\$ 137,500	
Trail to First Tee / Short Game / Short Course					
Bridges & Crossings	1	ALL	\$ 35,000	\$ 35,000	
Pad Development Hwy 12					
Fence - Perimeter					
Golf (2)	1	ALL	\$ 108,000	\$ 108,000	
Service Road (2)	1	ALL	\$ 160,000	\$ 160,000	
	1	ALL	\$ 200,000	\$ 200,000	
South Loop 12					
Elam Parcels	18,000	LF	\$ 24	\$ 432,000	
Fence/Wall - Entry	9,000	LF	\$ 24	\$ 216,000	
Ornamental fencing at underpass, other areas (Add'l cost)	1	ALL	\$ 40,000	\$ 40,000	
Site Landscaping / Lighting	3,000	LF	\$ 46	\$ 138,000	
Tournament / Network Requirements	1	ALL	\$ 250,000	\$ 250,000	
	1	ALL	\$ 25,000	\$ 25,000	
				\$ 2,589,500	
Infrastructure - Other SubTotal					
Grow-In / Maturation (Golf & grounds)	1	ALL	\$ 900,000	\$ 900,000	
Construction - Horizontal Total					
				\$ 17,751,500	

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Construction - Vertical					
Clubhouse (including academy building)					
Site Work (excluding earthwork)	1	ALL	\$ 425,000	\$ 425,000	
Utility Conenctions	1	ALL	\$ 140,000	\$ 140,000	
Structure	5,000	SF	\$ 300	\$ 1,500,000	
Methane mitigation	1	ALL	\$ 25,000	\$ 25,000	
A&E / MEP Design @ 10%	1	ALL	\$ 150,000	\$ 150,000	
FFE	1	ALL	\$ 175,000	\$ 175,000	
Outdoor Patios / Living / Amenity	5,000	SF	\$ 20	\$ 100,000	
				\$ 2,515,000	
Villas SubTotal					
First Tee Building					
Site Work (excluding earthwork)	1	ALL	\$ 25,000	\$ 25,000	
Utility Conenctions	1	ALL	\$ 25,000	\$ 25,000	
Structure	8,000	SF	\$ 100	\$ 800,000	
A&E / MEP Design	1	ALL	\$ 80,000	\$ 80,000	
FFE	1	ALL	\$ 96,000	\$ 96,000	
				\$ 1,026,000	
First Tee Building SubTotal					
Maintenance Facility					
Site Work (excluding road earthwork)	1	ALL	\$ 80,000	\$ 80,000	
Utility Conenctions	1	ALL	\$ 60,000	\$ 60,000	
Structure	10,000	SF	\$ 80	\$ 800,000	
Other structures	1	ALL	\$ 160,000	\$ 160,000	
A&E & MEP Design	1	ALL	\$ 40,000	\$ 40,000	
FFE	1	ALL	\$ 48,000	\$ 48,000	
Shop outfitting (Equipment below)	1	ALL	\$ 40,000	\$ 40,000	
				\$ 1,228,000	
Maintenance Facility SubTotal					
Pump Station Building (Inc Well)					
Site Work (excluding earthwork)	1	ALL	\$ 10,000	\$ 10,000	
Utility Conenctions	2,500	SF	\$ 60	\$ 150,000	
Structure (1 @ 2,500 SF)	1	ALL	\$ 15,000	\$ 15,000	
A&E / MEP Design	1	ALL	\$ 1,000	\$ 1,000	
FFE	1	ALL	\$ 1,000	\$ 1,000	
				\$ 176,000	
Pump Station Building SubTotal					
Construction - Vertical Total					
				\$ 4,945,000	

Exhibit B - Lessee Construction Budget
April 26, 2013

	Quantity	Unit	Unit Price	Extended	Notes
Pre-Opening					
Golf maintenance until opening	6	MO	\$ 80,000	\$ 480,000	
				\$ 480,000	
SubTotal Budget				\$ 23,993,000	
Contingency			10%	\$ 2,399,300	
Total Minimum Lessee Budget				\$ 26,392,300	

Pre-Opening SubTotal

EXHIBIT C
Not to exceed \$12M
City Commitment for Trinity Forest Golf Course Project

1	Survey, zoning and platting - field work on boundary and topography survey, and preparation of field notes, plats and maps for CPC and Council Approval of the plats and planned development.
2	Tree survey - field survey of trees 8 inches and above.
3	Remediation testing - testing required to remediate the site conditions related to the former use as a landfill of the Simpkins property and for obtain regulatory closure.
4	Remediation design - design plans to remediate the site conditions related to the former use as a landfill of the Simpkins property and to obtain regulatory closure.
5	Remediation construction - construction to remediate the site conditions related to the former use as a landfill of the Simpkins property and to obtain regulatory closure - may be assigned to TFGNP for management.
6	Installation of the vegetative support layer as submitted to TCEQ.
7	Tree clearing and grubbing of all disturbed landfill areas.
8	Median opening at Great Trinity Forest Way - design and construction of median opening, deceleration and acceleration lanes, left turn lane and driveway approach to main entrance of the TFGC.
9	Elam Road - design and construction of a two-lane concrete roadway, drainage system, bike and pedestrian lanes, and street lights from Pemberton Hill to west to dead end.
10	Water and wastewater improvements - design and construction of approximately 4,900 feet of water replacements for completing the loop system and approximately 400 feet of wastewater improvements on Elam Road.
11	Irrigation system and components for joint use at Audubon and TFGC (Estimated amount to be verified)
12	Street lights along Great Trinity Forest Way - design and construction of street lights from Pemberton Hill to Sleepy Hollow Golf Course.
13	Traffic signals at Longacre Drive and Great Trinity Forest Way - construction of new traffic signals.
14	Wetland Mitigations - for trails and other public improvements.
15	Traffic signals at Pemberton Hill and Great Trinity Forest Way - construction of new traffic signals.

EXHIBIT D

Bond. No. _____

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS: That _____, whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto the City of Dallas, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called Owner, and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements hereinafter referred to, in the penal sum of _____ and ___/100 DOLLARS (\$ _____) in lawful money of the United States, to be paid in Dallas County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract, identified by Resolution No. 13-_____, with the City of Dallas, the Owner, dated the ___ day of ___, A.D. 20___, a copy of which is hereto attached and made a part hereof, for _____ in the City and County of Dallas.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

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

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

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Section 3503.003 of the Insurance Code, Vernon's Texas Codes Annotated.

THE ADDRESS OF THE SURETY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE IN AUSTIN, TEXAS BY CALLING THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-252-3439.

IN WITNESS WHEREOF, this instrument is executed in ___ copies, each one of which shall be deemed an original, this ____ day of _____, 20__.

ATTEST:

PRINCIPAL:

a _____ corporation

BY _____
Secretary

BY _____
President

ATTEST:

SURETY:

a _____ corporation

BY _____

BY _____
Attorney-in-Fact

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

NAME: _____ TELEPHONE: _____

STREET ADDRESS: _____

(NOTE: Date of Payment Bond must be date of Contract. If Resident Agent is not a corporation, give a **person's** name.)

Bond. No. _____

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____ hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____ and fully authorized to transact business in the State of Texas, as Surety, are held and firmly bound unto the City of Dallas, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called Owner, in the penal sum of _____ DOLLARS (\$ _____) plus 10 percent of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Dallas County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract, identified by Resolution No. 13-_____, with the City of Dallas, the Owner, dated the _____ day of _____ A.D. 20____, a copy of which is hereto attached and made a part hereof, for _____ in the City and County of Dallas, Texas.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the plans, specifications and Contract Documents during the original term thereof and any extension thereof which may be granted by the Owner, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Owner; and, if the Principal shall fully indemnify and save harmless the Owner from all costs and damages which Owner may suffer by reason of failure to so perform herein and shall fully reimburse and repay Owner all outlay and expense which the Owner may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Dallas County, State of Texas.

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

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Section 3503.003 of the Insurance Code, Vernon's Texas Codes Annotated.

THE ADDRESS OF THE SURETY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE IN AUSTIN, TEXAS BY CALLING THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-252-3439.

IN WITNESS WHEREOF, this instrument is executed in three (3) copies, each one of which shall be deemed an original, this ____ day of _____, 20__.

ATTEST:

PRINCIPAL:

a Texas corporation

BY _____
Secretary

BY _____
President

ATTEST:

SURETY:

a Texas corporation

BY _____

BY _____
Attorney-in-Fact

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

NAME: _____ TELEPHONE: _____

STREET ADDRESS: _____

(NOTE: Date of Payment Bond must be date of Contract. If Resident Agent is not a corporation, give a **person's** name.)

Exhibit E

Insurance Requirements

E.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term of this Lease with responsible insurance companies, legally authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$10,000,000 Combined Single Limit protecting Lessor and Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It must be maintained by any combination of single policies and umbrella policies and may be obtained and maintained by a Sublessee with respect to that portion of the Premises subleased to such Sublessee. Lessor shall be named as an additional insured on all insurance policies required in this Section E.1, whether provided by Lessee or by any Sublessee, including policies providing higher limits of liability or other coverages. Lessee, at least every ten years during the Term, shall adjust the above referenced limits of liability to reflect percentage increases during such period in similar coverages at similar venues in Dallas, Texas.

E.2 Workers' Compensation Insurance. Lessee agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term, and if so required, with statutory limits and employer's liability with limits of \$100,000 each accident, \$100,000 disease each employee and \$500,000 disease per policy. The policy will be endorsed to provide a waiver of subrogation as to Lessor.

E.3 Property Insurance. At all times during the Term of this Lease, Lessee shall, at its sole expense, keep all buildings and structures included in the Premises insured against "all risk" of loss for full replacement cost coverage, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery, and flood. Coverage must be written by responsible insurance companies legally authorized to transact business in the State of Texas. Lessor shall be named as an additional insured or additional loss payee, as appropriate.

E.4 Policies. All insurance policies required by this Exhibit E shall provide for at least 60 days written notice to Lessor before cancellation and true and correct copies of policies of insurance shall be delivered to Lessor, and the form and substance thereof shall be subject to the reasonable approval of Lessor. If any blanket general insurance policy of Lessee complies with the terms of these provisions, the naming of Lessor therein as additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. Lessor and Lessee hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party by subrogation or otherwise may now or hereafter have against the other party or any of the other party's partners, directors, officers, employees, or agents, for bodily injuries (including death) to persons, or loss or damage to property of Lessor and Lessee whether caused by the negligence or fault of Lessor and Lessee or their partners, directors, officers, employees or agents or otherwise, to the extent that the

injuries, loss or damages are covered by the proceeds of insurance policies maintained by either party.

E.5 Adjustment of Losses. Any loss under any such insurance policy required under Section E.3 hereof shall be made payable to Lessee for the benefit of Lessor and Lessee, to the end that Lessee shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Premises, to be applied pursuant to Section E.6 below, but subject to the terms of the Lease. Any accumulation of interest on the insurance proceeds collected by Lessee shall be added to, and become a part of, the fund being held by Lessee for the benefit of Lessor and Lessee. The adjustment of losses with the insurer shall be made by Lessee.

E.6 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provisions of any policies of property insurance required to be carried under the terms of this Lease (net of reasonable expenses of collection) shall be applied for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Lease, as a fund for the rebuilding, restoration and repair of the portion of the Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any such proceeds not disbursed pursuant to subsection (a) above shall be applied to or as directed by Lessee.

Exhibit F

Hazardous Substances

Presence and Use of Hazardous Substances. Except for materials and substances used in the ordinary course of development and operation of the Project as a golf course (but in all events in compliance with applicable laws), Lessee shall not, without Lessor's prior written consent, store on or around the Premises, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic, or harmful by or is subject to regulation, by federal, state, or local law, regulation, statute, or ordinance, including but not limited such substances identified under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* "Hazardous Substances" shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, or similar substances (collectively referred to in this Agreement as "Hazardous Substances"). With respect to any such Hazardous Substances, Lessee shall:

a. Comply promptly, timely, and completely with all applicable government requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers.

b. Submit to Lessor true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate government authorities.

c. Within thirty (30) days of Lessor's request, submit written reports to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances and provide evidence satisfactory to Lessor of Lessee's compliance with the applicable government regulations.

d. Allow Lessor or Lessor's agent or representative to come on the Premises at all times to check Lessee's compliance with all applicable government regulations regarding Hazardous Substances.

e. Comply with all applicable government rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by Lessor and associated with Lessor's inspection of the Premises and Lessor's monitoring of Lessee's compliance with this Article, including Lessor's attorney fees and costs, shall be additional rent and shall be due and payable to Lessor immediately on demand by Lessor.

Cleanup costs, default, and indemnification. Lessee shall be fully and completely liable to Lessor for any and all cleanup, response, natural resource damage, and any and all other costs, charges, fees, and penalties (civil and criminal), whether imposed by any government authority or obtained by a third party in litigation with respect to Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances, in or about the Premises in violation of the terms of this Lease. Lessee shall indemnify, defend, and save Lessor harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed on Lessor (as well as Lessor's attorney fees and costs) as a result of Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances in violation of the terms of this Lease. Upon Lessee's default under this provision of the Agreement (beyond any notice and cure periods provided in Section 14.01 if the Lease), in addition to the rights and remedies set forth elsewhere in this Lease, Lessor shall be entitled to the following rights and remedies:

a. To recover any and all damages associated with the default, including, but not limited to all cleanup, response, natural resource damages, any and all other costs, charges, fees, and penalties (civil and criminal), whether imposed by any government authority or obtained by a third party in litigation, loss of business and sales by Lessee and other tenants of the Premises, and Lessor's attorney fees and costs; and/or

b. To enter onto the Premises and cause to be completed the cleanup, decontamination, and remediation of the Hazardous Substances on the Premises, whether present in soil, groundwater, air, or any other media, as reasonably determined by the City.

EXHIBIT G

Memorandum of Lease Agreement

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS MEMORANDUM OF LEASE AGREEMENT ("Memorandum") is entered into as of the _____ day of _____, 2012, by and between the CITY OF DALLAS, a municipal corporation of Dallas County, Texas ("Lessor"), and THE COMPANY OF TRINITY FOREST GOLFERS, INC., a Texas nonprofit corporation ("Lessee"), sometimes collectively referred to herein as the "Parties" or singularly as a "Party".

RECITALS

- A. Lessor and Lessee have entered into a Lease Agreement (the "Lease") pertaining to the Premises (as defined in the Lease) which includes the land described on Exhibit A attached hereto and made a part hereof for all purposes (the "Land").
- B. Lessor and Lessee desire to enter into and record this Memorandum in the public records of Dallas County, Texas, to put all third parties on notice of the Lease and Lessee's rights thereunder in and to the Premises.

AGREEMENT

- 1. The Lease. Upon and subject to the terms and provisions set forth in the Lease, Lessor has leased, demised and let unto Lessee, and Lessee has taken and leased from Lessor, the Premises. Lessee has certain rights and interests in the Premises under the Lease.
- 2. Term. The Term of the Lease is for a period commencing on the date first above written and ending on the 40th anniversary of the Completion Date (defined in the Lease as _____), unless sooner terminated or extended according to the terms and provisions of the Lease.
- 3. Incorporation of Lease. The terms, conditions and provisions of the Lease are incorporated herein by reference for all purposes. Any inconsistencies between this Memorandum and the Lease are governed by the Lease and not by this Memorandum. This Memorandum in no way modifies or amends the Lease.

Executed as of the day and year first above written.

LESSOR:

CITY OF DALLAS
Mary K. Suhm, City Manager

LESSEE:

THE COMPANY OF TRINITY FOREST GOLFERS, INC.
a Texas nonprofit corporation

By: _____
Name: _____
Assistant City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
Thomas P. Perkins, Jr.
City Attorney

By: _____
Name: _____
Assistant City Attorney

ATTEST:

By: _____
City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AGREEMENT WITH AT&T SERVICES, INC. FOR TRINITY TRAILS

This Agreement (this “Agreement”) for the funding, construction and maintenance for Trinity Trails Phase 3A (defined herein) is entered into between the CITY OF DALLAS, a Texas municipal corporation acting through its authorized officials (the “City”) and AT&T SERVICES, INC., a Delaware corporation acting through its authorized officials (“AT&T”).

WITNESSETH:

WHEREAS, the City is the owner of approximately 300 acres of real property located in the City of Dallas, Texas in the vicinity of Great Trinity Forest Blvd (f/k/a “Loop 12”) and Elam Road and adjacent to the Trinity Audubon Center and the Texas Horse Park (the “Premises”); and

WHEREAS, the City is supporting and facilitating the development of the Premises into a world class championship golf course and training facility (hereinafter the “Golf Course”) by and through The Company of Trinity Forest Golfers, Inc., a Texas nonprofit corporation (“CTFG”), and then the City will lease the Golf Course to CTFG for a term of 40 years in accordance with an Agreement to be executed on May 15, 2013 (the “Lease Agreement”); and

WHEREAS, on December 12, 2012, the City Council approved a Letter of Intent (dated December 7, 2012) with CTFG by Resolution No. 12-3066 (attached hereto) for the Golf Course that included a commitment by CTFG to raise or to commit up to \$2,500,000 for the funding and construction of a portion of Trinity Trails Phase 3 and 3A (defined herein) and directed the City Manager to advance and to finalize negotiations with CTFG for the development, lease and operation of the Golf Course and for the funding and development of a portion of Trinity Trails Phase 3 and 3A; and

WHEREAS, during negotiations for the Lease Agreement the City also executed a Letter of Intent (dated November 30, 2012) with AT&T wherein AT&T proposed to provide a grant to the City in the amount of Two Million, Five Hundred Thousand and no/100 dollars (\$2,500,000) (such amount, the “Grant Amount”) for the funding, construction and maintenance of a portion of Trinity Trails Phase 3 and 3A in exchange for naming rights for a segment of the trail described herein; and

WHEREAS, by resolution approved on May 15, 2013, the City Council authorized this Agreement with AT&T for the funding, construction, maintenance and naming rights associated with a portion of Trinity Trails Phase 3 and 3A and a portion of Trinity Trails Phase 2 pursuant to the terms of this Agreement.

NOW, THEREFORE, the City and AT&T, in consideration of the mutual covenants, terms and conditions contained in this Agreement, and for other good and valuable consideration, do hereby agree as follows:

ARTICLE I
SUBJECT OF AGREEMENT

Section 1.1. Purpose. (a) The purpose of this Agreement is to set forth the terms and conditions upon which the City and AT&T will fund, and the City will construct and maintain, an approximately 3.6 mile segment of the Trinity Trails in and around the Trinity Forest directly west and south of the Golf Course (“Trinity Trails Phase 3 and 3A”). The Budget and List of Improvements for Trinity Trails Phase 3 and 3A to be constructed is attached hereto as **Exhibit B**. Pursuant to the terms of this Agreement, the Trinity Trails Phase 3 and 3A portion of the trail west of Longacre Lane and South of Elam Road shall be named the “AT&T Trail” for a period equal to forty (40) years from the date on which the Project is fully completed.

(b) Subject to Section 2.4, the completed segment of Trinity Trails Phase 2 east of the Golf Course through the Audubon Center shall also be named the “AT&T Trail” for a period equal to forty (40) years from the date on which the Project is fully completed and the entire segment of the Trinity Trail that will be named the AT&T Trail shall be approximately 4.25 miles and shall be as depicted in navy blue on the trail map attached hereto as **Exhibit A**.

Section 1.2. The Project. As used herein, the “Project” means the construction of Trinity Trails Phase 3 and 3A, including all improvements contemplated in the Budget and List of Improvements approved by the City and AT&T and attached hereto as **Exhibit B**. The Project will be publicly bid and constructed by the City. The Project is located entirely within the city limits and all improvements shall be constructed within City-owned property or within City easements over Oncor property.

Section 1.3. The AT&T Funding Commitment. Subject to the terms and conditions of this Agreement, AT&T will contribute to the City for public purposes the Grant Amount for the construction of the Project, including construction of Security Enhancements for the AT&T Trail. As provided in this Agreement, a portion of the Grant Amount may also be used for maintenance of the Project and subject to the requirements in Section 2.4, up to \$100,000 may be used to fund the Tower (defined below).

Section 1.4. Commencement and Term of this Agreement. The term of this Agreement shall commence on the date this Agreement is approved by the City Council, and shall continue for the time necessary to construct the Project, *plus* a term equal to forty (40) years from the date on which the Project is fully completed, unless terminated at an earlier date in accordance with the terms of this Agreement.

ARTICLE II
FUNDING

Section 2.1. AT&T Grant Payments. The City is required by state law to comply with the public procurement procedures outlined in Sections 252.043(d-1) and 271.116 of the Texas Local Government Code for all Project improvements including any necessary construction change orders authorized. Prior to the date of this Agreement, the City designed the Project and submitted the Project for bid. The public bid materials were prepared in a manner to permit the City reasonably to adjust the scope of the Project as necessary to ensure that the Grant Amount would be sufficient to fund the Project, including appropriate signage that identifies Trinity Trails Phase 3 and 3A and, subject to Section 1.1(b), the portion of Trinity Trails Phase 2 east of

Longacre Lane through the Audubon Center as the “AT&T Trail” and that shall include, subject to the provisions of Section 4.3, marks or symbols conforming to AT&T branding guidelines (the “AT&T Signage”). On or about April 18, 2013, the City received responsive bids, which the City evaluated in accordance with the City’s ordinary practices. Thereafter, the City consulted with AT&T regarding the scope of the Project, the bids and the proposed reserve for the AT&T Signage. The City has advised AT&T that the City intends to award the construction contract on or about May 22, 2013 (such date, the “Award Date”), after this Agreement is approved by the City Council and executed and delivered by each of the City and AT&T. AT&T shall advance a portion of the Grant Amount in an amount equal to the City’s obligation under the construction contract to be signed on the Award Date (such amounts, the “Initial Payment”), not later than one (1) day prior to the Award Date. The Grant Amount (including without limitation the Initial Payment) shall be used solely for the purposes provided in this Agreement. The AT&T-deposited funds shall be held by the City in a segregated account dedicated solely for purposes of funding the Project (the “AT&T Account”) and, each month (in arrears) after funds are disbursed out of the AT&T Account, the City shall provide to AT&T a written statement listing the amount of such disbursements and the completed construction work attributable to such disbursements. If AT&T requests any change order to the construction contract entered into on the Award Date that increases the total cost of such construction contract, AT&T shall advance a portion of the Grant Amount to the AT&T Account at least one (1) day prior to the date on which the City will become obligated under such construction contract for the amount necessary for such AT&T-requested change order.

Section 2.2. Additional Grant Amount Payments. After the Award Date and the payment by AT&T of the Initial Payment, the City shall create a design plan (the “Security Plan”) for security enhancements (generally consisting of security cameras, “call boxes” and similar elements) (“Security Enhancements”) for the AT&T Trail; *provided* that the Security Plan will cover all portions of the AT&T Trail and in no event shall any portion of the AT&T Trail be exempted or excluded from the Security Enhancements contemplated in the Security Plan; *provided further* that the City shall create the Security Plan for the AT&T Trail regardless of whether Security Enhancements should be installed as part of a broader initiative for the City’s Trinity Trails system or, potentially, as a “pilot project” on the AT&T Trail. Upon completion of the Security Plan and any related necessary design and construction plans for the Security Enhancements, the City shall submit the Security Plan and related bid materials to AT&T for informational purposes only. Not sooner than fifteen (15) days thereafter, the City will submit such bid materials for bid in accordance with the City’s ordinary practices and the City thereafter shall evaluate responsive bids in accordance with the City’s ordinary practices. So long as the City receives bids for the Security Plan that are less than the remaining portion of the Grant Amount (after payment of the Initial Payment), then the City shall notify AT&T that the City intends to award a construction contract on or about fifteen (15) days after the date on which such construction contract is approved by the City Council (if such approval is required) and executed and delivered by each of the City and the contractor (such date, the “Subsequent Award Date”). AT&T thereafter shall advance a portion of the Grant Amount in an amount equal to the City’s obligation under the construction contract to be signed on the Subsequent Award Date (such amount, the “Security Payment”), not later than one (1) day prior to the Subsequent Award Date. The AT&T-deposited funds shall be held by the City in the AT&T Account and, each month (in arrears) after funds are disbursed out of the AT&T Account, the City shall provide to AT&T a written statement listing the amount of such disbursements and the completed Security Enhancement construction work attributable to such disbursements.

Section 2.3. Operation and Maintenance Funding. If, after the Project is fully completed (including without limitation the completion of any Security Enhancements for the AT&T Trail pursuant to Section 2.2 above and all signage contemplated in Section 3.1 below), the actual final cost of the Project (including the Initial Payment and any Subsequent Payment) is less than the Grant Amount, then upon such completion of the Project, AT&T shall advance the remaining balance of the Grant Amount into the AT&T Account for future maintenance of the constructed improvements to Trinity Trails Phase 3 and 3A. Each month (in arrears) after each disbursement of funds out of the AT&T Account for the purposes described in this Section 2.3, the City shall provide to AT&T a written statement listing the amount of such disbursements and the maintenance work attributable to such disbursements.

Section 2.4. Audubon Center Tower. Subject to a written agreement between AT&T and the Trinity River Audubon Center (or, as applicable, its parent entity) (the “Audubon Center”), the City intends to utilize up to \$100,000 of the Grant Amount to fund the construction of an observation tower (the “Tower”) to be constructed at the Audubon Center located adjacent to the AT&T Trail. AT&T will use commercially reasonable efforts to enter into, and will notify the City Manager in writing when AT&T has entered into, a written agreement with the Audubon Center relating to the Tower. After delivery of such written notice, the Tower shall be deemed to be an element of the Project under this Agreement and the City shall be deemed authorized to utilize up to \$100,000 of the Grant Amount to fund the Tower’s construction.

ARTICLE III DESIGN AND CONSTRUCTION

Section 3.1. Design Plans for Project; Security Enhancements; Signage. All design, engineering, environmental remediation and construction for the Project, including the construction of the Security Enhancements and the Tower, shall be the sole responsibility of the City, *provided, however*, the City and AT&T shall reasonably cooperate to complete the design plans for the AT&T Signage in the Project (in addition to any required regulatory or “wayfinding” signage, which shall be in addition to the AT&T Signage); *provided* that the total cost of installation of the AT&T Signage in such design plans shall not exceed \$250,000. All design and construction of the AT&T Signage shall conform to AT&T branding guidelines, as well as to applicable City codes, ordinances, regulations, design criteria, building standards and specifications; *provided, however*, AT&T may seek reasonable variances from any applicable City codes, ordinances, regulations, design criteria, building standards and specifications.

Section 3.2. Construction. The City shall manage all the construction work on the Project in the same manner as the City manages other work on the Trinity Trails plan. The City shall ensure that all aspects of the Project are completed in a timely manner, in accordance with the contract documents, plans and specifications approved by the City. The City shall review all monthly and final payment requests from contractors. All payments for work performed under the construction contract for the Project shall be made by the City to the contractor(s) from the AT&T Account. The City shall not make any payment under a monthly or final estimate unless the City has certified, by affidavit sworn to by the corporate official or employee duly authorized to submit same, that the estimate of work completed for the period in question is true and correct to the best of its information and belief, has been measured and verified in accordance with the contract documents, and that all contract preconditions to payment have been met. The City shall perform inspections, measurements or verifications of the estimates or work quantities as are necessary. The City shall not make final payment to the construction contractor until the

final completion of the Project (as verified by the City's Trinity Watershed Management) in accordance with the approved contract documents, plans and specifications and accepted by the City in accordance with the terms of this Agreement.

Section 3.3. Payment and Performance Bonds. The City shall use its standard practices in accordance with state law with respect to its contractors furnishing appropriate payment and performance bonds, indemnification and insurance (including, as applicable, commercial liability, builders risks, workers compensation and auto liability coverage), in form and substance satisfactory to the City for projects with a scope similar to the Project.

Section 3.4. Final Plans. The Project will substantially conform to the definitive construction plans, specifications, budget, and construction schedule for the Project (the "Approved Plans and Specifications") available upon request from the City, which are hereby approved by the City and AT&T upon execution of this Agreement; *provided, however*, any Security Enhancements for the AT&T Trail described in Section 2.2, the Tower described in 2.4 and the AT&T Signage are not set forth on the Approved Plans and Specifications, *provided further* that the Security Plan shall become a portion of the Project as provided in Section 2.2, and the Tower may become a portion of the Project as provided in Section 2.4 and the AT&T Signage shall become a portion of the Project as provided in Section 3.1. The parties acknowledge that certain elements of the approved plans and specifications may change (or be eliminated) upon the mutual agreement of the parties (for example, certain proposed decorative elements).

ARTICLE IV OPERATION AND NAMING RIGHTS

Section 4.1. City's Management and Operation of the Project Improvements. From and after the completion of the Project, the City shall be solely responsible for, and shall do all things and take all actions necessary and or appropriate for the repair, maintenance and management of the Project improvements, including, without limitation, major structural repairs and maintenance and repairs of fencing, lighting, signage (including the AT&T Signage) and fixtures, irrigation and landscaping; *provided, however*, in designing the AT&T Signage the parties shall reasonably consider materials that are not anticipated to result in excessive maintenance costs, and AT&T shall reasonably cooperate to exempt the City from extraordinary maintenance obligations for any such materially variant AT&T Signage.

Section 4.2. AT&T Trail Naming Rights.

(a) **Exhibit A** attached hereto depicts in navy blue the portion of the Trinity Trails that constitutes the "AT&T Trail." Upon completion of the Project, the approximately 4.25 miles of Trinity Trails identified in navy blue on **Exhibit A**, including rest areas, structures or other physical improvements and features along the AT&T Trail shall be formally and exclusively named the "AT&T Trail" for a period equal to forty (40) years from the date on which the Project is fully completed. During the term of this Agreement, the City shall use commercially reasonable efforts to ensure that all references to this segment of the Trinity Trails by the City will exclusively use the "AT&T Trail" name, including publicity and other public relations materials.

(b) During the term of this Agreement, the City shall not grant naming rights to, or accept sponsorship of, Adjacent Trails (defined herein) by Competitors (defined herein). For purposes of this Agreement, the term “Adjacent Trails” means any portion of the Trinity Trails depicted in mustard yellow on **Exhibit A**. The Adjacent Trails are located generally west and north of Elam Road at the northern end of the AT&T Trail and southeast and southwest of the Audubon Center at the southern end of the AT&T Trail. For purposes of this Agreement, the term “Competitors” means those entities that engage in the businesses listed on **Exhibit C**; *provided, however*, that AT&T shall be entitled to update **Exhibit C** from time to time during the term of this Agreement, by delivering written notice to the City containing a replacement **Exhibit C**.

(c) During the term of this Agreement, the City shall protect AT&T’s rights described in this Section 4.2 by: (i) preventing any person or entity using the AT&T Trail from covering or materially obscuring any portion of the AT&T Signage, (ii) taking action to enforce permitting requirements for events on or near the AT&T Trail (including to the extent AT&T (or its Agent) notifies the City of any activity that violates permitting requirements), and (iii) not issuing to any Competitor a special use permit (or similar City authorization) authorizing a Competitor to advertise, post signs or distribute (including without limitation by selling) any merchandise, commercial marketing materials or similar items on or near the AT&T Trail. The City shall from time to time establish permitting guidelines and/or procedures reasonably designed to facilitate the City’s compliance with this Section 4.2(c); *provided, however*, that the City shall not be required to take any action or to withhold any permit under this Section 4.2(c) that, in either case, the City is not authorized under applicable law, rule or regulation to take or withhold. Without limiting the foregoing, the City shall not be required to take action under Section 4.2(c)(i) above unless AT&T (or its agent) advises the City that AT&T Signage is being covered or obscured, in which case the City shall promptly act to correct the condition identified by AT&T.

(d) The City reserves the right to require renaming if AT&T is finally convicted of a felony that materially diminishes or damages AT&T’s goodwill or business reputation in the City of Dallas.

Section 4.3. AT&T Trail Signage. Notwithstanding anything herein to the contrary, the AT&T Signage (and any required regulatory or “wayfinding” signage):

(a) shall bear ample environmentally and cosmetically appropriate signage approved by AT&T; and

(b) shall not promote or advertise alcohol or tobacco products or companies (except with the City’s and AT&T’s approval) and

(c) shall not be of a non-commercial or cause-oriented nature (*e.g.* promoting or criticizing a political party, political cause or movement, connected to a public official or candidate social cause or movement or religion or religious establishment or movement).

The AT&T Signage shall include, in AT&T’s sole discretion, any marks or symbols conforming to AT&T branding guidelines, so long as such marks or symbols conform to the conditions provided in (a) – (c) of this Section 4.3. In the event of any change in the corporate or trade name of AT&T or any of its operating affiliates, the City shall change the name of Trinity Trails

Phase 3A and all related signage (including the AT&T Signage) and marketing materials at the exclusive direction of AT&T and at AT&T's expense.

Section 4.4. AT&T Licenses. During the term of this Agreement and at no cost or liability to the City, AT&T shall provide to the City all necessary licenses and other rights for the use of AT&T's name and marks only for the purpose of the sponsorship contemplated in this Agreement; *provided* that (i) such licenses and other rights shall terminate upon the termination of this Agreement, and (ii) no less than ten (10) business days prior to anticipated use, the City shall submit to AT&T for written approval a comprehensive description of any proposed use whatsoever of AT&T's name or marks, including, without limitation, in promotional materials, advertisements, banners, and signage (including the AT&T Signage), in connection with this Agreement.

ARTICLE V DEFAULT, TERMINATION AND OTHER REMEDIES

Section 5.1. Default by AT&T. An "AT&T Default" shall mean the failure of AT&T to advance funding when due to the City in accordance with this Agreement, and the continuation of the failure without cure for a period of sixty (60) days after the City notifies AT&T of the failure in writing in accordance with the notice provisions under this Agreement.

Section 5.2. Termination and Other Remedies By the City Upon an AT&T Default.

(a) Upon the occurrence of an AT&T Default, the City may terminate this Agreement. Termination or non-termination of this Agreement upon an AT&T Default shall not prevent the City from pursuing its other remedies; *provided* that in no event shall AT&T be liable for any amount of damages exceeding the Grant Amount, including any excess amount representing construction costs or exemplary, punitive or other special damages. After the running of the cure periods provided for in Section 5.1, the City may exercise its right to terminate this Agreement by delivering to AT&T, in writing, a notice of termination upon the expiration of 30 days after the receipt of such notice.

(b) In the event this Agreement is terminated after commencement of construction, for any reason, the unexpended amounts of any construction costs advanced by AT&T remaining and that have been contractually committed will be held at a federally insured depository institution within the city limits of Dallas and used solely for the benefit of the Project. Any uncommitted funds remaining in the AT&T Account shall be returned to AT&T.

Section 5.3. City Default and AT&T's Remedies. A "City Default" shall mean failing to comply with any material provision of this Agreement within sixty (60) days after written notice of said specific non-compliance and the cure action requested. Upon a City Default, AT&T may terminate the Agreement or may pursue such other equitable remedies, including an action for specific performance or injunctive relief to enforce Article IV of this Agreement. In no event shall the City ever be liable to AT&T for construction costs, exemplary or punitive damages.

**ARTICLE VI
GENERAL PROVISIONS**

Section 6.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and, except as otherwise provided in this Agreement, their assigns.

Section 6.2. Compliance with Laws. The City and AT&T shall, during the term of this Agreement, conform to and comply with all applicable laws of the United States and the State of Texas as relates to this Agreement, and all applicable ordinances, rules or regulations of the City as relates to this Agreement.

Section 6.3. Place of Performance of Obligations and Venue. All obligations of the parties under the terms of this Agreement reasonably susceptible of being paid or performed in Dallas County, Texas, shall be payable and performable in Dallas County, Texas, and venue for any legal actions arising out of this Agreement shall lie exclusively in Dallas County, Texas.

Section 6.4. Texas Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without giving effect to principles of conflict of laws.

Section 6.5. Captions. The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

Section 6.6. Notices. Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified return receipt requested and postage prepaid, and addressed to the party to be served at the last address given by that party to the other party under the provisions of this Article. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

CITY:
City of Dallas – City Manager’s Office
1500 Marilla, 4th Floor
Dallas, Texas 75201
Attn: City Manager

AT&T:
AT&T Services, Inc.

Attention: _____

With copy to:
City of Dallas
City Attorney’s Office
1500 Marilla 7ES
Dallas, TX 75201
Attn: Barbara Martínez

Section 6.7. 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, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein.

Section 6.8. No Implied Waiver. The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

Section 6.9. Cumulative Remedies. Each right, power, and remedy of the City provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the City of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers, or remedies.

Section 6.10. Notice of Contract Claim. This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Developer shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

Section 6.11. Relationship of the Parties. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between AT&T, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 6.12. Conflict of Interest of City Employees. The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Contract, to-wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

- (a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sales to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer’s or employee’s office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.
- (b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.
- (c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

Section 6.13. Gift to Public Servant. AT&T will not offer or agree to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting in connection with this Agreement and the City reserves all rights granted to the City under applicable law to the extent any such prohibited benefit is conferred. For purposes of this Section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may require AT&T to remove any employee of AT&T from the Project who has violated the restrictions of this Section or any similar state or federal law.

Section 6.14. Entire Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties that relate to the subject of this Agreement. This Agreement cannot be modified without written agreement of the parties. Any Exhibits attached to and referred to in this Agreement are incorporated in this Agreement as a part of this Agreement for all purposes.

* * * * *

EXECUTED and effective as of the 15th day of May 2013, by the City, signing by and through its City Manager, authorized to execute same by City Council Resolution No. 13-_____, approved by City Council on May 15, 2013, and by AT&T acting by and through their authorized officials.

APPROVED AS TO FORM;
Thomas P. Perkins, Jr.
City Attorney

CITY OF DALLAS
Mary K. Suhm
City Manager

By: _____
Barbara A. Martínez
Assistant City Attorney

By: _____
Ryan S. Evans
Assistant City Manager

ATTEST:

AT&T SERVICES INC.,

By: _____
Secretary

By: _____
Name: _____
Title: _____

Attachments:

Resolution No. 12-3066 Approved on December 12, 2012, approving the Letter of Intent with CTFG for the Golf Course (including Trinity Trails Phase 3A)

Authorizing resolution approved on May 15, 2013 authorizing the AT&T Agreement for Trinity Trails

Exhibit A – Trail Map

Exhibit B – Budget and List of Improvements

Exhibit C – Competitors

Exhibit A

Trail Map

Exhibit A

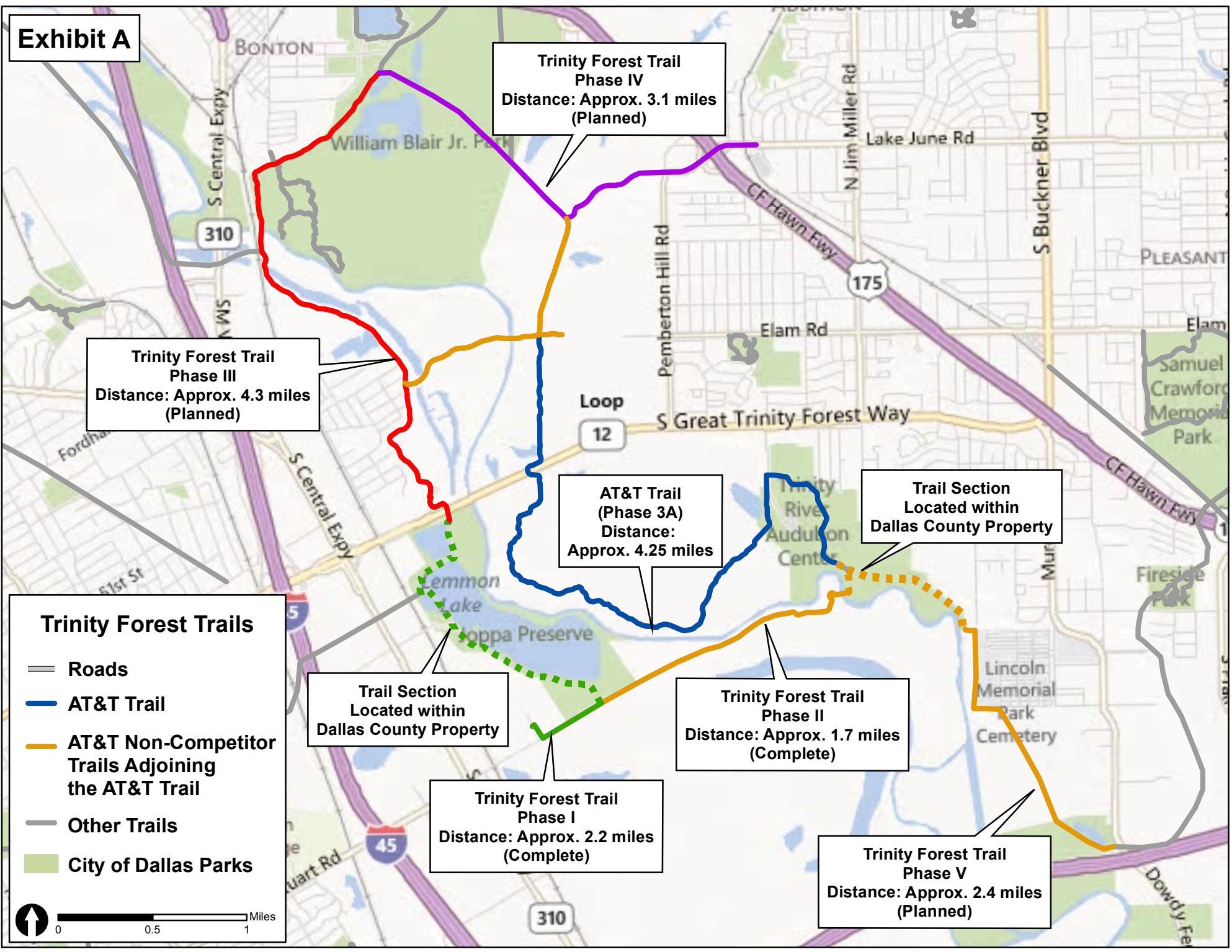


Exhibit B

Budget and List of Improvements

EXHIBIT "B"

BUDGET & LIST OF IMPROVEMENTS
FOR
AT&T TRAIL

DESCRIPTION OF WORK	AMOUNT
Base Bid -- Schedule 1 2.4 miles of concrete trail from the Trinity River Audubon Center towards Loop 12	\$1,315,737.38
Add Alternate -- Schedule 2 0.4 miles of concrete trail from the end of Schedule 1 to Loop 12	\$240,447.53
Add Alternate -- Schedule 3 0.8 miles of concrete trail from the end of Schedule 2 to Elam ROW	\$342,554.57
Add Alternate -- #1 13 Stone Benches with Resting Areas	\$11,713.39
TOTAL	\$1,910,452.87

Exhibit C

Competitors

Wireless Services. Services used by consumer or business customers to make wireless voice calls, send texts messages, and/or access the Internet. Services include, without limitation, those for mobile phones, smartphones, netbooks, and tablet devices.

Wireline Services. Services used by consumer or business customers to complete voice calls or to access the Internet.

TV Services. Paid TV services used by consumer or business customers.

Web search engines. Services used by consumer or business customers to conduct directory or web searches on the Internet (wireless or wireline).

Business Services. Services used by businesses to create networks within or between different locations, and/or access information stored in the Cloud (wireless or wireline).

Alarm Security and Automation. Home or business alarm services used by consumer or business customers, including the ability to remotely control appliances and security equipment.

Trinity Forest Golf Course Schedule

Updated as of 4-26-13

- Dec. 17, 2012 CTFG Project Manager's consultant meets with Floodplain Management for a pre-fill permit meeting - **Completed**
- Dec. 31, 2012 City submits Affected Property Assessment Report (APAR) to TCEQ Voluntary Cleanup Program (VCP) – **Completed**
- Jan. 4, 2013 City contracts for design of remediation package; submits AA to CMO – **Completed**
- Jan. 4, 2013 City engages tree survey – **Completed**
- Jan. 8, 2013 City meets with City of Dallas' Sustainable Development and Construction Department for a pre-development meeting prior to submission of completed application for a PD – **Met with the City arborist and City forester – Completed**
- Jan 12, 2013 CTFG Project Manager announced the Trinity Forest Golf Course designer - **Completed**
- Jan. 14, 2013 City (DWU & PW) coordinates with developer to identify consultant for joint use for design of water loop system, paving of Elam & intersection improvement at Great Trinity Forest; City begins negotiation of proposal - **Completed**
- Jan. 15, 2013 City's second meeting with City of Dallas' Sustainable Development and Construction Department for a pre-development meeting prior to submission of completed application for a PD - **Completed**
- Jan 23, 2013 City Council awards contract for the tree & topographic survey for areas to be platted and for the PD - **Completed**
- Jan 23, 2013 CTFG Project Manager provides irrigation system design and details for preparation of a Subchapter T variance letter – **Completed (1/24/13)**
- Jan 24, 2013 City met with Private Development to complete the Development Services/Engineering Waiver of Traffic Impact Analysis required for the PD submittal. – **Completed**
- Jan. 29, 2013 City to send out notification on the Open House meeting on February 12, 2013 **Completed (Sent out 3300 notifications to property owners and addresses; extended beyond the required 500 feet notification area)**
- Jan 30, 2013 City and CTFG Project Manager to discuss submittal requirement to TCEQ - **Completed**

Trinity Forest Golf Course Schedule

Updated as of 4-26-13

- Jan. 31, 2013 Submit the variance letter to TCEQ MSW group for approval; CTFG Project Manager will also provide all required plans for inclusion in the Subchapter T Authorization Request to Disturb Final Cover – **Completed on Feb. 1, 2013**
- Jan. 31, 2013 City completes boundary survey - **Completed**
- Feb. 1, 2013 Tree survey estimated completion - **Completed**
- Feb. 4, 2013 City submits completed PD application (Requires Traffic Impact Worksheet/Study, CTFG Project Manager’s Conceptual or Development plans & Landscape plans, City’s boundary survey & tree count) to Sustainable Development and Construction Department. - **Completed**
- Feb. 4, 2013 CTFG Project Manager submits application of fill permit to Floodplain Management– **Completed**
- Feb. 12, 2013 City submits application for a preliminary plat to Sustainable Development and Construction Department for City Plan Commission (CPC) consideration - **Completed**
- Feb. 12, 2013 Public Meeting to discuss Golf Course, Horse Park, & USACE Mitigation Land at Audubon Center (Open House Format) - **Completed**
- Feb. 13, 2013 City plans to meet with TCEQ to discuss the irrigation variance, subchapter T review and to request expedited review on submittals - **Completed**
- Feb. 25, 2013 City submits Subchapter T permit package to TCEQ (Must include CTFG Project Manager’s plans); City also submits Remedial Action Plan (RAP) to TCEQ Voluntary Cleanup Program (VCP) (Must include CTFG Project Manager’s Plans) – **Completed on 3-8-13**
- Mar. 6, 2013 City advertises remediation package for construction - **Completed**
- Mar. 7, 2013 CPC considers preliminary plat application submitted by the City. Early release of the plat allows the issuance of a building permit – **Completed - CPC approved all platting**
- Mar. 15, 2013 – City Staff to mail notices to 468 property owners within 500 feet of the proposed Planned Development area - **Completed**

Trinity Forest Golf Course Schedule

Updated as of 4-26-13

- Mar 19, 2013 City staff to meet with TXDOT to discuss access from Loop 12 and access underneath Loop 12 – **Completed**
- Mar. 21, 2013 CPC considers PD Application – Action to be taken on April 4, 2013 after staff meets with citizens – **Completed – CPC deferred action to April 4**
- Mar. 25, 2013 City provides AT&T trail plans to AT&T for review as specified in the term sheet - **Completed**
- Mar. 25, 2013 CTFG Project Manager to meet with Sustainability Development staff to discuss TFGC plans – Determine what needs to be done with the grading plan and irrigation system, and the rest of the development plans – **Completed**
- Mar. 26, 2013 Neighborhood Meeting on TFGC fill permit – **Completed**
- Mar. 27, 2013 City advertises AT&T Trails for construction – **Completed**
- Mar. 27, 2013 City estimates TCEQ sends City initial review letter on Subchapter T permit (30-day review from TCEQ)
- April 1, 2013 Staff to meet with TxDOT regarding the access to Great Trinity Forest Way (Loop 12) – **Completed**
- April 2, 2013 2nd meeting with citizens regarding the PD – **Completed (approximately 50 citizens attended)**
- April 3, 2013 TCEQ approves interim Response Action Plan – **Completed**
- April 4, 2013 City opens bids on remediation package – Bids can be held up to 180 days according to Item 103.2.1. Addendum to the NCTCOG Specification - **Completed**
- April 4, 2013 CPC considers PD application – **Completed – CPC unanimously approved**
- April 11, 2013 TCEQ MSW issued a letter requesting additional information for the Subchapter T Authorization Request to Disturb Final Cover – **Completed on April 22, 2012**
- Apr. 18, 2013 City open bids on AT&T Trails - **Completed**
- Apr. 24, 2013 City Council considers zoning change - **Completed - CPC unanimously approved**
- May 1, 2013 City Council briefing on the proposed Lease Agreement

Trinity Forest Golf Course Schedule

Updated as of 4-26-13

May 8, 2013 City estimates TCEQ provides City final approval letter on Subchapter T permit permit

May 15, 2013 City Council to consider authorizing the City Manager to sign the lease with the Tenant, and donation agreement (AT&T) including naming rights

May 22, 2013 City awards construction of the AT&T trails

May 22, 2013 City Council considers fill permit application

Aug 31, 2013 Tenant's Funding Commitment Deadline

Sept. 2013 Remediation contract starts

Sept. 2013 City Council to consider design of water loop system, wastewater improvements and paving of Elam & intersection improvement at Great Trinity Forest