

AMENDMENT NUMBER THREE

TO AN AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS

AND

SPECIALTY LAND SERVICES, LLC

FOR

RIGHT-OF-WAY (ROW)/EASEMENT ACQUISITION SERVICES

Made as of the _____ day of _____, 2015.

Between City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and Consultant: **Specialty Land Services, LLC.**
1341 S. Preston Rd Ste A
Celina, Texas 75009
Telephone (972)382-4747
Facsimile (972)382-4748
EIN 51-0509559

for the following Project: **Master Agreement for On-Call Right-of-Way/Easement Acquisition Services, Contract Number 2010-001**

THIS AMENDMENT NUMBER THREE ("Amendment Number Three") is made and entered by and between the City of Frisco, Texas, a home-rule municipality ("City") and Specialty Land Services, L.L.C., a Texas limited liability company ("Consultant"), to be effective from and after the date as provided herein. City and Consultant at times are each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City and Consultant entered into that certain Agreement for Professional Right-of-Way/Easement Acquisition Services on an on-call basis dated June 1, 2010 ("Agreement"), which is incorporated herein by reference for all purposes; and

WHEREAS, City and Consultant entered into that certain Amendment Number One to the Agreement dated May 17, 2011 ("Amendment Number One") for the purpose of revising the Consultant's Fee (defined in the Agreement) and to include the provision of Additional Services, said Amendment Number One being incorporated herein by reference for all purposes; and

WHEREAS, City and Consultant entered into that certain Amendment Number Two to the Agreement dated June 18, 2013 ("Amendment Number Two") for the purposes of revising the Scope of Services for the Project (defined in the Agreement) and Amendment Number One; extending the completion date for the Project (defined in the Agreement); and revising Consultant's Fee, said Amendment Number Two being incorporated herein by reference for all purposes; and

WHEREAS, City and Consultant desire to amend the Agreement, Amendment Number One and Amendment Number Two for the purpose of extending the completion date for the Project (defined in the Agreement); and

WHEREAS, the City and Consultant desire to amend the Agreement, Amendment Number One and Amendment Number Two upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Consultant mutually agree as follows:

1. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work, Amendment Number One, Paragraph 2, and Amendment Number Two, Paragraph 2** – Article 1, Section 1.3, Schedule of Work, of the Agreement, Paragraph 2 of Amendment Number One and Paragraph 2 of Amendment Number Two is hereby amended as follows:

"1.3 **Schedule of Work** – Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule/Project Billing/Project Budget, attached hereto as **Exhibit B** and incorporated herein for all purposes, and **Exhibit H**, attached hereto and incorporated herein for all purposes, but in no event shall the Project be completed any later than October 1, 2017."

2. **Complete Agreement** – This Amendment Number Three, including the exhibits hereto labeled "H", "I" and "J," all of which are incorporated herein for all purposes, the Agreement, including the exhibits thereto, the

Amendment Number One, including the exhibits thereto, and the Amendment Number Two, including the exhibits thereto, constitute the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number Three may not be amended, supplemented and/or modified except by written agreement duly executed by both parties. The following exhibits are attached hereto and made a part of the Agreement, Amendment Number One and Amendment Number Two:

Exhibit H, Project Schedule (Amendment Number Three);

Exhibit I, Affidavit; and

Exhibit J, Conflict of Interest Questionnaire, Form CIQ.

3. **Counterparts** – This Amendment Number Three may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes. If so executed, each of such counterparts shall, collectively, constitute one Amendment Number Three. A facsimile signature will also be deemed to constitute an original if properly executed.
4. **Controlling Agreement** – To the extent any provision contained herein conflicts with the Agreement, Amendment Number One and/or Amendment Number Two, then the provisions of this Amendment Number Three, Amendment Number Two, Amendment Number One and the Agreement shall prevail in that order.
5. **Defined Terms/Ratification of Agreement, Amendment Number One and/or Amendment Number Two** – Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Agreement, Amendment Number One and/or Amendment Number Two. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement, Amendment Number One and/or Amendment Number Two are hereby ratified and confirmed and shall continue in full force and effect.
6. **Authority to Execute** – The individuals executing this Amendment Number Three represent and warrant that they are empowered and duly authorized to so execute this Amendment Number Three on behalf of the parties they represent.
7. **Entire Agreement/Amendment Number One/Amendment Number Two/Amendment Number Three** – The Amendment Number One, Amendment Number Two, Amendment Number Three and the Agreement

embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number Three may only be amended by written agreement duly executed by all parties hereto.

8. **Governing Law; Venue** – This Amendment Number Three is performable in Collin County, Texas, and the venue for any action related directly or indirectly to this Amendment Number Three or in any manner connected therewith shall be in Collin County, Texas. This Amendment Number Three shall be construed under the laws of the State of Texas.
9. **Assignment and Subletting** – This Amendment Number Three may not be assigned and the work to be performed hereunder may be sublet except as authorized in Paragraph 12.2 of the Agreement.
10. **Appropriation of Funds** – Funds are not presently budgeted for City's performance under the Agreement, Amendment Number One, Amendment Number Two and this Amendment Number Three beyond the end of City's 2014-2015 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are no longer budgeted to continue beyond that time. City will make a good faith effort to budget funds for City's performance under the Agreement, Amendment Number One, Amendment Number Two and this Amendment Number Three for its 2015-2016 and 2016-2017 fiscal years. Should City not budget funds for its performance of the Agreement, Amendment Number One, Amendment Number Two and this Amendment Number Three, as set forth in this Paragraph 11, for the 2015-2016 and 2016-2017 fiscal years, City will give Consultant sixty (60) days' notice of the same. City shall have no liability for payment of any money for services performed after the end of fiscal year 2014-2015 unless and until such funds are budgeted.
11. **Successors and Assigns** – The City and the Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Amendment Number Three.
12. **Savings/Severability** – Should any part, term or provision of this Amendment Number Three or any document required herein to be executed or delivered be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby; provided that the essential provisions for each party remain valid, binding, and enforceable.

13. **Execution/Consideration** – This Amendment Number Three is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
14. **Headings** – The headings of the various sections of this Amendment Number Three are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
15. **Immunity** – The parties acknowledge and agree that, in executing and performing this Amendment Number Three, City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Amendment Number Three, the parties do not create any obligations, express or implied, other than those set forth herein.
16. **Additional Representations** – Each signatory represents this Amendment Number Three has been read by the party for which this Amendment Number Three is executed and that such party has had the opportunity to confer with its counsel.
17. **Miscellaneous Drafting Provisions** – This Amendment Number Three shall be deemed drafted equally by all parties hereto. The language of all parts of this Amendment Number Three shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
18. **No Third Party Beneficiaries** – Nothing in this Amendment Number Three shall be construed to create any right in any third party not a signatory to this Amendment Number Three, and the parties do not intend to create any third party beneficiaries by entering into this Amendment Number Three.

[Signature page follows.]

IN WITNESS HEREOF, the parties have executed this Amendment Number Three to the Agreement, and caused this Amendment Number Three to be effective on the effective date set forth in the introductory clause of this Agreement.

CITY:

City of Frisco, Texas,
a home-rule municipality

By: _____
Name: George Purefoy
Title: City Manager

CONSULTANT:

Specialty Land Services, L.L.C.,
a Texas limited liability company

By: 
Name: Buddy Mizett
Title: Member

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd, and Hullett, P.C.
Ryan D. Pittman, City Attorneys

EXHIBIT "H"
PROJECT SCHEDULE (AMENDMENT NUMBER THREE)

**Amendment Number Three by and between
the City of Frisco, Texas
and Specialty Land Services, LLC.
for Master Agreement for Right-of-Way/Easement Acquisition Services
Contract Number 2010-001**

MONTH, DATE, YEAR	TASK COMPLETED
September 15, 2015	City Council approval of a Resolution authorizing the City Manager to execute the Agreement; City issues Notice to Proceed to Consultant.
October 1, 2015 through October 1, 2017	Consultant to perform services as authorized by City's issuance of written Task Orders (Work and payment schedule shall be as defined in the authorized Task Orders).

EXHIBIT "I"
AFFIDAVIT

THE STATE OF TEXAS

§

THE COUNTY OF _____

§

§

I, _____, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000.00).

_____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

_____ Other: _____.

_____ None of the Above.

Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the TEX. GOV'T CODE, is a member of a public body which took action on the agreement.

SIGNED this _____ day of _____, 2015.

Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 2015.

Notary Public in and for the State of Texas
My commission expires: _____

EXHIBIT "J"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

<p>CONFLICT OF INTEREST QUESTIONNAIRE</p> <p>For vendor or other person doing business with local governmental entity</p>	<p>FORM CIQ</p>
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<p>OFFICE USE ONLY</p>
<p>1 Name of person who has a business relationship with local governmental entity.</p>	<p>Date Received</p>
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p align="center">_____</p> <p align="center">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>	
<p>4</p> <p align="center">_____</p> <p align="center">Signature of person doing business with the governmental entity</p> <p align="right">_____</p> <p align="right">Date</p>	

Adopted 06/29/2007