

## NOVATION AGREEMENT

This **NOVATION AGREEMENT** ("Agreement"), dated as of this \_\_\_ day of \_\_\_\_\_, 2014, ("Effective Date") is entered into by and among **KENNEDY CONSULTING, LTD.**, a Texas limited partnership, ("Transferor"), **KENNEDY CONSULTING, INC.**, a Texas corporation, ("Transferee") and the **CITY OF FRISCO, TEXAS**, a Texas home-rule municipality, ("Owner") on the terms and conditions set forth below. Transferor, Transferee and Owner are individually and collectively referred to herein, respectively, as "party" or "parties".

(a) The parties agree to the following facts:

- (1) Owner has entered into certain contracts ("Contracts") with Transferor, as shown in the attached list marked as Exhibit "A" and incorporated herein for all purposes.
- (2) "Contracts" as used herein shall mean and include the above-defined Contracts and all other active contracts, including, without limitation, all modifications, amendments and/or supplements, made between Owner and Transferor before the Effective Date of this Agreement.
- (3) Transferor has transferred all of its assets and liabilities to Transferee.
- (4) Transferee is in a position and desires to fully perform all obligations existing under the Contracts.
- (5) It is consistent with Owner's interests to recognize Transferee as the successor party to the Contracts.

(b) In consideration of these facts, the parties agree as follows:

- (1) Transferee agrees to be bound by and to perform all obligations, covenants and commitments of each of the Contracts in accordance with the terms and conditions contained therein. Transferee also assumes all obligations and liabilities of, and all claims against, Transferor under the Contracts as if Transferee were the original party to the Contracts.
- (2) Transferee ratifies all previous actions taken by Transferor with respect to the Contracts, with the same force and effect as if the action had been taken by Transferee.
- (3) Owner recognizes Transferee as Transferor's successor in interest in and to the Contracts. Transferee, by this Agreement, becomes entitled to all rights, titles and interests of Transferor in and to the Contracts as if Transferee were the original party to the Contracts.
- (4) All payments and reimbursements previously made by Owner to Transferor, and all other previous actions taken by Owner under the Contracts, shall be considered to have discharged those parts of Owner's obligations under the Contracts. All payments and reimbursements made by Owner after the date of

this Agreement should be made in the name of Transferee, under the same remittance instructions as were applicable for Transferor.

- (5) In consideration of the terms and conditions of this Agreement, Owner hereby consents to the foregoing transfer and novation of the Contracts.
- (6) The Contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the Effective Date.
- (7) This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas, which is the county in which the principal administrative offices of Owner are located. It is specifically agreed between the parties to this Agreement that Collin County, Texas is the place of performance of this Agreement and that in the event any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought and exclusive venue shall lie in Collin County, Texas.
- (8) This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- (9) The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date.
- (10) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal and/or unenforceable in any respect, such invalidity, illegality and/or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal and/or unenforceable provision had never been contained herein.
- (11) Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- (12) Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

***[SIGNATURE PAGE TO FOLLOW.]***

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

**TRANSFEROR:**

**KENNEDY CONSULTING, LTD.,**  
a Texas limited partnership

By: O'Malley-Chick, LLC,  
a Texas limited liability company  
Its: General Partner

By: J. Kevin Kennedy  
J. Kevin Kennedy, President

**TRANSFeree:**

**KENNEDY CONSULTING, INC.,**  
a Texas corporation

By: J. Kevin Kennedy  
J. Kevin Kennedy, President

**OWNER:**

**CITY OF FRISCO, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
George Purefoy, City Manager

ACKNOWLEDGMENTS

STATE OF TEXAS §  
COUNTY OF Williamson §

BEFORE ME, the undersigned authority, on this day personally appeared **J. Kevin Kennedy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the President and duly authorized representative of **O'MALLEY-CHICK, LLC**, a Texas limited liability company and the General Partner of **KENNEDY CONSULTING, LTD.**, a Texas limited partnership, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25<sup>th</sup> day of March, 2014.

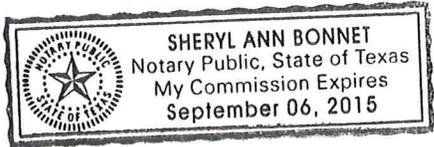


Sheryl Ann Bonnet  
Notary Public in and for the State of Texas

STATE OF TEXAS §  
COUNTY OF Williamson §

BEFORE ME, the undersigned authority, on this day personally appeared **J. Kevin Kennedy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the President and duly authorized representative of **KENNEDY CONSULTING, INC.**, a Texas corporation, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25<sup>th</sup> day of March, 2014.



Sheryl Ann Bonnet  
Notary Public in and for the State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

**BEFORE ME**, the undersigned authority, on this day personally appeared **George Purefoy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the City Manager and duly authorized representative of the **CITY OF FRISCO, A TEXAS**, a Texas home-rule municipality, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT "A"**

**CONTRACTS TO BE NOVATED**

**KENNEDY CONSULTING, LTD. to KENNEDY CONSULTING, INC.,**

<b>Project No.</b>	<b>Description</b>	<b>Project Manager</b>	<b>Contract No.</b>
Eldorado Pkwy - CIP # 05-0006	Final engineering and construction documents for Eldorado Parkway from Preston Road to Custer Road	Kurt Aungst, P.E.	PO #01003783
Custer Road. - CSJ #2351-01-020 – CIP #10-0018	Environmental Analysis, Schematic Design, and final Plans, Specifications, and Estimates (PS&E) for Custer Road (FM 2478) from SH 121 to Stonebridge Drive	Kurt Aungst, P.E.	PO #01207029