



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
TUESDAY, DECEMBER 13, 2022 – 7:00 PM
CITY COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY
ALLEN, TX 75013**

- 1. Call to Order and Announce a Quorum is Present.**
- 2. Pledge of Allegiance.**
- 3. Public Recognition.**
 - 3.1 Presentation of a Blue Star Flag to Family Members of Allen Service Personnel Currently Serving in the U.S. Armed Forces.
 - 3.2 Presentation of a Check by Mayor Fulk and the Allen City Council to the Allen Library Endowment Fund as a recipient of the 2022 State of Allen event.
 - 3.3 Recognition by the State of Texas Alliance for Recycling (STAR) for Texas Environmental Leadership Awards.
 - 3.4 Recognition of the Allen Information Technology Department for the Info-Tech CIO and Digital Cities Awards.
- 4. Citizens' Comments.**

[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]
- 5. Consent Agenda.**

[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]

 - 5.1 Approve minutes of the November 8, 2022, Regular City Council Meeting.
 - 5.2 Approve minutes of the November 22, 2022, Regular City Council Workshop.
 - 5.3 Adopt an Ordinance amending the Code of Ordinances, Chapter 13, Streets and Sidewalks, Article 1, Sections 13-3 and 13-3.1 for Sidewalk Maintenance and Liability.
 - 5.4 Adopt a Resolution approving the terms and conditions of an Advance Funding Agreement

(AFA) with the State of Texas acting by and through the Texas Department of Transportation for funding traffic signal safety improvements.

- 5.5 Adopt a Resolution Approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas Acting by and through the Texas Department of Transportation for funding landscape and scenic elements to the Allen Drive and US75 Interchange.
- 5.6 Adopt a Resolution Establishing the 2023 State Legislative Program for the City of Allen.
- 5.7 Reappoint Cynthia Porter Gore as the Municipal Court Judge and Authorize the City Manager to Execute an Employment Agreement Relating to her Appointment for a Period Ending December 31, 2024.
- 5.8 Reappoint Michelle Montemayor and Donald McDermitt as the Alternate Court Judges and appoint Terri Daniel as an additional Alternate Court Judge and Authorize the City Manager to Execute Employment Agreements Relating to their Appointments for a Period Ending December 31, 2024.
- 5.9 Reappoint Kevin Hoffman, MD, as the Health Authority for the City of Allen in accordance with Section 121.033 of the Texas Health and Safety Code and authorize the City Manager to Execute an Agreement Relating to his appointment for a Period Ending December 31, 2024.
- 5.10 Authorize the City Manager to negotiate and execute amendments to the Agreements relating to the Purchase and Sale of a Portion of Lot 2, Block A, North System Exchange Parkway Addition and Lot 1R, Block A, First Christian Church Addition.
- 5.11 Authorize the City Manager to execute amendments to the Economic Development Incentive and Easement Agreement and the Project Development Agreement with The Farm Development Co. to extend the required completion date for the Phase 1 Project to December 31, 2024.
- 5.12 Authorize the City Manager to execute a contract addition with Unite Private Network/Fiber Platform for Leased Fiber Services for Ten (10) Years to add fiber for Stephen G. Terrell Recreation Center (STRC) and Fire Station 6 in the average annual amount of \$24,000 for those new locations for a total average annual contract value for all nine leased lines of approximately \$113,400.
- 5.13 Award bid and authorize the City Manager to execute a contract with S&J Officials, LLC, for officiating services for adult recreation leagues in the amount of \$165,721, for a one-year term with two additional one-year renewal options.
- 5.14 Authorize the City Manager to execute a contract with East Bay Restaurant Supply, Inc., for the purchase of food service equipment at the Stephen G. Terrell Recreation Center for \$163,311.
- 5.15 Authorize the City Manager to execute a contract with Sunbelt Pools for the replacement of the indoor waterslide at Don Rodenbaugh Natatorium in the amount of \$596,070.
- 5.16 Authorize the City Manager to execute the purchase and installation of fitness equipment from Team Marathon Fitness and Advanced Exercise for the Stephen G. Terrell Recreation

Center for \$1,088,836.

5.17 Motion to Cancel the December 27, 2022, Regular City Council Meeting.

5.18 Set January 28, 2023, as the date for the Strategic Planning Session with Allen City Council.

6. Regular Agenda.

6.1 Conduct a Public Hearing and adopt an Ordinance to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, Landscape Plan, and Building Elevations for property generally located northwest of US Highway 75 and Curtis Lane. [Montfort Capital]

6.2 Conduct a Public Hearing and adopt an Ordinance to amend the development regulations of Planned Development. No. 98 with a base zoning of Single Family and adopt a Concept Plan, Building Elevations, and a Landscape Plan for Lots 1 - 18, Block A, Lots 1 - 9, Block B, and Lots 1 - 3, Block X, Ridgeview Villas, generally located south of Ridgeview Drive and east of Exchange Parkway. [Ridgeview Villas]

6.3 Conduct a Public Hearing and adopt an Ordinance for a Specific Use Permit authorizing approximately 2,087± square foot portion of a building for a Medical or Dental Office use generally located at the northeast corner of the intersection of Exchange Parkway and Twin Creeks Drive and commonly known as 1420 Exchange Parkway B130, to be developed and used as a Medical or Dental Office. [ClearLife PLLC]

6.4 Conduct a Public Hearing and adopt an Ordinance to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, and Building Elevations for a Property generally located south of State Highway 121 and approximately 600 feet west of Watters Road. [TX-121 Commerce Center]

7. Other Business.

[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]

7.1 Calendar.

- December 23 and 26 - City Hall Closed for Christmas Holidays
- December 27 - Council Workshop and Regular Meeting Canceled
- January 2 - City Hall Closed for New Year's Day Holiday.
- January 10 - Next Regular Council Meeting.

7.2 Items of Interest.

8. Executive Session (As needed).

Legal, Section 551.071.

As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein. (Closed to Public as Provided in the Texas Government Code.)

8.1 Pursuant to Texas Government Code, Section 551.087; Deliberation of Economic

Development Negotiations.

- Economic Development projects along the SH 121 Corridor.

8.2 Reconvene and consider action on items resulting from Executive Session.

9. Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, December 9, 2022, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Recognition by the State of Texas Alliance for Recycling (STAR) for Texas Environmental Leadership Awards. |
| STAFF RESOURCE: | Andrea Smith, Education Specialist |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

BACKGROUND

Keep Allen Beautiful Award Recognition

State of Texas Alliance for Recycling (STAR) - Texas Environmental Leadership Awards

1. Allen ISD - Gifted and Talented Program for "Excellence in Environmental Awareness Education" - Presented by Andrea Smith
2. Mayor Ken Fulk for Honorable Mention for "All Star Elected Official" - Presented by Andrea Smith and Robert Medigovich, CWD
3. Donna Kliewer for "Lifetime Recycling Achievement" - Presented by Robert Medigovich, CWD

STAFF RECOMMENDATION

Keep Allen Beautiful - Award Recognition

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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Approve minutes of the November 8, 2022, Regular City Council Meeting. |
| STAFF RESOURCE: | Shelley B. George, City Seretary |
| STRATEGIC PLANNING GOAL: | Financially Sound and Transparent City Government. |

ATTACHMENT(S)

[Minutes](#)

ALLEN CITY COUNCIL

REGULAR MEETING

NOVEMBER 8, 2022

Present:

Allen City Council:

Kenneth M. Fulk, Mayor
Chris Schulmeister, Mayor Pro Tem
Daren Meis
Carl Clemencich
Dave Cornette
Dave Shafer
Ben Trahan

City Staff:

Eric Ellwanger, City Manager
Eric Strong, Deputy City Manager
Tim Dentler, Assistant City Manager
Rebecca Vice, Assistant City Manager
Shelley B. George, City Secretary
Teresa Warren, Director, Public and Media Relations
Rocio Gonzalez, Deputy City Secretary
Pete Smith, City Attorney

Workshop Session

1. Call to Order and Announce a Quorum is Present

With a quorum of the Allen City Council present, the Workshop of the Allen City Council was called to order by Mayor Fulk at 6:00 p.m. on Tuesday, November 8, 2022, in the Basement Meeting Rooms of Allen City Hall, 305 Century Parkway, Allen, Texas.

2. Items of Interest

2.1 Roadway Projects Update.

2.2 Committee updates from City Council Liaisons.

2.3 Questions on the current Agenda.

3. Adjourn to Regular Meeting

With no further discussion, Mayor Fulk adjourned the Workshop of the Allen City Council at 6:54 p.m. on Tuesday, November 8, 2022, in the Basement Meeting Rooms of Allen City Hall, 305 Century Parkway, Allen, Texas.

Regular Meeting

1. Call to Order and Announce a Quorum is Present

With a quorum of the Allen City Council present, the Regular Meeting of the Allen City Council was called to order by Mayor Fulk at 7:00 p.m. on Tuesday, November 8, 2022, in the City Council Chambers of Allen City Hall, 305 Century Parkway, Allen, Texas.

2. Pledge of Allegiance

2.1 Members of VFW Post 2195 posted the Colors and lead the Pledge of Allegiance.

3. Public Recognition

3.1 Presentation of a Proclamation by the Office of the Mayor.

- Veteran's Day
- Hunger and Homelessness Awareness

4. Citizens' Comments

Baine Brooks, 1810 San Carlos Avenue, Allen, Texas, spoke regarding recent community events impacting the City's economic growth.

5. Consent Agenda

MOTION: Upon a motion made by Councilmember Shafer and a second by Councilmember Cornette, the Council voted seven (7) for and none (0) opposed to approve all items on the Consent Agenda as follows:

5.1 Approve minutes of the October 25, 2022, Regular City Council Meeting.

5.2 Approve minutes of the October 27, 2022, Special Called Joint Workshop of the Allen City Council and Community Development Corporation.

5.3 Adopt a Resolution updating the Collin County Hazard Mitigation Action Plan.

RESOLUTION NO. 3966-11-22(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE COLLIN COUNTY HAZARD MITIGATION PLAN, JUNE 2022; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

5.4 Adopt a Resolution authorizing the City Manager to apply for, accept, reject, alter, or terminate a grant from the State of Texas, Office of the Governor, to purchase ten bullet-resistant shields for law enforcement use.

RESOLUTION NO. 3967-11-22(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR TERMINATE GRANT #4659901 FROM THE STATE OF TEXAS, OFFICE

OF THE GOVERNOR PROVIDING FUNDING TO PURCHASE TEN BULLET-RESISTANT SHIELDS, IF AWARDED; AND PROVIDING FOR AN EFFECTIVE DATE.

- 5.5 Authorize the City Manager to execute a Professional Service Agreement with Birkhoff, Hendricks & Carter, LLP, for the design of the Timbercreek and Allenwood Watermain Replacement Project for \$384,900.
- 5.6 Award Bid and authorize the City Manager to execute a contract with Tri-Lam, Inc., for labor, equipment, and installation for \$488,500 and with The Garland Company for materials for \$485,070 for the Allen Police Headquarters, Allen Senior Center, and Municipal Service Center Administration Building Roof Replacement Project for a total project amount of \$1,070,927.
- 5.7 Authorize the City Manager to purchase Cradlepoint vehicle routers and antennas for the public safety fleet from GTS through the Texas Department of Information Resources (TXDIR) state contract for \$152,830.
- 5.8 Award Bid and authorize the City Manager to purchase Expanded Personal Protective Equipment for Allen Fire Department personnel from Casco Industries, Inc., and Delta Industrial Service and Supply for \$205,000.
- 5.9 Motion to cancel the November 22, 2022, Regular City Council Meeting and to conduct the Workshop Meeting as scheduled.
- 5.10 Receive the Quarterly Investment Report for period ending September 30, 2022.
- 5.11 Receive the Quarterly Financial Report for period ending September 30, 2022.

The motion carried.

6. Regular Agenda

- 6.1 Conduct a Public Hearing and adopt a Resolution adopting the 2021-2022 Comprehensive Annual Performance Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) Program.

Mayor Fulk opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

Paula Kelley, 111 Greeting Gate Lane, Allen, Texas, spoke in support of this item.

With no one else speaking, Mayor Fulk closed the Public Hearing.

RESOLUTION NO. 3968-11-22(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE 2021-2022 COMPREHENSIVE ANNUAL PERFORMANCE EVALUATION REPORT (CAPER); AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Shafer and a second by Councilmember Clemencich, the Council voted seven (7) for and none (0) opposed to adopt Resolution No. 3968-11-22(R), as previously captioned, approving the 2021-2022 Comprehensive Annual Performance Evaluation Report (CAPER) for the Community Development Block Grant program and authorizing submission to the U.S. Department of Housing and Urban Development. The motion carried.

6.2 Continue the Public Hearing and adopt an Ordinance to amend the Development Regulations of Planned Development No. 54 with a base zoning of Community Facilities and adopt a Concept Plan, Building Elevations, and Landscape Plan for a Property generally located southwest of Exchange Parkway and Junction Drive. [Medical Offices - NTMWD]

MOTION: Upon a motion made by Mayor Pro Tem Schulmeister and a second by Councilmember Cornette, the Council voted seven (7) for and none (0) opposed to remove this item from the table and continue the Public Hearing. The motion carried.

Substantial changes to the layout of the Concept Plan and Landscape Plan would need to be made to accommodate both the proposed development and the existing utility infrastructure on the site. The changes to both plans will be significant enough to warrant remanding the application back to the Planning and Zoning Commission for review.

Mayor Fulk announced the public hearing was still open and asked anyone wishing to speak for or against this item to do so at this time.

With no one speaking, Mayor Fulk closed the Public Hearing.

MOTION: Upon a motion made by Councilmember Clemencich and a second by Councilmember Shafer, the Council voted seven (7) for and none (0) opposed to remand the request to amend the development regulations of PD-54 with a base zoning of Community Facilities back to the Planning and Zoning Commission. The motion carried.

7. Other Business

7.1 Calendar.

- November 24 and 25 - City Hall Closed for Thanksgiving Holiday
- December 3 - Holly Jolly 5K and Fun Run and Celebration featuring the Christmas Tree Lighting

7.2 Items of Interest.

- Councilmember Cornette announced that the Allen Americans are offering free tickets to veterans and their families for the November 9th game.
- Councilmember Cornette encouraged Allen residents to participate in the many events honoring veterans this coming weekend.
- Council wished happy birthday to Assistant City Manager Vice, Mayor Pro Tem Schulmeister, and Councilmember Meis.

- Mayor Fulk announced “Toys for Texans” as his charity of the month.

8. Executive Session (As needed).

8.1 Reconvene and consider action on items resulting from Executive Session.

The Executive Session was not held.

Adjournment

Mayor Fulk adjourned the Regular Meeting of the Allen City Council at 7:45 p.m. on Tuesday, November 8, 2022.

These minutes were approved on the 13th day of December 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Approve minutes of the November 22, 2022, Regular City Council Workshop. |
| STAFF RESOURCE: | Shelley B. George, City Seretary |
| STRATEGIC PLANNING GOAL: | Financially Sound and Transparent City Government. |

ATTACHMENT(S)

[Minutes](#)

ALLEN CITY COUNCIL

WORKSHOP

NOVEMBER 22, 2022

Present:

Allen City Council:

Kenneth M. Fulk, Mayor
Chris Schulmeister, Mayor Pro Tem
Daren Meis
Carl Clemencich
Dave Cornette
Dave Shafer
Ben Trahan (absent)

City Staff:

Eric Ellwanger, City Manager
Eric Strong, Deputy City Manager
Tim Dentler, Assistant City Manager
Rebecca Vice, Assistant City Manager (absent)
Shelley B. George, City Secretary
Teresa Warren, Director, Public and Media Relations
Rocio Gonzalez, Deputy City Secretary (absent)
Pete Smith, City Attorney

1. Call to Order and Announce a Quorum is Present

With a quorum of the Allen City Council present, the Workshop of the Allen City Council was called to order by Mayor Fulk at 6:00 p.m. on Tuesday, November 22, 2022, in the Basement Meeting Rooms of Allen City Hall, 305 Century Parkway, Allen, Texas.

2. Items of Interest

- 2.1 Overview of Info-Tech CIO Award and Digital Cities Awards.**
- 2.2 Discussion on the Residential Sidewalk program.**
- 2.3 Waste Services Update.**
- 2.4 Discussion on Amending the Code of Ordinances Relating to Parks and Recreation.**
- 2.5 Committee Updates from City Council Liaisons.**

Mayor Fulk announced the Executive Session and recessed the Workshop Session at 7:31 p.m.

3. Executive Session (As Needed)

In accordance with the Texas Government Code, the Allen City Council convened into Executive Session at 7:40 p.m. on Tuesday, November 22, 2022, in the Basement Meeting Rooms of the Allen City Hall, 305 Century Parkway, Allen, Texas, in order to discuss matters pertaining to:

3.1 Pursuant to Texas Government Code, Section 551.076, Deliberations Regarding Security Devices or Security Audits.

- **Briefing on Emergency Action Plan.**

The Executive Session adjourned at 8:19 p.m. on Tuesday, November 22, 2022.

3.2 Reconvene and consider action on items resulting from Executive Session.

The Allen City Council reconvened into the Workshop session at 8:19 p.m. on Tuesday, November 22, 2022. No action was taken on items discussed during Executive Session.

4. Taping of Holiday Message by the Allen City Council

Adjournment

Mayor Fulk adjourned the Workshop of the Allen City Council at 8:28 p.m. on Tuesday, November 22, 2022.

These minutes were approved on the 13th day of December 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

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|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Adopt an Ordinance amending the Code of Ordinances, Chapter 13, Streets and Sidewalks, Article 1, Sections 13-3 and 13-3.1 for Sidewalk Maintenance and Liability. |
| STAFF RESOURCE: | Steve Massey, Community Services Director |
| PREVIOUS COUNCIL ACTION: | On September 15, 1994, City Council adopted Ordinance No. 1286-9-94, the current sidewalk maintenance ordinance. |
| STRATEGIC PLANNING GOAL: | Safe and Livable Community for All. |

BACKGROUND

Due to changes in state court interpretation of legal liability in case law since the 1994 Sidewalk Maintenance and Liability Ordinance was adopted, an update to conform the Ordinance to current case precedent is needed. The proposed ordinance amendment solidifies the concept that property owners that abut the sidewalks are responsible for the maintenance and repair of the sidewalks. Additionally, said property owners are solely liable for the injuries occasioned by reason of the defective condition of the sidewalk for which they are responsible.

The revised ordinance does not change the eligibility of the owners of single-family residential properties for participation in the fifty-fifty cost-share program. This program allows qualifying residents with sidewalk issues that meet the condition standards in Exhibit A to the Ordinance to split the cost of necessary repairs on a one-half cost share to the City, and a one-half cost share to the resident.

This ordinance does not update the cost sharing portion of the agreement. Staff is still developing options on how a change to that might work, and will bring that back to you separately at a future date.

The revised ordinance also updates Exhibit A which is the Agreement that staff uses to set expectations with residents about the outcome of sidewalk replacements.

BUDGETARY IMPACT

The recent cost change for commercial sidewalk replacement is \$39.00 per linear foot of four-foot wide residential sidewalk. This was increased from \$36.00 per linear foot when the new stand-by concrete maintenance contract was approved on October 11, 2022. The Community Services Department is budgeting \$450,000 for sidewalk maintenance in the FY23 department budget. The resident's one-half cost share is deposited as general fund revenue as part of the FY23 revenue budget.

STAFF RECOMMENDATION

Adopt an Ordinance Amending the Code of Ordinances Sections 13-3 and 13-3.1 for Sidewalk Maintenance and Liability.

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances by amending Sections 13-3 and 13-3.1 for Sidewalk Maintenance and Liability.

ATTACHMENT(S)

[Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING SECTIONS 13-3 AND 13-3.1 OF THE CODE TO PROVIDE FOR SIDEWALK MAINTENANCE AND LIABILITY IN THE CITY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen has received from city staff recommendations regarding the revision of the City's Code of Ordinances to address required maintenance of and associated liability regarding sidewalks in the City, including recommended policies, procedures, and forms to be used in association therewith.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Code of Ordinances is hereby amended by amending Sections 13-3 and 13-3.1 to read as follows:

“Sec. 13-3. Sidewalk Maintenance Responsibility and Liability.

- (a) Owner(s) of property which is situated within a zoning district of the City other than single-family residential and which is adjacent to and abutting sidewalks that are in need of repair, maintenance, replacement, and reconstruction are responsible for the needed repair, maintenance, replacement, and/or reconstruction and all of the costs associated therewith and are hereby required to make said needed repairs, maintenance, replacement, and reconstruction. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the property owner that repair, maintenance, replacement, or reconstruction is required. The abutting property owner is solely liable for the injuries occasioned by reason of the defective condition of the sidewalks for which they are responsible.
- (b) With regard to sidewalks adjacent to and abutting single-family residential property situated within a single-family residential zoning district of the City, if a formal development plan, maintenance agreement, or platted document assigns maintenance responsibility to a Homeowner's Association (HOA), the HOA is solely responsible for the repair, maintenance, replacement, and reconstruction of such sidewalks and all costs associated therewith. HOAs are also responsible for sidewalk repair, maintenance, replacement, and reconstruction for sidewalks located along common areas and streets where single-family residential properties do not abut the Right of Way. The HOA is hereby required to make said repair, maintenance, replacement, and/or reconstruction. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the HOA or any property owner that repair, maintenance, replacement, or reconstruction is required. HOA is solely liable for the injuries occasioned by reason of the defective condition of the sidewalks for which it is responsible.

- (c) With regard to sidewalks adjacent to and abutting single-family residential property situated within a single-family residential zoning district of the City for which no formal development plan, maintenance agreement, or platted document assigns maintenance responsibility to a Homeowner's Association, the property owner is solely responsible for the repair, maintenance, replacement, and reconstruction of such sidewalk and is hereby required to perform the same. However, for owner-occupied, single-family residences located in such zoning district, upon proper request and approval by City, the City shall be responsible for payment of fifty percent (50%) of the total repair, maintenance, replacement, and reconstruction costs, including costs of labor, material, equipment, engineering, and inspection services. To be eligible for this cost participation by the City, the property owner must submit to the City an Owner's Sidewalk Maintenance Request/Agreement, in the form attached hereto as Exhibit "A," must follow the procedures set forth in that Exhibit "A," which is hereby incorporated herein by this reference, and the request must be approved by City staff. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the property owner that repair, maintenance, replacement or reconstruction is required. Regardless of city participation, the property owner is and remains solely liable for injuries occasioned by reason of the defective condition of said sidewalks.
- (d) In the event any HOA or property owner in any zoning district in the City fails to repair, maintain, replace, or reconstruct a sidewalk for which that HOA or property owner bears such responsibility and the City Code Compliance Division determines such sidewalk to be a nuisance detrimental to public safety or welfare, the City Staff is authorized, in addition to any other available remedies, to commence involuntary abatement proceedings to affect the necessary repair, maintenance, replacement and reconstruction of such sidewalk in accordance and may, in accordance with the provisions regarding general nuisances, assess the associated expenses to the HOA or property owner and assess a lien against the property until paid.
- (e) Any HOA or property owner that violates any provision of this Section 13-3 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed \$2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. Enforcement shall be the responsibility of the City Code Compliance Division.

Sec. 13-3.1 Repealed."

SECTION 2. All provisions of the ordinances of the City of Allen, Texas in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance, or the ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the ordinances of the City, as amended hereby, which shall remain in full force and effect.

SECTION 4. This Ordinance shall take effect immediately upon its passage and approval by the City, as the law and charter in such cases provide, and it is accordingly so ordained.

SECTION 5. Any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(tm131739)

Shelley B. George, TRMC, CITY SECRETARY



**RESIDENT
ADDRESS
ALLEN, TEXAS**

**CITY OF ALLEN
OWNER'S SIDEWALK MAINTENANCE REQUEST/AGREEMENT**

We, the undersigned by our signature(s) set forth below hereby certify that (1) we are all of the owner(s) of the real property identified below, (2) we occupy this residence as our home and it is not used as rental/lease property, and (3) said real property is located within a single-family property district and adjacent to sidewalk(s) in need of repair, maintenance, reconstruction, or replacement of said, sidewalk(s). We respectfully request that the City of Allen authorize and conduct repairs/replacement of the sidewalk(s) identified below, and that the City approve fifty percent (50%) City participation in the total cost of such repair.

TO BE COMPLETED BY THE CITY:

Owner(s) Name(s): _____

Property Address: _____

Cost:

- Linear feet of 4-foot wide residential sidewalk X current cost per linear foot of 4-foot-wide sidewalk = \$ total cost
- _____ feet X _____ cost = total cost \$ _____
- The owner's 50% portion is \$ _____
- The cost per linear foot of sidewalk will be adjusted should the residential sidewalk being replaced be greater than 4 feet in width.

The City will not participate in cost-sharing of concrete replacement past the point where the sidewalk meets the home's lead walk and/or driveway and/or driveway approach. The City does not cost-share the replacement of lead walks, driveways, and/or driveway approaches under this program.

____ (City will check if appropriate) - City evaluation of the sidewalk indicates that there will be a step-up or a step-down where the repaired or replaced sidewalk meets the home's lead walk and/or driveway or driveway approach. The step-up or step-down may be an estimated ____ inches. By signing below, you acknowledge that you have been advised of this anticipated step-up or step-down and that you consent thereto. You further agree that any repair or reconstruction to alleviate such step-up or step-down will be your sole responsibility and at your sole expense. You also acknowledge and agree that you are solely responsible for any damages or injuries resulting from said step-up or step-down.

Information About the Cost-Shared Sidewalk Program:

1. Evaluation criteria for sidewalk replacement/repair will be as follows:
 - a. The residence is an owner-occupied Single-Family residence, and the location meets the other criteria listed above;
 - b. The sidewalk is located within the City of Allen street right-of-way;
 - c. The sidewalk is aligned parallel to the street;
 - d. Sidewalk sections to be replaced shall total to at least eight (8) linear feet in length;
 - e. Sidewalk has surface spalling with a depth of one quarter (1/4) inch or greater, and covers 50% or more of the sidewalk section being evaluated;
 - f. Sidewalk sections are upheaved or depressed causing an abrupt change in grade of two (2) inches or more vertically; or creates an unsafe condition as determined by the City of Allen;
 - g. Sidewalk sections are broken with pieces missing and/or rebar exposed; and either issue creates an unsafe condition as determined by the City of Allen.
2. After receiving a communication expressing citizen interest in the residential cost-shared sidewalk program, the City shall establish a work order for the Streets and Drainage Division to evaluate the sidewalk using the criteria provided in Paragraph 1. After inspection, non-qualifying locations will be notified by the Streets and Drainage Division concerning the reason their situation does not qualify, and the work order will be closed out.
3. For qualifying locations, this Request/Agreement shall be completed by the City and mailed to the residential property owner(s) by the City. Those who wish to proceed with the program should return the signed agreement to the Community Services Department accompanied with cost-share payment of check or money order. The agreement and payment must be received prior to scheduling of repair, maintenance, reconstruction or replacement of the sidewalk. Work is scheduled on a first-come, first-serve basis. The 50% cost-share includes the cost of labor, material, equipment, engineering, restoration, and inspection service. The 50% cost-share is based on the actual contract cost with no markup at the time the City Agreement is prepared.
4. The Request/Agreement remains effective for a period of ninety (90) days. At ninety (90) days, the work order will be cancelled. If after the ninety (90) days, the resident wishes to pursue replacement, the area must be re-inspected for qualification. The then determined qualifying area and the charge will be at the then-prevailing replacement cost.
5. Work will be scheduled and performed as expeditiously as possible after payment is received by the City. Depending on the volume of requests, it may take one (1) to three (3) months or more for work to be scheduled.
6. If the problem with the sidewalk is being caused by tree roots, and it will be necessary to remove the tree roots to repair/replace the sidewalk, the property owner(s), by signature on this request, agree not to hold the City responsible for damage to or replacement of the tree if the tree is damaged or dies after sidewalk is repaired/replaced.

7. A sidewalk that is repaired, maintained, reconstructed, or replaced shall be placed on proper grade and/or match the elevation as close as possible, of the adjacent sidewalks. This is because the sidewalk must support lot-to-lot drainage.
8. Matching the grade between lots and promoting drainage without water puddling may result in a grade differential between the sidewalk and the home's "lead walk" that runs from the sidewalk up to the home's front door.
9. The property owner shall be solely responsible for the repair, maintenance, reconstruction and/or replacement of any of the sidewalk and entry to the house, which does not match the grade of new sidewalk.
10. Residents who qualify for a sidewalk repair may call either 972-984-8784 or 214-509-3131 to request an estimate of when their repair or replacement will be completed.
11. Citizens contracting with the City for sidewalk repair under this Agreement may have either a city crew or private concrete crew (contractor that is working for the City) perform the tear out and replacement of the sidewalk. As landscape irrigation systems are typically located close to sidewalks, sometimes during the course of this work, landscape irrigation lines, sprinkler heads and even irrigation controllers can be damaged. If the resident finds after construction is completed that there is damage to the irrigation system that may be associated with the sidewalk replacement/repair, they must contact the City at 214-509-4500 to immediately report the issue. Either the City or the sidewalk contractor will make the required repairs. The City will not reimburse the property owner for having a private irrigation contractor make the repairs on the resident's behalf. **The resident will have thirty (30) days following the sidewalk completion date to report any subsequent issues pertaining to the repair.**
12. Shortly after the sidewalk repair, maintenance, reconstruction and/or replacement, as may be necessary, new sod will be placed in the affected areas (this may occur a few weeks following the sidewalk repair). It is the homeowner's responsibility to irrigate the new sod to assure the sod's viability.
13. The area repaired and specified on this Owner's Sidewalk Maintenance Agreement will be covered under a one (1) year warranty from date of installation on all repairs.

By the signature(s) on this application, the property owner(s):

- 1. Shall accept full and sole responsibility and liability for failure to take corrective action to eliminate trip hazards between the new sidewalk and the lead sidewalk, and shall indemnify and hold the City harmless from any claim for injury or damage that may result from such failure.
- 2. Understand that if this cost-shared sidewalk work is not completed because the resident property owner(s) decide to either not sign the agreement and or make cost-shared payment for the repairs, the resident remains expressly liable for injuries occasioned by reason of the defective conditions of the sidewalks for which they are responsible.
- 3. Understand that by City Ordinance, residential property owners are solely liable for injuries occasioned by reason of the defective condition of the sidewalks for which they are responsible and that any agreement by City to participate in sharing the cost of repair, reconstruction, or maintenance of such sidewalk(s) does not alter that sole liability of the property owners.

(Estimate is only good for 90 days.)

Date: [Click here to enter text.](#)

Please mail completed form
and enclosed payment to:

City of Allen
Attn: Community Services
305 Century Pkwy
Allen, TX 75013-8042

Office: 214.509.3100

Property Owner(s)' Name (Print)

Property Owner(s)' Signature

Mailing Address

Home/ Work Telephone Number

«Name»
«Address»
Allen, TX «ZIP»

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Adopt a Resolution approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas acting by and through the Texas Department of Transportation for funding traffic signal safety improvements. |
| STAFF RESOURCE: | Chris Flanigan |
| STRATEGIC PLANNING GOAL: | Financially Sound and Transparent City Government. |

BACKGROUND

The City of Allen is a recipient of a Highway Safety Improvement Program (HSIP) Grant through the Texas Department of Transportation. The purpose of this program is to reduce instances of traffic fatalities and serious injuries. Eleven (11) intersections were selected in our community, based on crash occurrences at traffic signals in the City of Allen. Various traffic signal related improvements are proposed and approved, including one new traffic signal installation, rewiring of existing traffic signals, traffic detection camera upgrades, and accessible pedestrian crossing upgrades.

The following is a list of the awarded intersections in the City of Allen:

1. ALMA DR & HEDGCOXE RD
2. ALMA DR & COMANCHE DR
3. BETHANY DR & MALONE RD
4. EXCHANGE PARKWAY & ANDREWS PARKWAY
5. GREENVILLE AVE & RIDGEMONT DR
6. GREENVILLE AVE & BETHANY DR
7. HEDGCOXE RD & DUCHESS DR
8. MCDERMOTT RD & WATTERS RD
9. STACY RD & ANDREWS PARKWAY
10. STACY RD & CHELSEA BLVD
11. STACY RD & WATTERS RD

BUDGETARY IMPACT

The project is estimated to cost \$2,571,568.78 for various improvements at eleven (11) signalized intersections. Of this, 10% of the construction cost and all TxDOT direct project costs will be the responsibly of the City to fund.

In summary, the city's responsible project expenses associated with HSIP funding project are as follows:

ST2206

| Description | Costs |
|--------------------------------------|----------------------|
| Initial payment by City to TXDOT | \$ 133,358.97 |
| Payment to TXDOT before construction | \$ 94,245.38 |
| Total | \$ 277,604.35 |

The estimated cost for the city is programmed in the 2023-2027 CIP Book, found on page PW-14 is Roadway Impact Fee \$400,000. This proposed expense is below that allocation amount in the CIP.

STAFF RECOMMENDATION

Staff recommends that Council adopt a Resolution approving the terms and conditions of an Advance Funding Agreement (AFA) with The State of Texas acting by and through The Texas Department of Transportation for funding Traffic Signal Safety Improvements.

MOTION

I make a motion to adopt Resolution No. _____ approving the terms and conditions of the Advance Funding Agreement (AFA) with The State of Texas Acting by and through The Texas Department of Transportation for Funding Traffic Signal Safety Improvements.

ATTACHMENT(S)

[Resolution](#)
[Agreement](#)
[Location Map](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ADVANCE FUNDING AGREEMENT FOR HIGHWAY SAFETY IMPROVEMENT PROJECT OFF-SYSTEM, BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Advance Funding Agreement for Highway Safety Improvement Project Off-System (the “Agreement”), by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for improving traffic signals in the City of Allen, Collin County, Texas (the “Project), substantially in the form attached as Exhibit “A” and incorporated herein by reference; and,

WHEREAS, the City Council is of the opinion and finds that the City Manager should be authorized to execute an Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for improving traffic signals CSJ 0918-24-272 (Alma Dr. at Hedgcoxe Rd.) and CSJ 0918-24-273 (Alma Dr. at Comanche Dr.), CSJ 0918-24-274 (E. Bethany Dr. at Malone Rd), CSJ 0918-24-275 (Exchange Pkwy. at Andrews Pkwy.), CSJ 0918-24-280 (McDermott Rd. at Watters Rd.), CSJ 0918-24-281 (Stacy Rd. at Andrews Pkwy.), CSJ 0918-24-282 (Stacy Rd. at Chelsea Blvd.), **Install Traffic Signals** CSJ 0918-24-276 (Greenville Ave. at Ridgemont Dr.), **Improve Traffic Signals, Improve Pedestrian Signals** CSJ 0918-24-277 (Hedgcoxe Rd. at Duchess Dr.), **Improve Traffic Signals, Install Flashing Yellow Arrow** 0918-24-279 (Main St. at S. Allen Heights), **Improve Traffic Signals, Add Left Turn Lane** 0918-24-283 (Stacy Rd. at N. Watters Rd.) in the City of Allen, Collin County, Texas (CSJ #s 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283) (Traffic Signals Project).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Advance Funding Agreement for the Traffic Signals Project, which provides funding for improving traffic signals in the City of Allen, Collin County, Texas, is hereby approved, and the City Manager is hereby authorized to execute the Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for improving traffic signals CSJ 0918-24-272 (Alma Dr. at Hedgcoxe Rd.) and CSJ 0918-24-273 (Alma Dr. at Comanche Dr.), CSJ 0918-24-274 (E. Bethany Dr. at Malone Rd), CSJ 0918-24-275 (Exchange Pkwy. at Andrews Pkwy.), CSJ 0918-24-280 (McDermott Rd. at Watters Rd.), CSJ 0918-24-281 (Stacy Rd. at Andrews Pkwy.), CSJ 0918-24-282 (Stacy Rd. at Chelsea Blvd.), **Install Traffic Signals** CSJ 0918-24-276 (Greenville Ave. at Ridgemont Dr.), **Improve Traffic Signals, Improve Pedestrian Signals** CSJ 0918-24-277 (Hedgcoxe Rd. at Duchess Dr.), **Improve Traffic Signals, Install Flashing Yellow Arrow** 0918-24-279 (Main St. at S. Allen Heights), **Improve Traffic Signals, Add Left Turn Lane** 0918-24-283 (Stacy Rd. at N. Watters Rd.) in the City of Allen, Collin County, Texas (CSJ # 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283) (Traffic Signals Project), substantially in the form attached as Exhibit “A (and any amendments thereto, including any related instruments), on behalf of the City of Allen, Texas.

SECTION 2. This Resolution shall take effect from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY
(PGS:11-23-22:TM 132516)

| | | | | | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT **For** **Highway Safety Improvement Project** **Off-System**

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of Allen**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **116073** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **improving traffic signals**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the

| | | | | | |
|-----------------|---|--------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | <i>AFA Not Used For Research & Development</i> | |

Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

| | | | |
|----|-------------------------|---|------------|
| 1. | Local Government | Utilities | Article 8 |
| 2. | Local Government | Environmental Assessment and Mitigation | Article 9 |
| 3. | Local Government | Architectural and Engineering Services | Article 11 |
| 4. | State | Construction Responsibilities | Article 12 |
| 5. | Local Government | Right of Way and Real Property | Article 14 |

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of **Improve Traffic Signals**: CSJ 0918-24-272 (Alma Dr. at Hedgcoxe Rd.) and CSJ 0918-24-273 (Alma Dr. at Comanche Dr.), CSJ 0918-24-274 (E. Bethany Dr. at Malone Rd), CSJ 0918-24-275 (Exchange Pkwy. at Andrews Pkwy), CSJ 0918-24-280 (McDermott Rd. at Watters Rd.), CSJ 0918-24-281 (Stacy Rd. at Andrews Pkwy.), CSJ 0918-24-282 (Stacy Rd. at Chelsea Blvd.), **Install Traffic Signals** CSJ 0918-24-276 (Greenville Ave. at Ridgemont Dr.). **Improve Traffic Signals, Improve Pedestrian Signals** CSJ 0918-24-277 (Hedgcoxe Rd. at Duchess Dr.), **Improve Traffic Signals, Install Flashing Yellow Arrow** 0918-24-279 (Main St. at S. Allen Heights), **Improve Traffic Signals, Add Left Turn Lane** 0918-24-283 (Stacy Rd. at N. Watters Rd.).

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete

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| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.

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| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

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| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

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|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

| TxDOT: | | | | Federal Highway Administration: | |
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11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.

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- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

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| Local Government: | State: |
| City of Allen ATTN: City Manager 305 Century Pkwy Allen, TX 75013 | Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701 |

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

20. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

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21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement

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covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 - 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

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- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this*

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Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this

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certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance

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Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

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32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE CITY OF ALLEN

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

Typed or Printed Name

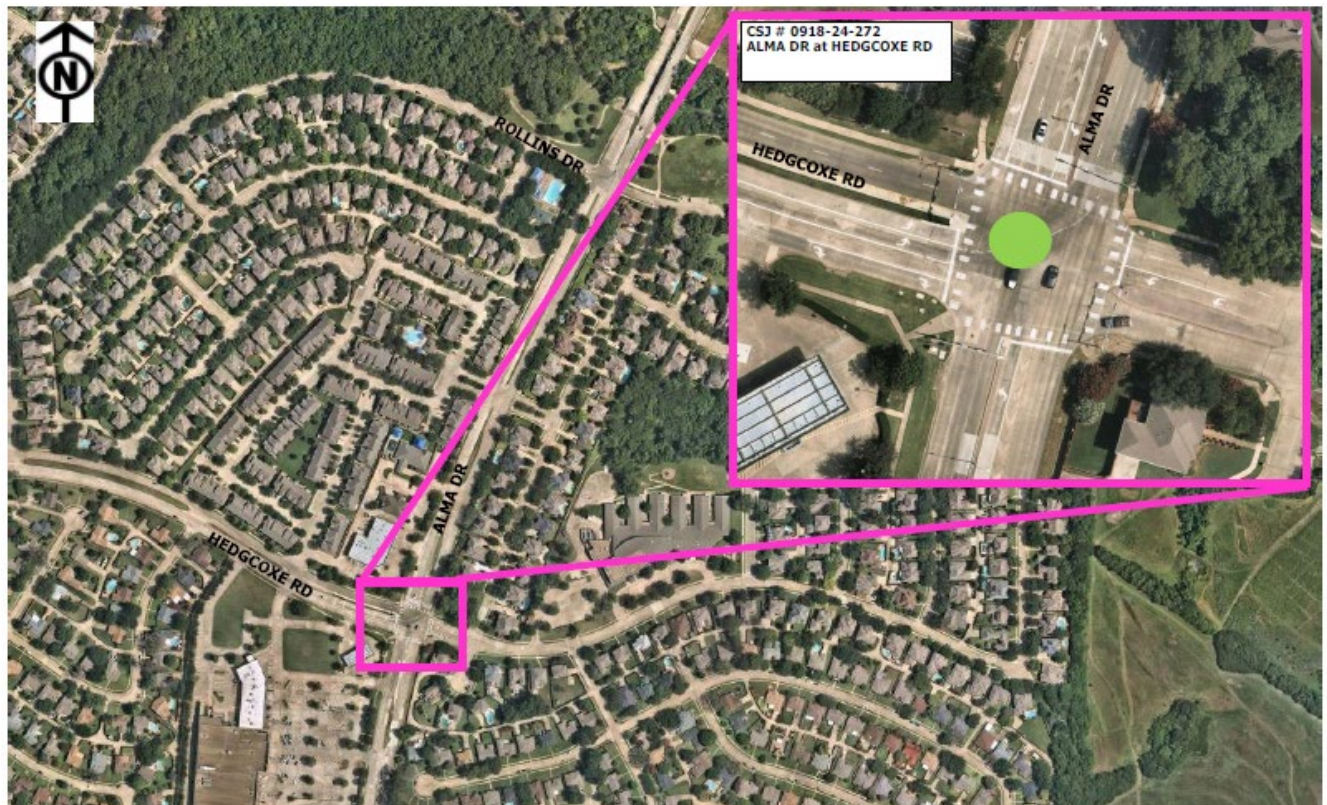
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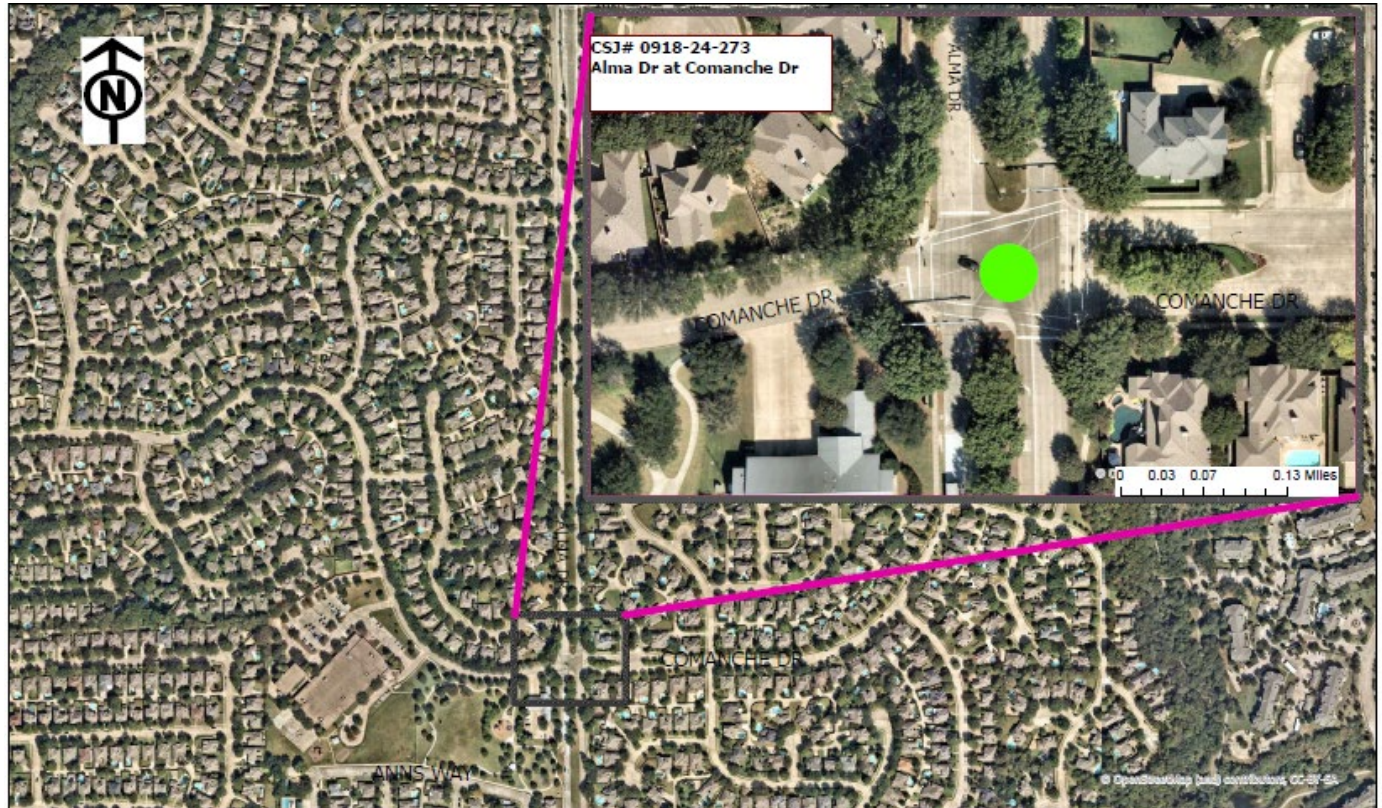
ATTACHMENT A LOCATION MAP SHOWING PROJECT

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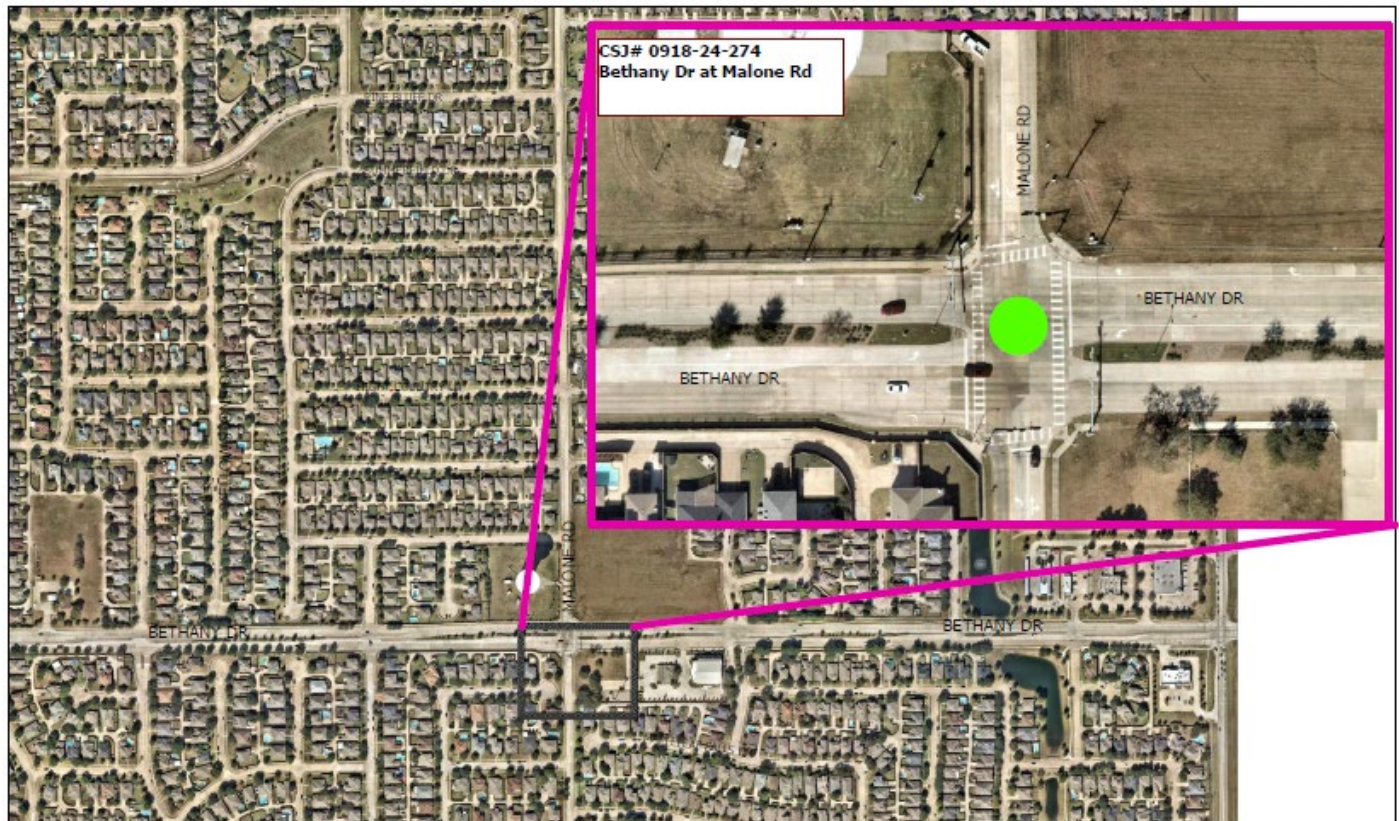
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| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-273



| TxDOT: | | | | Federal Highway Administration: | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-274



| TxDOT: | | | | Federal Highway Administration: | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-275



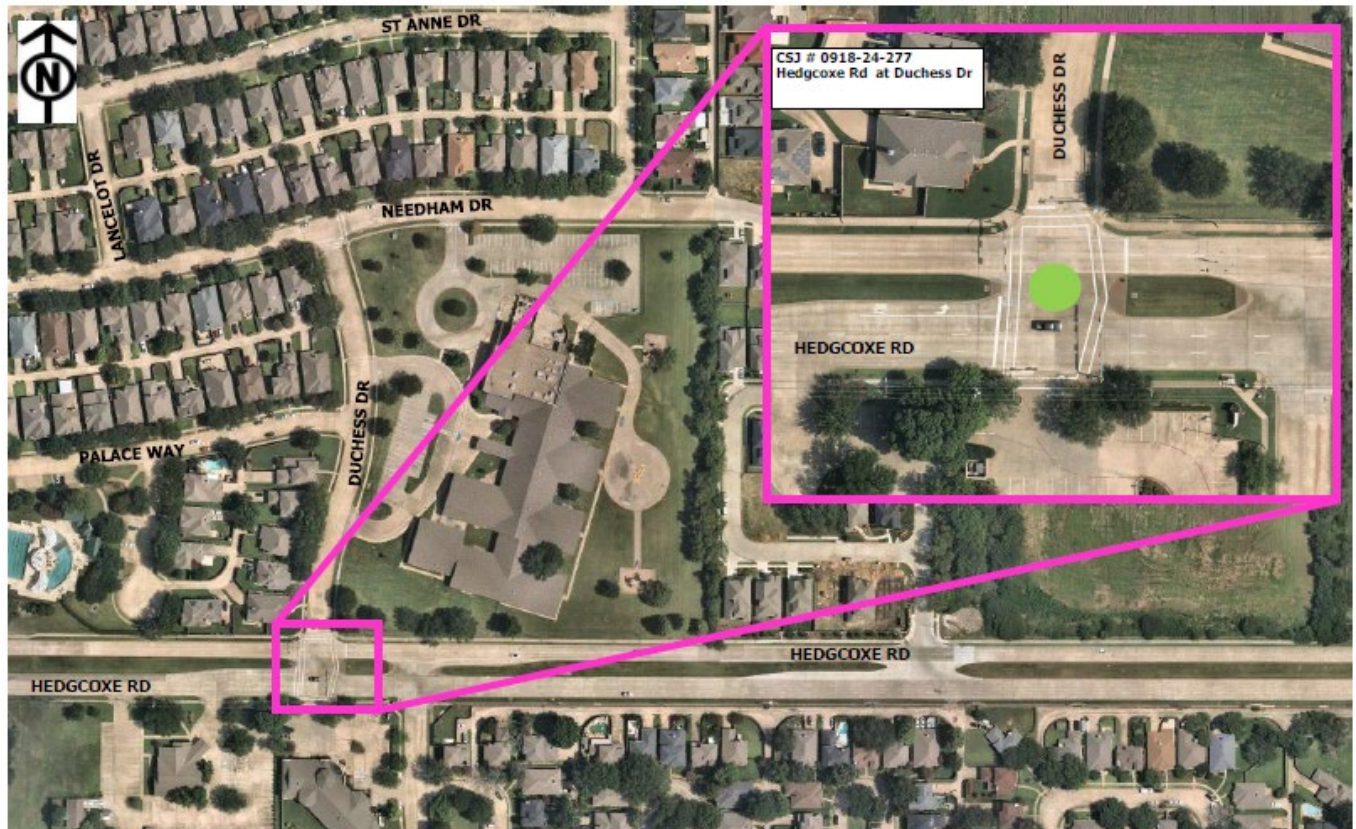
| TxDOT: | | | | Federal Highway Administration: | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-276



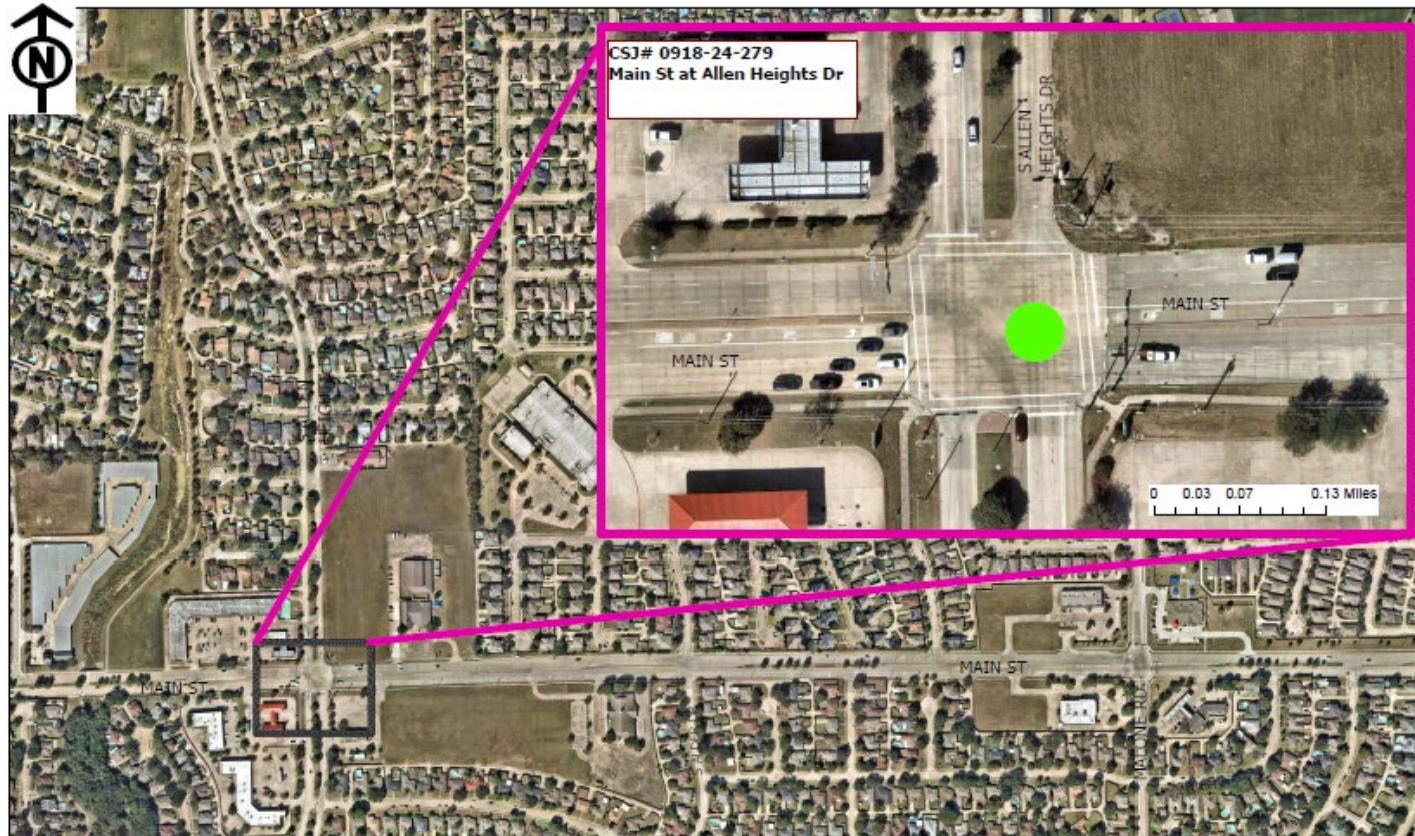
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|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-277



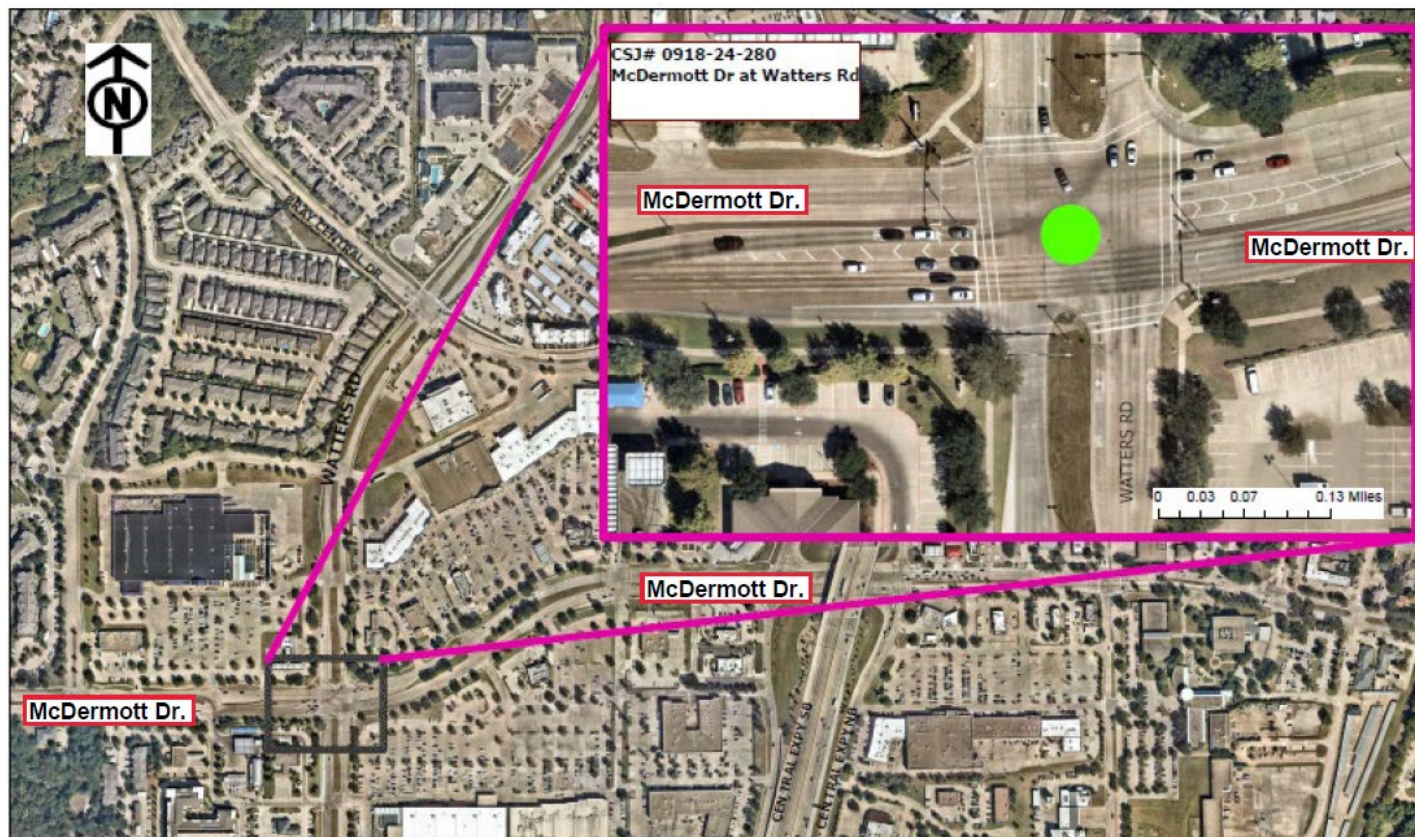
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|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-279



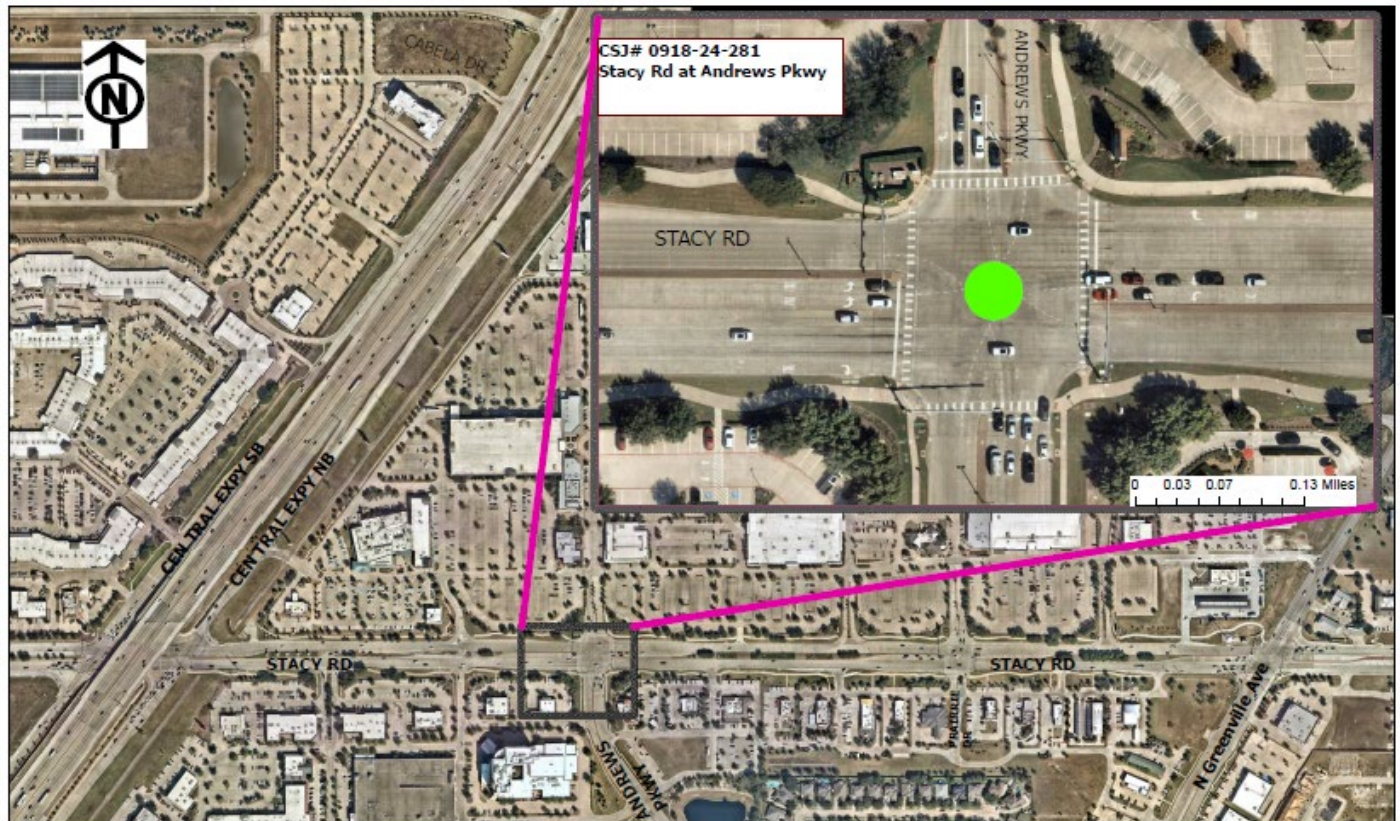
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|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-280



| | | | | | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-281



| | | | | | |
|-----------------|---|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

0918-24-282



0918-24-283

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|------------------------|---|---------------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | | | | | |
| Project Name | Traffic Signals | | | AFA Not Used For Research & Development | |

ATTACHMENT B

PROJECT BUDGET% federal funding and

Costs for will be allocated, as listed below, based on 100% federal funding and 0% local funding or 90% federal funding and 10% local funding until the federal funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

| DESCRIPTION | TOTAL ESTIMATED COST | FEDERAL PARTICIPATION | | STATE PARTICIPATION | | LOCAL PARTICIPATION | |
|--|----------------------------|--------------------------|-----------------------|------------------------|---------------------|------------------------|---------------------|
| | | % | Cost | % | Cost | % | Cost |
| Engineering (by Local) | \$220,000.00 | 0% | \$0 | 0% | \$0 | 100% | \$220,000.00 |
| Construction (by State) CSJ 0918-24-272 | \$130,415.00 | 100% | \$130,415.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-273 | \$96,253.00 | 100% | \$96,253.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-274 | \$86,665.00 | 100% | \$86,665.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-275 | \$74,432.00 | 100% | \$74,432.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-276 | \$359,713.00 | 100% | \$359,713.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-277 | \$130,415.00 | 100% | \$130,415.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-279 | \$306,811.44 | 100% | \$306,811.44 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-280 | \$249,599.00 | 100% | \$249,599.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-281 | \$118,657.76 | 100% | \$118,657.76 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-282 | \$74,014.00 | 100% | \$74,014.00 | 0% | \$0 | 0% | \$0 |
| Construction (by State) CSJ 0918-24-283 | \$391,126.00 | 90% | \$352,013.40 | 0% | \$0 | 10% | \$39,112.60 |
| Subtotal | \$2,238,101.20 | | \$1,978,988.60 | | \$0 | | \$259,112.60 |
| Environmental Direct State Costs | \$23,561.34 | 0% | \$0 | 0% | \$0 | 100% | \$23,561.34 |
| Right of Way Direct State Costs | \$23,561.34 | 0% | \$0 | 0% | \$0 | 100% | \$23,561.34 |
| Engineering Direct State Costs | \$23,561.35 | 0% | \$0 | 0% | \$0 | 100% | \$23,561.35 |
| Utility Direct State Costs | \$23,561.35 | 0% | \$0 | 0% | \$0 | 100% | \$23,561.35 |
| Construction Direct State Costs (9.34%) | \$94,245.37 | 0% | \$0 | 0% | \$0 | 100% | \$94,245.37 |
| Subtotal | \$188,490.75 | | \$0 | | \$0 | | \$188,490.75 |
| Indirect State Cost – 4.73% | \$105,862.23 | 0% | \$0 | 100% | \$105,862.23 | 0% | \$0 |
| TOTAL | \$2,532,454.18 | | \$1,978,988.60 | | \$105,862.23 | | \$447,603.35 |

Initial Payment by the Local Government to the State: **\$133,358.97**

Payment by the Local Government to the State before Construction: **\$94,245.38**

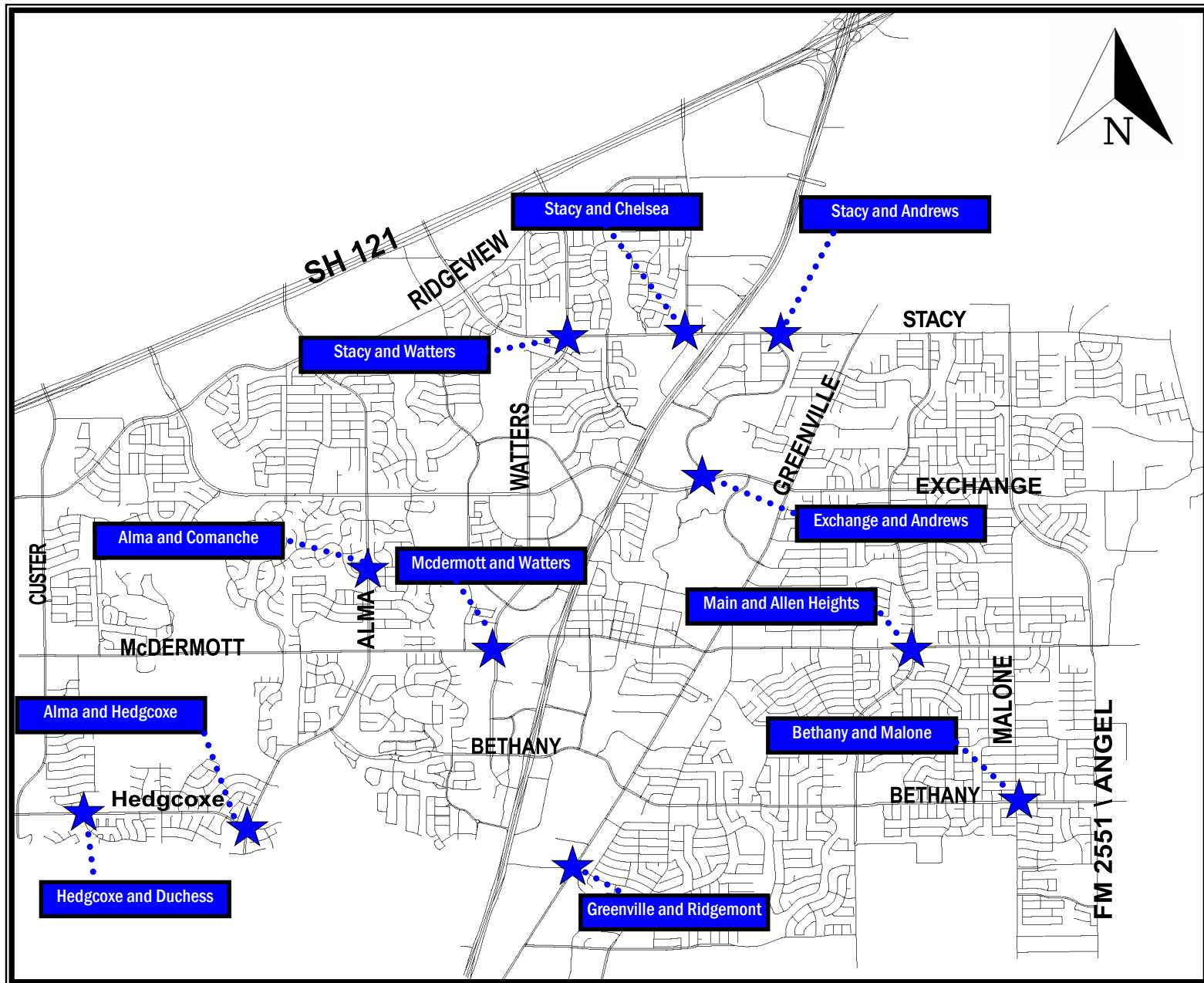
Total payment by the Local Government to the State: **\$227,604.35**

This is an estimate. The final amount of Local Government participation will be based on actual costs.

| TxDOT: | | | | Federal Highway Administration: | |
|-----------------|---|--------|-----------|--|-----------------------------------|
| CSJ # | 0918-24-272, 0918-24-273, 0918-24-274, 0918-24-275, 0918-24-276, 0918-24-277, 0918-24-279, 0918-24-280, 0918-24-281, 0918-24-282, 0918-24-283 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00004177 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | Traffic Signals | | | <i>AFA Not Used For Research & Development</i> | |

ATTACHMENT C
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER

Location Map CIP # ST2206
Signal Improvement Design at
Various Locations for TXDOT HSIP Grant Project



| |
|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Adopt a Resolution Approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas Acting by and through the Texas Department of Transportation for funding landscape and scenic elements to the Allen Drive and US75 Interchange. |
| STAFF RESOURCE: | Chris Flanigan, Director of Engineering |
| PREVIOUS COUNCIL ACTION: | May 25, 2021, Council adopted Resolution No. 3828-5-21(R) approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas Acting by and through the Texas Department of Transportation. |
| STRATEGIC PLANNING GOAL: | Financially Sound and Transparent City Government. |

BACKGROUND

For years, planning initiatives have been underway to provide a gateway, monument, or other aesthetic improvement to the US75 corridor that announces and establishes the community identity for the City of Allen. Governor's Achievement Award (GCAA) funds and TxDOT Green Ribbon (G/R) Funds have been set-aside to fund part of this vision.

The gateway project on Allen Drive at US75 has been expected to be delivered in two phases. Phase 1, which was bid in summer of 2021 and awarded in October 2021, is nearly complete and locally funded by the City of Allen. Phase 2, anticipated to be bid in January, will include all irrigation and landscape surrounding the new interchange and a new ornamental pedestrian fence on the existing overpass crossing the US75 highway. Phase 2 is eligible for use of TxDOT funds (GCAA and G/R).

Since this project lies within the TxDOT right-of-way, the state agency has final approval authority on any design and construction associated with the project. Our completed design plans and specifications are in the final stage of TxDOT approval and TxDOT has required that we execute an Advance Funding Agreement (AFA) prior to their formal authorization for bidding and construction. This agreement outlines the responsibilities of the City of Allen as well as TxDOT for the project, memorializing that the project is funded with GCAA and G/R funds and any overage is the responsibility of the local agency. Since there are no federal funds involved, many of the provisions of the agreement do not apply. The agreement language is a universal template used by the State, so those items are not applicable, even though they remain in the agreement language.

TxDOT has waived their traditional review and management fee for implementation of this project (see Attachment 'C' where local agency is not responsible for reimbursing the State for their costs). Even so, TxDOT still requires the AFA to be executed as symbolic approval of the project to be constructed within their right-of-way.

This action does not approve or obligate the construction on behalf of the City of Allen or encumber funds toward the project, beyond what is already published in the 5-year Capital Improvement Program; rather, this action is the last step for approval of the project by TxDOT. After the project is bid, the project will be brought forth to the Allen City Council for consideration of awarding a bid to construct. Only at that time, will the project expenses be officially approved by the Allen City Council.

BUDGETARY IMPACT

There is no immediate budgetary impact resulting from this agreement. Expenses for the project will derive from future action by the City Council; specifically, the award for construction is predicted to occur in the Spring of 2023, after bidding and securing final approval from TxDOT.

STAFF RECOMMENDATION

Staff recommends that Council adopt a Resolution approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas Acting by and through the Texas Department of Transportation for funding landscape and scenic elements to the Allen Drive and US75 Interchange.

MOTION

I make a motion to adopt Resolution No. _____ approving Resolution approving the terms and conditions of an Advance Funding Agreement (AFA) with the State of Texas acting by and through the Texas Department of Transportation for funding landscape and scenic elements to the Allen Drive and US75 Interchange.

ATTACHMENT(S)

Resolution
Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ADVANCE FUNDING AGREEMENT FOR GOVERNOR’S COMMUNITY ACHIEVEMENT AWARD PROJECT AND GREEN RIBBON ON-SYSTEM PROJECT AT US 75 AND NORTH ALLEN DRIVE, BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and,

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision; and,

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and,

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects; and,

WHEREAS, the Texas Transportation Commission passed Minute Order Number 116073, 115814 authorizing the State to undertake and complete a highway improvement or other transportation project generally described as Landscape and Scenic Enhancements. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project); and,

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution; and,

WHEREAS, the Local Government will provide funding through the Government Community Achievement and Green Ribbon Grant Awards allocated to the City of Allen; and,

WHEREAS, the Local Government is responsible for overruns; and,

WHEREAS, the City Council has been presented a proposed Advance Funding Agreement (“AFA”) for Governor’s Community Achievement Award Project and Green Ribbon On-System (the “Agreement”), by and between the City of Allen, Texas (the “Local Government”), and the State of Texas, acting by and through the Texas Department of Transportation (the “State”), which provides funding for the construction of landscaping activities to include planting and irrigation along US 75 at North Allen Drive within the limits of the City of Allen (the “Project); and,

WHEREAS, the City Council is of the opinion and finds that the City Manager should be authorized to execute an Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for the construction

of landscaping activities to include planting and irrigation along US 75 at North Allen Drive within the limits of the City of Allen (CSJ # 0047-06-172) (US 75 at North Allen Drive Project).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Advance Funding Agreement for the Governor's Community Achievement and Green Ribbon On-System Project at US75 and North Allen Drive, which provides funding for the construction of landscaping activities to include planting and irrigation along US 75 at North Allen Drive within the limits of the City of Allen, is hereby approved, and the City Manager is hereby authorized to execute the Advance Funding Agreement by and between the City of Allen, Texas, and the State of Texas, acting by and through the Texas Department of Transportation, which provides funding for the construction of landscaping activities to include planting and irrigation along US 75 at North Allen Drive within the limits of the City of Allen (CSJ # 0047-06-172) (US 75 at North Allen Drive Project), (and any amendments thereto, including any related instruments), on behalf of the City of Allen, Texas.

SECTION 2. This Resolution shall take effect from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY
(PGS:12-8-22:TM 132718)

| | | | | | |
|-----------------|----------------------------|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | AFA Not Used For Research & Development | |

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For
Governor's Community Achievement Award Project and Green Ribbon
On-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the "State", and the **City of Allen**, acting by and through its duly authorized officials, called the "Local Government". The State and Local Government shall be collectively referred to as "the parties" hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **116073**, **115814** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **Landscape and Scenic Enhancements**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated _____, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C). A map showing the Project location appears in Attachment A, Location Map Showing Project (Attachment A), which is attached to and made a part of this Agreement.

| | | | | | |
|-----------------|----------------------------|--------|-----------|--|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | <i>AFA Not Used For Research & Development</i> | |

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

| | | | |
|----|------------------|---|------------|
| 1. | N/A | Utilities | Article 8 |
| 2. | N/A | Environmental Assessment and Mitigation | Article 9 |
| 3. | N/A | Architectural and Engineering Services | Article 11 |
| 4. | Local Government | Construction Responsibilities | Article 12 |
| 5. | N/A | Right of Way and Real Property | Article 14 |

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of **the construction of landscaping activities to include planting and irrigation along US 75 at North Allen Drive within the limits of the city of Allen**, as shown in Attachment A.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget (Attachment B) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

| | | | | | |
|------------------------|-----------------------------------|---------------|------------------|---|--|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | <i>AFA Not Used For Research & Development</i> | |

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment B shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government.
- F. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment B. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for

| | | | | | |
|------------------------|-----------------------------------|---------------|------------------|---|--|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | <i>AFA Not Used For Research & Development</i> | |

- the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
 - K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
 - L. The State will not pay interest on any funds provided by the Local Government.
 - M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
 - N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
 - O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
 - P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
 - Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

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5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

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9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

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12. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

13. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

14. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

15. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance

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verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

| Local Government: | State: |
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| City of Allen ATTN: City Manager 305 Century Parkway Allen, TX 75013 | Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701 |

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

17. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

18. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

19. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

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20. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including

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procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 - 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

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- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment

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and Suspension.” By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory’s knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject

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to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website [http://fedgov.dnb.com/webform](http://fedgov.dnb.com/webform;); and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

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| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | <i>AFA Not Used For Research & Development</i> | |

32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

Eric Ellwanger

Typed or Printed Name

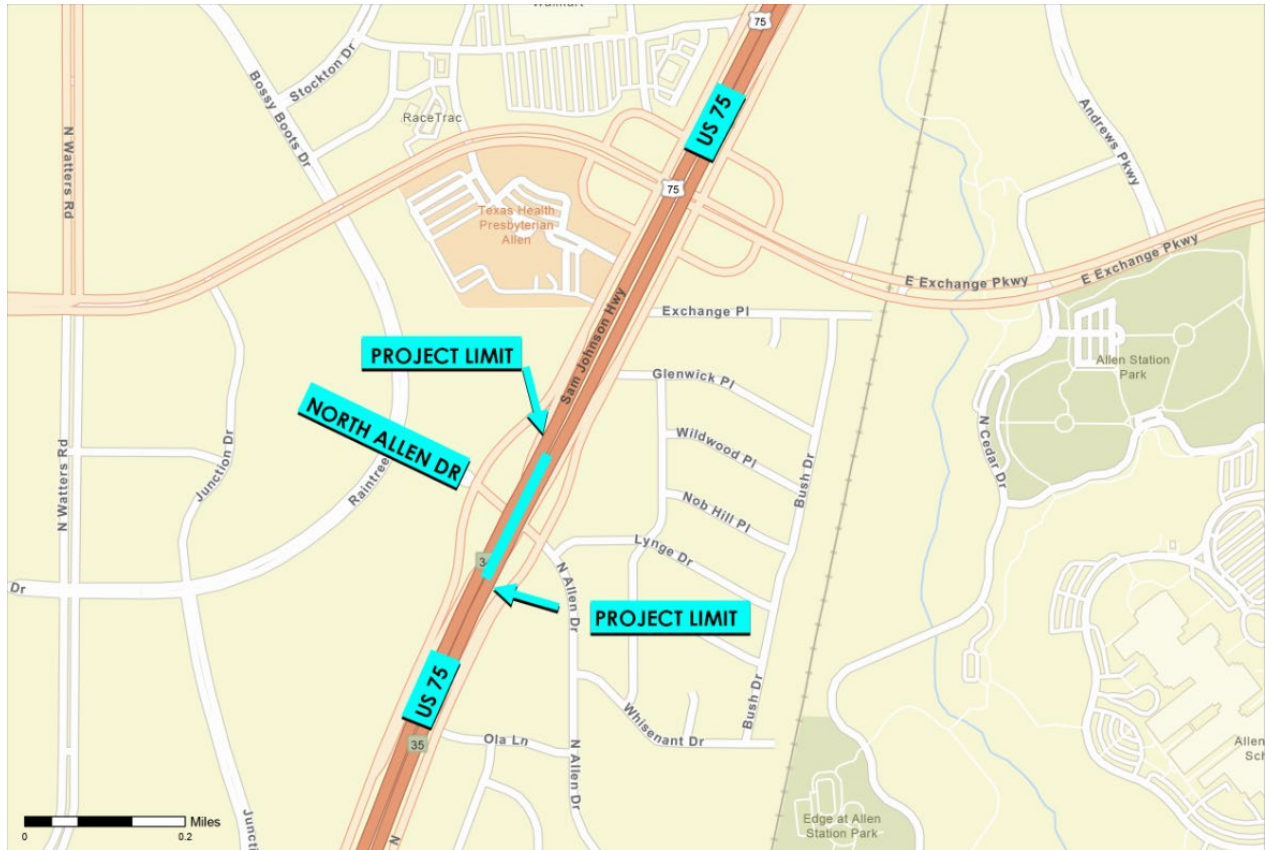
City Manager

Typed or Printed Title

Date

| | | | | | |
|-----------------|----------------------------|--------|-----------|---|-----------------------------------|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | AFA Not Used For Research & Development | |

ATTACHMENT A LOCATION MAP SHOWING PROJECT



CITY OF ALLEN, TEXAS
FUNDING SOURCE: GOVERNMENT COMMUNITY ACHIEVEMENT AWARD
FY20

| | | | | | |
|------------------------|-----------------------------------|---------------|------------------|--|--|
| TxDOT: | | | | Federal Highway Administration: | |
| CSJ # | 0047-06-172 | | | CFDA No. | 20.205 |
| District # | 18/DAL | AFA ID | Z00003768 | CFDA Title | Highway Planning and Construction |
| Code Chart 64 # | 00650 | | | | |
| Project Name | US 75 at North Allen Drive | | | AFA Not Used For Research & Development | |

ATTACHMENT B PROJECT BUDGET

Costs will be allocated based on 100% State funding and 0% Local Government funding until the State funding reaches the maximum obligated amount. The Local Government will then be responsible for 100% of the costs.

| DESCRIPTION | TOTAL ESTIMATED COST | FEDERAL PARTICIPATION | | STATE PARTICIPATION | | LOCAL PARTICIPATION | |
|---|----------------------------|--------------------------|---------------|------------------------|-----------------------|------------------------|---------------|
| | | % | Cost | % | Cost | | Cost |
| GCAA Construction (by Local Government) | \$830,000.00 | 0% | \$0.00 | 100% | \$830,000.00 | 0% | \$0.00 |
| Green Ribbon Construction (by Local Government) | \$797,500.00 | 0% | \$0.00 | 100% | \$797,500.00 | 0% | \$0.00 |
| Subtotal | \$1,627,500.00 | | \$0.00 | | \$1,627,500.00 | | \$0.00 |
| Direct State Cost – Env | \$20,343.75 | 0% | \$0 | 100% | \$20,343.75 | 0% | \$0 |
| Direct State Cost – Eng. | \$20,343.75 | 0% | \$0 | 100% | \$20,343.75 | 0% | \$0 |
| Direct State Cost – ROW | \$20,343.75 | 0% | \$0 | 100% | \$20,343.75 | 0% | \$0 |
| Direct State Cost – UTL | \$20,343.75 | 0% | \$0 | 100% | \$20,343.75 | 0% | \$0 |
| Direct State Cost – CNST | \$81,375.00 | 0% | \$0 | 100% | \$81,375.00 | 0% | \$0 |
| Subtotal | \$162,750.00 | | \$0 | | \$162,750.00 | | \$0.00 |
| Indirect State Cost – 4.77% | \$74,412.00 | 0% | \$0 | 100% | \$74,412.00 | | \$0 |
| TOTAL | \$1,864,662.00 | | \$0.00 | | \$1,864,662.00 | | \$0.00 |

Initial Payment by the Local Government to the State: \$0.00

Payment by the Local Government to the State before Construction: \$0.00

Estimated total payment by the Local Government to the State: \$0.00

This is an estimate. The final amount of Local Government participation will be based on actual costs.

This is a placeholder document: please
upload your resolution materials in place of
this document



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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Adopt a Resolution Establishing the 2023 State Legislative Program for the City of Allen. |
| STAFF RESOURCE: | Rebecca Vice, Assistant City Manager |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a Resolution establishing the 2023 State Legislative Program for the City of Allen.

MOTION

I make a motion to adopt Resolution No. _____ establishing the 2023 State Legislative Program for the City of Allen.

ATTACHMENT(S)

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING A STATE LEGISLATIVE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Eighty-Eighth Session of the Texas Legislature convenes in January 2023; and,

WHEREAS, many legislative issues affecting local government will be considered; and,

WHEREAS, the City of Allen desires to work with our State Senator and Representatives to remain a center of excellence and a community of choice.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The 2023 State Legislative Program for the City of Allen is hereby adopted. The Allen City Council supports the following positions on issues to be addressed in the 88th Biennial Session:

- **Preservation of Home-Rule Authority** – We believe that local issues require local solutions. We support legislation that promotes the authority of home rule cities to govern themselves as a sovereign entity. Local Control allows Allen to respond to the unique needs and wishes of Allen citizens. We support legislation that preserves local authority for property taxation, budgeting, permitting and zoning decisions.
- **Transportation** – We support legislative efforts to fully fund the state’s transportation needs through the existing authorized funding sources. We support legislative efforts to equitably distribute funding among the districts within Texas and oppose any efforts to reduce funding from existing revenue sources. We also support legislative efforts to increase both funding of transportation projects as well as flexibility by which cities can fund local transportation projects. We support legislation that provides funding to maintain and repair aging infrastructure.
- **Strong Fiscal Stewardship** – We support legislation to maintain current revenue structures of the city of Allen. We support legislation that promotes innovative financing tools for funding local infrastructure projects, and that preserves the current flexibility that exists in funding those projects. We support legislative efforts that will increase transparency and improve clarity on the municipal budget adoption process. We oppose legislation that would limit the City’s ability to receive fair market compensation for use of public rights-of-way. We also oppose any efforts that threaten the financial stability of the solid waste system, or any efforts to restrict our municipal franchise fee structures. We oppose any state mandates imposed without a proportionate level of compensation. We oppose legislation that would limit our ability to leverage our AAA bond rating to issue debt.
- **Economic Development** – We support legislation to continue, maintain and protect economic and community development tools such as the Texas Enterprise Fund (TEF), Texas Local Government Code Chapter 380 Agreements, Tax Increment Financing (TIF), and Type A and B Economic Development Corporations. Local taxpayers should retain the right to determine the use of Type A and B funds. We support amendments to the hotel occupancy tax statute that provide additional flexibility in how the City may use that revenue to promote tourism in our community.
- **Natural Resources** – We support efforts and legislation to increase Texas’ water supply, maintain a commitment to water conservation and preserving and improving the quality of the state’s raw water supplies. We support measures that increase an affordable and reliable water supply across the entire state. We support special, targeted programs incentivizing homeowners and businesses to make

investments to reduce their overall energy consumption. We also support efforts to improve air quality in the DFW non-attainment area.

- **Elections** – We support legislation that maintains the current May and November Uniform Election Dates. We support legislation that promotes and/or increases voter participation. We support plain ballot language.
- **Development** – We support efforts to amend HB 2439 (building materials bill), as passed in the 86th Texas Legislature, to allow the City of Allen to mitigate the unintended consequences of a reduction in development standards, require reasonable exterior materials that create long-term quality and resiliency, and allow local amendments related to building codes to maintain safety and property values. We support efforts to modify HB 3167 (30-day shot clock bill), as passed in the 86th Texas Legislature, and Section 212 of the Texas Local Government Code, to allow for high-growth communities like the City of Allen to deliver better customer service to the development community; such amendments may include flexibility for refining plats as they go through the process, modifying the timing requirements to give developers more certainty, and reasonable review to protect the community’s safety and economic value. We oppose legislation that preempts the City of Allen’s home rule authority related to land use and zoning, local amendments to building codes, local building permit fees, tree preservation, short-term rentals, and eminent domain.
- **Utilities** – We support legislation that maintains a municipality’s authority over our community’s rights-of-ways and the ability to collect reasonable compensation for their use. We support legislation ensuring that any utility planning is coordinated with local input and completed in advance of local growth and development. We support legislative efforts to improve the reliability of the electric grid and the consistent provision of this vital resource to our residents.
- **Public Safety** – We support legislation that strengthens the integrity, effectiveness, and transparency of local law enforcement, and oppose any measures that weaken those efforts. We support legislation that preserves qualified immunity for public safety personnel acting within the bounds of city policies, departmental orders and procedures in their performance of their official duties. We support legislation that clarifies the roles of state, county and municipal governments in emergency management, and their respective authority, powers and duties during a local state of disaster.

SECTION 2. The City Secretary will provide a copy of this resolution to Allen’s Representatives in the Texas Legislature to communicate the items important to the City of Allen in the upcoming state legislative session.

SECTION 3. This Resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Reappoint Cynthia Porter Gore as the Municipal Court Judge and Authorize the City Manager to Execute an Employment Agreement Relating to her Appointment for a Period Ending December 31, 2024. |
| STAFF RESOURCE: | Monika Kretschmer, Human Resources Director |
| PREVIOUS COUNCIL ACTION: | On December 8, 2020, the City Council re-appointed Cynthia Porter Gore as the City of Allen Municipal Court Judge and Authorized the City Manager to Execute an Employment Agreement Relating to her Appointment for a Period Ending December 31, 2022. |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

BACKGROUND

Section 3.08 of the City Charter requires the City Council appointment of a Municipal Court Judge every two years. Cynthia Porter Gore is currently serving as the Municipal Court Judge. The two-year agreement is up for renewal.

Judge Gore performs all of the judicial duties associated with the court as set forth in the attached agreement. She also performs judicial services on scheduled weekends and evenings and works closely with the Court staff and Police personnel.

The proposed agreement stipulates an annual performance review and includes adjustments to the compensation to be effective for each year. Attached is a two-year employment agreement relating to the re-appointment of Cynthia Porter Gore performing duties as the Municipal Court Judge with expiration on December 31, 2024.

Subsequent renewals to this agreement will be for two-year terms with the dates coinciding with the calendar year.

BUDGETARY IMPACT

The Municipal Court budget will cover the costs associated with the Municipal Court Judge contract.

STAFF RECOMMENDATION

Staff recommends that the City Council re-appoint Cynthia Porter Gore as the Municipal Court Judge.

MOTION

I make a motion to reappoint Cynthia Porter Gore as the Municipal Court Judge and authorize the City Manager to execute an Employment Agreement relating to her appointment for a period ending December 31, 2024.

ATTACHMENT(S)

[Agreement](#)

THE STATE OF TEXAS §
COUNTY OF COLLIN § EMPLOYMENT AGREEMENT
§

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Cynthia Porter Gore ("Gore") (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, City desires to employ the services of said Gore as Judge of the Municipal Court of the City of Allen, Texas, as provided by City Charter and State law; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set working conditions of said Gore; and

WHEREAS, Gore desires to accept employment as Judge of the Municipal Court of the City of Allen, Texas; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

Section 1. Duties

City hereby agrees to employ Gore as Judge of the Municipal Court to perform the functions and duties specified in the City Charter, City Code, State law and to perform such other duties and functions as the City Manager shall from time to time assign. The Judge of the Municipal Court shall be under the direction and control of the City Manager. The primary duties shall include, but are not limited to, the following:

- (1) Preside over all municipal court proceedings;
- (2) Arraign all adult prisoners daily;
- (3) Arraign all juveniles prior to interviews by State;
- (4) Execute all arrest warrants;
- (5) Execute all court warrants;
- (6) Perform such other duties as assigned by the City Council and/or the City Manager that may be commensurate with the position of Municipal Court Judge; and

- (7) Perform all other administrative duties of a Municipal Court Judge as may be provided by ordinance, resolution of the City Council, or applicable State laws.

Section 2. Terms

- A. Gore shall serve as Judge of the Municipal Court commencing on January 1, 2023, and expiring on December 31, 2024, but may be removed for cause at any time in accordance with the provisions of this Agreement, the City Charter and State law. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Gore as an employee or to remove Gore from the position of Judge of the Municipal Court in accordance with the City Charter and State law.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Gore to resign at any time from the position of Judge of the Municipal Court.
- C. Gore agrees to remain in the exclusive employ of City, and neither to accept other employment nor to become employed by any other employer. The term employed shall not be construed to include occasional teaching, writing, consulting, mediation, military reserve service or part time work performed on Gore's time off which does not conflict with, or is incompatible with, the duties as Municipal Court Judge.
- D. The City Manager of the City of Allen shall be the designated supervisor of the day to day administrative duties of the position; however, nothing contained herein shall be construed so as to be interpreted as to interfere with the judicial functions of the position.

Section 3. Salary; Benefits

- A. City agrees to pay Gore for services rendered pursuant hereto, an annual base salary payable in installments at the same time as other full-time employees of the City are paid and subject to the same applicable deductions for Gore benefit contributions.
- B. Upon determination by the City Manager that Gore is performing the duties of Judge of the Municipal Court in an acceptable manner, the City Manager may increase the annual base salary in such amount and to the extent as the City Manager may determine is appropriate based on an annual performance evaluation by the City Manager. Said increase will be reflected in the first pay period following the anniversary of the date of employment.

- C. City agrees to provide Gore the same benefits relating to health care, vacation, sick leave, retirement system contributions, holidays and other fringe benefits and working conditions as they now exist or maybe amended, that apply to other full-time employees.

Section 4. Performance Evaluation

The City Manager shall conduct an annual performance review of Gore prior to January 1st of each calendar year.

Section 5. Hours of Work

Gore shall devote her primary working time, energy, skill, and best efforts to the performance of her duties hereunder in a manner that will faithfully and diligently conform to the appropriate standard of care, and further the legitimate professional and business interests of the City. Gore shall be required to maintain regular office hours as may be required to maintain full time employment status with the City. In addition, Gore shall be on call at all times to perform arraignments and sign warrants, or otherwise discharge the duties required herein. Gore freely acknowledges that the hours during which she shall perform the job duties set forth herein may vary from time to time, both in terms of total hours per week or time of day.

Section 6. Notices

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or Gore as the case may be at the address set forth opposite the signature of the Party.

Section 7. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 8. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

Section 9. Governing Law

This Agreement is governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Collin County, Texas.

Section 10. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 11. Legal Construction

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

EXECUTED this ____ day of December 2022.

CYNTHIA PORTER GORE

CITY OF ALLEN, TEXAS

By: _____
Cynthia Porter Gore
Municipal Court Judge

By: _____
Eric Ellwanger
City Manager

Address: 301 Century Parkway
Allen, Texas 75013

305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
Shelley B. George, TRMC, CMC
City Secretary

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|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Reappoint Michelle Montemayor and Donald McDermitt as the Alternate Court Judges and appoint Terri Daniel as an additional Alternate Court Judge and Authorize the City Manager to Execute Employment Agreements Relating to their Appointments for a Period Ending December 31, 2024. |
| STAFF RESOURCE: | Cynthia Porter Gore, Municipal Court Judge Monika Kretschmer, Human Resources Director |
| PREVIOUS COUNCIL ACTION: | On December 8, 2020, the City Council approved two-year contracts with Judge Montemayor and Judge McDermitt. |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

BACKGROUND

Section 3.08 of the City Charter requires the City Council appointment of an Alternate Municipal Court Judge every two years. The Alternate Judge performs judicial services on schedules weekends for the City and presides over Teen Court. The Alternate Judge may also perform judicial duties in assisting Judge Gore with other court-related duties in her absence. Judge Gore is recommending that contracts be executed with Michelle Montemayor, Donald McDermitt and Terri Daniels for the Alternate Municipal Court Judge position and associated duties.

Ms. Montemayor is an Allen resident who currently serves as Assistant Regional Counsel of the General Counsel. She brings over twenty-seven years of relevant experience as an attorney and is Licensed and in good standing with the State Bar of Texas.

Mr. McDermitt is also licensed and in good standing with the State Bar of Texas since 1978. He has practiced in Collin County since 1983 specifically in the areas of Criminal Defense, Juvenile, and representation of respondents within the Texas Family Code and the Texas Department of Family and Protective Services (CPS).

Judge Gore is recommending that we appoint a third Alternate Judge to ensure consistent coverage and availability. The third Judge is Ms. Terri Daniel. She is a Board Certified Attorney in the area of Criminal Law. She has practiced Criminal and Juvenile Law in Collin County for over 27 years, first as a prosecutor and currently as a defense attorney. She is in good standing with the State Bar of Texas.

The addition of a third alternate will have no additional financial impact.

BUDGETARY IMPACT

The Municipal Court operating budget will cover the costs associated with the Alternate Municipal

Court Judge agreements.

STAFF RECOMMENDATION

Staff recommends the City Council reappoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and Appoint Terri Daniel as an additional Alternate Municipal Court Judge and authorize the City Manager to execute employment agreements relating to their appointments for a period ending December 31, 2024.

MOTION

I make a motion to reappoint Michelle Montemayor and Donald McDermitt as the Alternate Municipal Court Judges and Appoint Terri Daniel as an additional Alternate Municipal Court Judge and authorize the City Manager to execute employment agreements relating to their appointments for a period ending December 31, 2024.

ATTACHMENT(S)

[Agreement-Daniel](#)
[Agreement-Montemayor](#)
[Agreement-McDermitt](#)

THE STATE OF TEXAS
COUNTY OF COLLIN

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§

EMPLOYMENT AGREEMENT

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Terri Daniel ("Daniel") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage and provide for the compensation of Daniel, as an independent contractor and not as an employee, to serve as the Alternate Municipal Court Judge as provided by the City Charter and State Law; and

WHEREAS, Daniel desires to provide services to the City as an Alternate Municipal Court Judge on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Section 1. Scope of Services

City hereby engages Daniel, and Daniel hereby agrees to provide services as the Alternate Municipal Court Judge every other calendar weekend or as mutually agreed to by Daniel and the Municipal Court Judge during the term hereof in the capacity of a magistrate serving in the absence of the Municipal Court Judge, including, but not limited to, performing arraignments in the Allen City Jail, reviewing and signing arrest, blood, and search warrants, and magistrate Juveniles for the purpose of obtaining voluntary statements. The Alternate Municipal Judge shall also preside over the Municipal Court in the absence of the Municipal Court Judge, including, but not limited to, presiding over regularly scheduled docket hearings and trials. The Alternate Municipal Court Judge shall preside over Teen Court trials, which are scheduled on two evenings a month from September through May, and one evening per month during the summer.

The Alternate Municipal Court Judge shall provide assistance as needed to the Municipal Court Judge regarding the City's warrant round ups as scheduled.

Section 2. Term

Daniel shall provide services to the City as Alternate Municipal Court Judge beginning January 1, 2023, through and including December 31, 2024. A performance and contract review shall be conducted annually. This Agreement shall automatically terminate without notice in the event Daniel resigns or is removed from office as the Alternate Municipal Court Judge by the City Council. In the event of resignation or removal from office, Daniel shall be paid for services rendered as of the date of termination or resignation. Nothing contained herein shall be construed to limit or prohibit the City Council from removing Daniel as the Alternate Municipal Court Judge or to terminate this Agreement under the City Charter and applicable State Law.

Section 3. Compensation

City agrees to pay Daniel for services rendered herein for the term of January 1, 2023 through December 31, 2024, with a minimum 1-hour guarantee for all services actually rendered. The City shall provide payment for services within 15 days after receipt of an invoice submitted by Daniel to the City's Finance Department.

Section 4. Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or Daniel, as the case may be, at the address set forth below the signature of the Party.

Section 5. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 6. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the prior written consent of the City.

Section 7. Governing Law

This Agreement is governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in Collin County, Texas. Exclusive venue shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 8. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 9. Legal Construction

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 10. Independent Contractor

It is understood and agreed by and between the Parties that Daniel, in satisfying the conditions of this Agreement, is acting independently, and that the City does not assume any responsibility or liability to any third-party in connection with these actions. All services to be performed by Daniel pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Daniel shall supervise the performance of her services and shall be entitled to control the manner and means by which her services are to be performed, subject to the terms of this Agreement. City agrees during the term of this Agreement, at its costs, to obtain and maintain public

official liability insurance covering the acts and omissions by Daniel in the scope of her duties and responsibilities as Alternate Municipal Court Judge.

Section 11. Training

Daniel agrees to participate in all required professional training related to the position of Alternate Municipal Court Judge. The City shall pay for all local (within the DFW metro area) training that has been approved in advance by the City Manager or designee. Registration costs associated with required professional training outside of the DFW area shall be paid by the City, however, all travel, lodging, and meal expenses shall be the responsibility of Daniel.

Section 12. Effective Date

This Agreement shall become effective January 1, 2023.

EXECUTED this the ____ day of December 2022.

TERRI DANIEL

CITY OF ALLEN, TEXAS

By: _____
Terri Daniel

By: _____
Eric Ellwanger
City Manager

Address:



305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
Shelley B. George, TRMC, CMC
City Secretary

THE STATE OF TEXAS
COUNTY OF COLLIN

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EMPLOYMENT AGREEMENT

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Michelle Myers Montemayor ("Montemayor") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage and provide for the compensation of Montemayor, as an independent contractor and not as an employee, to serve as the Alternate Municipal Court Judge as provided by the City Charter and State Law; and

WHEREAS, Montemayor desires to provide services to the City as an Alternate Municipal Court Judge on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Section 1. Scope of Services

City hereby engages Montemayor, and Montemayor hereby agrees to provide services as the Alternate Municipal Court Judge every other calendar weekend or as mutually agreed to by Montemayor and the Municipal Court Judge during the term hereof in the capacity of a magistrate serving in the absence of the Municipal Court Judge, including, but not limited to, performing arraignments in the Allen City Jail, reviewing and signing arrest, blood, and search warrants, and magistrate Juveniles for the purpose of obtaining voluntary statements. The Alternate Municipal Judge shall also preside over the Municipal Court in the absence of the Municipal Court Judge, including, but not limited to, presiding over regularly scheduled docket hearings and trials. The Alternate Municipal Court Judge shall preside over Teen Court trials, which are scheduled on two evenings a month from September through May, and one evening per month during the summer.

The Alternate Municipal Court Judge shall provide assistance as needed to the Municipal Court Judge regarding the City's warrant round ups as scheduled.

Section 2. Term

Montemayor shall provide services to the City as Alternate Municipal Court Judge beginning January 1, 2023, through and including December 31, 2024. A performance and contract review shall be conducted annually. This Agreement shall automatically terminate without notice in the event Montemayor resigns or is removed from office as the Alternate Municipal Court Judge by the City Council. In the event of resignation or removal from office, Montemayor shall be paid for services rendered as of the date of termination or resignation. Nothing contained herein shall be construed to limit or prohibit the City Council from removing Montemayor as the Alternate Municipal Court Judge or to terminate this Agreement under the City Charter and applicable State Law.

Section 3. Compensation

City agrees to pay Montemayor for services rendered herein for the term of January 1, 2023 through December 31, 2024, with a minimum 1-hour guarantee for all services actually rendered. The City shall provide payment for services within 15 days after receipt of an invoice submitted by Montemayor to the City's Finance Department.

Section 4. Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or Montemayor, as the case may be, at the address set forth below the signature of the Party.

Section 5. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 6. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the prior written consent of the City.

Section 7. Governing Law

This Agreement is governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in Collin County, Texas. Exclusive venue shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 8. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 9. Legal Construction

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 10. Independent Contractor

It is understood and agreed by and between the Parties that Montemayor, in satisfying the conditions of this Agreement, is acting independently, and that the City does not assume any responsibility or liability to any third-party in connection with these actions. All services to be performed by Montemayor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Montemayor shall supervise the performance of her services and shall be entitled to control the manner and means by which her services are to be performed, subject to the terms of this Agreement. City agrees during the term of this Agreement, at its costs, to obtain and

maintain public official liability insurance covering the acts and omissions by Montemayor in the scope of her duties and responsibilities as Alternate Municipal Court Judge.

Section 11. Training

Montemayor agrees to participate in all required professional training related to the position of Alternate Municipal Court Judge. The City shall pay for all local (within the DFW metro area) training that has been approved in advance by the City Manager or designee. Registration costs associated with required professional training outside of the DFW area shall be paid by the City, however, all travel, lodging, and meal expenses shall be the responsibility of Montemayor.

Section 12. Effective Date

This Agreement shall become effective January 1, 2023.

EXECUTED this the ____ day of December 2022.

MICHELLE M. MYERS MONTEMAYOR

CITY OF ALLEN, TEXAS

By: _____
Michelle M. Myers Montemayor

By: _____
Eric Ellwanger
City Manager

Address:



305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
Shelley B. George, TRMC, CMC
City Secretary

THE STATE OF TEXAS
COUNTY OF COLLIN

§
§
§

EMPLOYMENT AGREEMENT

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Donald McDermitt ("McDermitt ") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage and provide for the compensation of McDermitt, as an independent contractor and not as an employee, to serve as the Alternate Municipal Court Judge as provided by the City Charter and State Law; and

WHEREAS, McDermitt desires to provide services to the City as an Alternate Municipal Court Judge on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Section 1. Scope of Services

City hereby engages McDermitt, and McDermitt hereby agrees to provide services as the Alternate Municipal Court Judge every other calendar weekend or as mutually agreed to by McDermitt and the Municipal Court Judge during the term hereof in the capacity of a magistrate serving in the absence of the Municipal Court Judge, including, but not limited to, performing arraignments in the Allen City Jail, reviewing and signing arrest, blood, and search warrants, and magistrate Juveniles for the purpose of obtaining voluntary statements. The Alternate Municipal Judge shall also preside over the Municipal Court in the absence of the Municipal Court Judge, including, but not limited to, presiding over regularly scheduled docket hearings and trials. The Alternate Municipal Court Judge shall preside over Teen Court trials, which are scheduled on two evenings a month from September through May, and one evening per month during the summer.

The Alternate Municipal Court Judge shall provide assistance as needed to the Municipal Court Judge regarding the City's warrant round ups as scheduled.

Section 2. Term

McDermitt shall provide services to the City as Alternate Municipal Court Judge beginning January 1, 2023, through and including December 31, 2024. A performance and contract review shall be conducted annually. This Agreement shall automatically terminate without notice in the event McDermitt resigns or is removed from office as the Alternate Municipal Court Judge by the City Council. In the event of resignation or removal from office, McDermitt shall be paid for services rendered as of the date of termination or resignation. Nothing contained herein shall be construed to limit or prohibit the City Council from removing McDermitt as the Alternate Municipal Court Judge or to terminate this Agreement under the City Charter and applicable State Law.

Section 3. Compensation

City agrees to pay McDermitt for services rendered herein for the term of January 1, 2023 through December 31, 2024, with a minimum 1-hour guarantee for all services actually rendered. The City shall provide payment for services within 15 days after receipt of an invoice submitted by McDermitt to the City's Finance Department.

Section 4. Notice

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or McDermitt, as the case may be, at the address set forth below the signature of the Party.

Section 5. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 6. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the prior written consent of the City.

Section 7. Governing Law

This Agreement is governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in Collin County, Texas. Exclusive venue shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 8. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 9. Legal Construction

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 10. Independent Contractor

It is understood and agreed by and between the Parties that McDermitt, in satisfying the conditions of this Agreement, is acting independently, and that the City does not assume any responsibility or liability to any third-party in connection with these actions. All services to be performed by McDermitt pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. McDermitt shall supervise the performance of his services and shall be entitled to control the manner and means by which his services are to be performed, subject to the terms of this Agreement. City agrees during the term of this Agreement, at its costs, to obtain and maintain public official

liability insurance covering the acts and omissions by McDermitt in the scope of his duties and responsibilities as Alternate Municipal Court Judge.

Section 11. Training

McDermitt agrees to participate in all required professional training related to the position of Alternate Municipal Court Judge. The City shall pay for all local (within the DFW metro area) training that has been approved in advance by the City Manager or designee. Registration costs associated with required professional training outside of the DFW area shall be paid by the City, however, all travel, lodging, and meal expenses shall be the responsibility of McDermitt.

Section 12. Effective Date

This Agreement shall become effective January 1, 2023.

EXECUTED this the ____ day of December 2022.

DONALD R. MCDERMITT

CITY OF ALLEN, TEXAS

By: _____
Donald R. McDermitt

By: _____
Eric Ellwanger
City Manager

Address: 

305 Century Parkway
Allen, Texas 75013

ATTEST:

By: _____
Shelley B. George, TRMC, CMC
City Secretary

| |
|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

AGENDA DATE: December 13, 2022

AGENDA CAPTION: Reappoint Kevin Hoffman, MD, as the Health Authority for the City of Allen in accordance with Section 121.033 of the Texas Health and Safety Code and authorize the City Manager to Execute an Agreement Relating to his appointment for a Period Ending December 31, 2024.

STAFF RESOURCE: Jonathon Boyd, Fire Chief

PREVIOUS COUNCIL ACTION: Council appointed Dr. Hoffman as the Health Authority on September 22, 2020.

STRATEGIC PLANNING GOAL: Safe and Livable Community for All.

BACKGROUND

In accordance with Texas Health and Safety Code, Title 2, Section 121.021, a health authority is a physician appointed for a two-year term to administer state and local laws relating to public healthy within the appointing body's jurisdiction.

A health authority must be a resident of Texas and a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state. Services provided shall include, but are not limited to, establishing, maintaining and enforcing quarantine orders; and advising and assisting with infectious disease control, suppression and prevention services, and general sanitation.

STAFF RECOMMENDATION

Staff recommends the appointment Kevin Hoffman, MD, as the Health Authority for the City of Allen in accordance with Section 121.033 of the Texas Health and Safety Code.

MOTION

I make a motion to appoint Kevin Hoffman, MD, as the Health Authority for the City of Allen in accordance with Section 121.033 of the Texas Health and Safety Code.

ATTACHMENT(S)

[Agreement](#)

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services ("Agreement") is made by and between the City of Allen, Texas, a Texas home-rule municipality ("City"), and KCH Med PA ("Professional") (each a "Party" and collectively the "Parties"), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, pursuant to section 121.033 of the Texas Health and Safety Code the City may appoint a physician as the Health Authority for the City; and

WHEREAS, City has appointed the Professional as its Health Authority and desires to engage the services of the Professional, hereinafter referred to as the "Project"; and

WHEREAS, the Professional meets the requirements of Section 121.022 of the Texas Health and Safety Code and is willing to render professional services for the City upon the terms and conditions provided in this Agreement; and

WHEREAS, Kevin Hoffman, M.D. shall be the sole provider of services under this Agreement;

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

**Article I.
Scope of Work**

1.1 Professional shall provide during the term of this Agreement services as set forth in the Texas Health and Safety Code, Chapter 121, "Local Public Health Reorganization Act", to the City as may be required and/or as requested by City. Such services shall include, but are not limited to, establishing, maintaining and enforcing quarantine orders; and advise and assist with infectious disease control, suppression and prevention services, and general sanitation. Kevin Hoffman, M.D. shall be the sole provider of services under this Agreement. The Professional shall perform the services with: (i) the professional skill and care ordinarily provided by competent physicians practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent physician.

1.2 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

1.3 Information/Confidentiality. City will furnish to Professional such information with respect to the Project as Professional may reasonably request in order to render Professional's

services effectively. Professional will hold in strict confidence all information with respect to the Project which is furnished to Professional by City in confidence, and which is not otherwise publicly available and/or not required, as a matter of law or proper business practice, to be disclosed to a third party in connection with the consulting services for the Project.

Article II. Term; Termination

2.1 The term of this Agreement shall be for the period beginning October 1, 2022 and ending on December 31, 2024.

2.2 Either Party may terminate this Agreement by giving ninety (90) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article III. Compensation

3.1 Compensation. Professional shall be compensated in the amount of One Thousand and No/100 Dollars (\$1,000.00) per month for the services provided herein. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly itemized statement for the services performed and reimbursable expenses, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

3.2 Professional shall keep accurate records of its services and expenses incurred in the performance of this Agreement and shall make the same available to City for inspection and copying upon five (5) days' notice thereof. These records shall be kept by Professional for three (3) years following the expiration of this Agreement.

3.3 Fiscal Funding. Professional recognizes that this Agreement shall commence upon the Effective Date and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any Agreement after the close of any given fiscal year of the City, which fiscal year ends on September 30th of each year, shall be subject to Allen City Council approval. In the event that the Allen City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the Parties shall have no further obligations hereunder.

3.4 Unless otherwise provided in the scope of services the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet, and email charges.

Article IV.
Ownership of Documents

All information and other data given to, prepared or assembled by Professional under this Agreement, and other related items, shall become the sole property of City and shall be delivered to City without restriction subject to any applicable laws, regarding the privacy of health-related information including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this Agreement the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not a work made for hire, then and in such event, Professional hereby assigns all right, title, and interest to said material to City. Any use by Professional of the information developed hereunder, whether for publication or for work with other clients, must receive prior written consent from City.

Article V.
Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and obtain written approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder and shall not otherwise be reimbursed by the City unless otherwise provided herein.

5.3 The Professional shall furnish the facilities, equipment, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article VI.
Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail or courier to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for the City, to:

Attn: Eric Ellwanger
City Manager
Allen City Hall
305 Century Parkway
Allen, Texas 75013

With a copy, to:

Attn: Peter G. Smith
City Attorney
Nichols, Jackson, Dillard
Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If intended for Professional, to:

KCH Med PA

Attn: Kevin Hoffman, M.D., President



6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage including the property of the City, its officers, contractors, agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the work and services provided by the Professional pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$1,000,000.00 aggregate. This policy shall be primary to any policy or policies carried by or available to the City; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) professional liability insurance with a policy limit of not less than \$1,000,000.00.
- (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation insurance and Professional Liability insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Professional shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.

- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Professional shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Professional shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein.

6.10 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, TO THE EXTENT CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS OFFICERS, EMPLOYEES, AND CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B), AS AMENDED. INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY. THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- (b) Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.

- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

(Signature page to follow)

SIGNED AND AGREED on this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager


APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2022.

PROFESSIONAL:

KCH MED PA

By:  _____
Kevin Hoffman, M.D., President

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| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
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| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to negotiate and execute amendments to the Agreements relating to the Purchase and Sale of a Portion of Lot 2, Block A, North System Exchange Parkway Addition and Lot 1R, Block A, First Christian Church Addition. |
| STAFF RESOURCE: | Daniel Bowman, Director of Economic Development Corporation |
| BOARD/COMMISSION ACTION: | AEDC Board authorized the Executive Director to negotiate and execute Amendments to the Agreements Relating to the Purchase and Sale of a Portion of Lot 2, Block A, North System Exchange Parkway Addition and Lot 1R, Block A, First Christian Church Addition on November 16, 2022, to extend the closing date and other deadlines and to adjust the proposed boundaries of the property to be purchased and sold. |
| PREVIOUS COUNCIL ACTION: | On April 26, 2022, Allen City Council authorized the City Manager to execute a Purchase and Sale Agreement with the North Texas Municipal Water District for the purchase of 1.0+ acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition [Exchange Parkway at Junction Drive], and authorized the City Manager to execute a Purchase and Sale Agreement with the Allen Economic Development Corporation for the sale of 1.0+ acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition. |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

The Allen Economic Development Corporation (AEDC) has been working with local dermatologist, Dr. Tanya Rodgers, who previously purchased a 1± acre site in Downtown Allen at 305 W. Main with the intent of constructing a medical office building. That site is located at the corner of Allen Drive and Main Street, directly north of the block containing the City-owned historic fire station property, and is in an area considered significant to future City of Allen redevelopment efforts in Downtown Allen.

The AEDC entered discussions with Dr. Rodgers to identify a 1± acre tract in another area of the City that would be more appropriate for the proposed medical office building. The intent is to swap the

alternate site for the site owned by Dr. Rodgers in Downtown.

The North Texas Municipal Water District (NTMWD) owns a 2± acre platted lot adjacent to its ground storage facility located on Exchange Parkway at Junction Drive which is presently undeveloped and constitutes surplus property. The NTMWD Board of Directors has expressed an interest in selling the property to a third party for development. The AEDC staff approached NTMWD staff about its interest in replatting and selling a portion of the NTMWD property. However, NTMWD staff was advised by its attorney that the sale of the NTMWD property would need to be to a governmental entity such as the City of Allen.

Working with the City Attorney, AEDC and City staffs, along with NTMWD staff, proposed a series of purchase sale agreements which, in the end, results in the east 1± acres of the NTWMD property being owned by Dr. Rodgers, the AEDC owning 305 W. Main presently owned by Dr. Rodgers, and the City spending no funds in the process. The steps are as follows:

Step 1: NTWMD sells the eastern 1.0 acre of the NTWMD property to the City for an appraised price of \$14.35 per square foot (approximately \$625,000). The purchase price and City closing costs will be funded through the purchase funds received from the sale of the property by AEDC in Step 2.

Step 2: The City sells the NTMWD property to AEDC for the same purchase price as paid in Step 1 to NTMWD. In this sale, AEDC pays all closing costs incurred by the City in Step 1 and the City and AEDC in Step 2.

Step 3. AEDC conveys the NTMWD parcel purchased in Step 2 from the City to Dr. Rodgers in exchange for Dr. Rodgers conveying 305 W. Main to AEDC.

All three transactions will close on the same day in virtually simultaneously closings. The City Council authorized the agreements in Step 1 and Step 2 on April 26, 2022, and the agreements have been signed.

UPDATE:

NTMWD determined late in the process of replatting the property into two lots that it requires an additional expansion of a significant easement on the east side of the property to accommodate the possible future repair of a major water transmission line that is located within the easement. This easement change required the Doctor to move the location of her proposed building.

The Doctor has worked with her consultants and determined the only way to maintain her site plan

(with the required parking and building footprint) is to shift the building, and thus the proposed western property line, to the west. This increases the Doctors required acreage to 1.25-acres and reduces the NTMWD remainder tract to 0.77-acres. AEDC staff is in the process of reviewing this potential change with NTMWD and asking for its approval. The NTMWD Board will not meet to discuss and consider the changes to the proposed property boundaries until January 2023. This delays the ability to approve the replat of the lot and approval of the pending zoning application, which, in turn, requires a delay in the closing on the land transactions to February 2023 at the earliest.

Given these changes to the transaction, Allen City Council and NTMWD Board of Directors will need to consider amendments of the purchase and sale agreements. The Allen EDC Board authorized negotiation and execution of the necessary amendments on November 16, 2022.

In summary, the two primary changes needed are:

- Extension of the deadline for closing to a date in February or March of 2023,
- Increase the size of the parcel from 1 acre to 1.25 acres

BUDGETARY IMPACT

None. There is no budgetary impact to the City since this purchase is being made as a pass-through from the City to AEDC. The AEDC will fund the full cost of acquiring the tract.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to negotiate and execute amendments to the Agreements Relating to the Purchase and Sale of a Portion of Lot 2, Block A, North System Exchange Parkway Addition and Lot 1R, Block A, First Christian Church Addition, allowing for a closing date extension, change in the proposed land area to be purchased and sold, and other amendments as may be necessary relating to the purchase.

MOTION

I make a motion to authorize the City Manager to Negotiate and execute amendments to the Agreements Relating to the Purchase and Sale of a Portion of Lot 2, Block A, North System Exchange Parkway Addition and Lot 1R, Block A, First Christian Church Addition, allowing for a closing date extension, change in the proposed land area to be purchased and sold, and other amendments as may be necessary relating to the purchase.

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to execute amendments to the Economic Development Incentive and Easement Agreement and the Project Development Agreement with The Farm Development Co. to extend the required completion date for the Phase 1 Project to December 31, 2024. |
| STAFF RESOURCE: | Daniel Bowman, Director |
| BOARD/COMMISSION ACTION: | AEDC Board authorized an amendment of the Project Development Agreement with The Farm Development Co. on November 16, 2022. |
| PREVIOUS COUNCIL ACTION: | The Agreements were previously approved by the Council in February 2021, with an amendment the Project Development Agreement approved on September 28, 2021. |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

The Farm in Allen is a 135-acre mixed use project being built by JaRyCo Development at the SW corner of SH 121 and Alma. One of the components of the project, The HUB entertainment space, has officially opened to the public and there is a great deal of excitement locally. Both the High Five entertainment project and Chicken N Pickle were recently announced, creating strong headwinds for The Farm and setting the stage for successful leasing of the future office projects. Developer JaRyCo is also negotiating contracts with several restaurants to locate near West Lake Park.

Developer JaRyCo was required to complete various components of the project on specified timelines. The following items have been completed or will be completed prior to the deadlines:

- Phase 1 Infrastructure (including all streets, utilities and detention)
- West Lake Park and required trail improvements
- 450+ car shared parking garage
- Required retail/restaurant space

The component that remains uncompleted is the required 100,000-square foot office building. The lender for FarmWORK One raised the interest rate considerably for the debt on the project, which required the developer to seek additional equity investment. With the Fed taking a very aggressive interest rate strategy, construction cost increases, and new supply chain and lead time issues, the office

project has experienced delays. These trends have caused weekly changes to the office project proforma and lengthened the amount of time required to finalize the project.

Given these various delays, and lead times on key components of the project in excess of 13 months, it is now impossible for the office project to be complete by the current deadline of February 29, 2024 that is included in the incentive agreements. The developer is still committed to completing the initial office building and is requesting that the Allen City Council amend the agreements to give them until December 31, 2024 to do so.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute amendments to the Economic Development Incentive and Easement Agreement and the Project Development Agreement with The Farm Development Co. to extend the required completion date for the Phase 1 Project to December 31, 2024.

MOTION

I make a motion to authorize the City Manager to execute amendments to agreements relating to The Farm in Allen.

ATTACHMENT(S)

[Second Amendment to Project Development Agreement](#)

[First Amendment to Farm Economic Development and Easement Agreement](#)

AFTER RECORDING, RETURN TO:

City of Allen
Attn: City Secretary
305 Century Plaza
Allen, Texas 75013

(Space Above for Recorder's Use Only)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

| | | |
|------------------|---|---|
| STATE OF TEXAS | § | SECOND AMENDMENT TO PROJECT DEVELOPMENT |
| | § | AGREEMENT |
| COUNTY OF COLLIN | § | |

This **Second Amendment to Project Development Agreement** (“**Second Amendment**”) is by and among the **City of Allen, Texas** (“**City**”), **Allen Economic Development Corporation** (“**AEDC**”), and **The Farm Development Co.**, a Texas corporation (“**Company**”) (collectively “**the Parties**” and individually as a “**Party**”), acting by and through their duly authorized representatives.

RECITALS

WHEREAS, the Parties entered into that certain ***Project Development Agreement*** (the “**Agreement**”) dated and effective February 10, 2021, relating to the development of approximately 135 acres of land owned by Company located at the southeast corner of Alma Road and State Highway 121 in Allen, Texas, said land being more completely described in Exhibit “A” to the Agreement (the “**Land**”); and

WHEREAS, a true and correct copy of the Agreement was recorded on March 3, 2021, as Instrument No. 20210303000422320, in the Official Public Records of Collin County, Texas; and

WHEREAS, the Parties entered into that certain First Amendment to Project Development Agreement (the “**First Amendment**”) dated and effective September 30, 2022; and

WHEREAS, a true and correct copy of the First Amendment was recorded on October 14, 2022, as Instrument No. 20211014002103270, in the Official Public Records of Collin County, Texas; and

WHEREAS, the Parties desire to amend the date for Completion of Construction for the Phase 1 of the Project set forth in Section 3.11 of the Agreement as amended by the First Amendment;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**: Unless the context clearly indicates a different definition, defined words and phrases as used in this Second Amendment shall have the same meaning set forth in the Agreement as amended by the First Amendment.

2. **Amendments**: Section 3.11 and Section 4.4 (g) of the Agreement are amended to read as follows:

“3.11 Construction of Phase 1 of the Project. Company shall, subject to events of Force Majeure, cause Completion of Construction of Phase 1 of the Project to occur on or before December 31, 2024.”

“4.4 Conditions to Grant.

....

(g) Construction of Phase 1 of the Project. Company shall, subject to events of Force Majeure, cause Completion of Construction of Phase 1 of the Project to occur on or before December 31, 2024.”

2. **Recording**. The Parties agree this Second Amendment shall be recorded following the Effective Date.

3. **Counterparts**. This Second Amendment may be executed by the Parties in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties.

4. **Agreement Remains Effective**. The Parties acknowledge and agree that the Agreement, as amended by First Amendment and this Second Amendment, remains in full force and effective.

5. **Effective Date**. This Second Amendment shall be effective when signed by authorized representatives of all of the Parties (the “**Effective Date**”).

(Signatures on Following Page)

City's Signature Page

SIGNED AND AGREED this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

Shelley B. George, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged be me, the undersigned authority, this ____ day of _____, 2022,
by Eric Ellwanger, City Manager of the City of Allen, a Texas home rule municipality, for and on
behalf of said municipality.

Notary Public, State of Texas

AEDC Signature Page

SIGNED AND AGREED this _____ day of _____, 2022.

ALLEN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Daniel Bowman, Executive Director/CEO

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged be me, the undersigned authority, this ____ day of _____, 2022,
by Daniel Bowman, Executive Director/CEO of the Allen Economic Development Corporation, a
Texas non-profit corporation, for and on behalf of said corporation.

Notary Public, State of Texas

Company's Signature Page

SIGNED AND AGREED this _____ day of _____, 2022.

THE FARM DEVELOPMENT CO.

By: _____
Robert J. Johnson, Jr., Director

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged be me, the undersigned authority, this ____ day of _____, 2022,
by Robert J. Johnson, Jr., Director of The Farm Development Co., a Texas corporation, for and on
behalf of said corporation.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Allen
Attn: City Secretary
305 Century Plaza
Allen, Texas 75013

(Space Above for Recorder's Use Only)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

STATE OF TEXAS §
 § FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AND
COUNTY OF COLLIN § EASEMENT AGREEMENT

This **First Amendment to Economic Development and Easement Agreement** (“**First Amendment**”) is by and between the **City of Allen, Texas** (“**City**”), and **The Farm Development Co.**, a Texas corporation (“**Company**”) (collectively “**the Parties**” and individually as a “**Party**”), acting by and through their duly authorized representatives.

RECITALS

WHEREAS, the Parties entered into that certain ***Economic Development and Easement Agreement*** (the “**Agreement**”) dated and effective February 10, 2021, relating to the development of approximately 135 acres of land owned by Company located at the southeast corner of Alma Road and State Highway 121 in Allen, Texas, said land being more completely described in Exhibit “A” to the Agreement (the “**Land**”); and

WHEREAS, a true and correct copy of the Agreement was recorded on March 3, 2021, as Instrument No. 20210303000422310, in the Official Public Records of Collin County, Texas; and

WHEREAS, Article VII of the Agreement sets forth certain agreements regarding the building materials to be incorporated into the design and construction of buildings to be constructed on the Land; and

WHEREAS, since the Effective Date of the Agreement, Company has proceeded with the design of the Project and determined that certain amendments to Section 7.2 of the Agreement are necessary to be more in line with the design of the Project and beneficial to the development of the Project; and

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions:** Unless the context clearly indicates a different definition, defined words and phrases as used in this First Amendment shall have the same meaning set forth in the Agreement.
2. **Amendments:** Section 5.4 of the Agreement is amended to read as follows:

“5.4 Construction of Phase I of the Project. Company shall subject to events of Force Majeure, cause Completion of Construction of Phase I of the Project to occur on or before December 31, 2024.”
2. **Recording.** The Parties agree this First Amendment shall be recorded following the Effective Date.
3. **Counterparts.** This First Amendment may be executed by the Parties in separate counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties.
4. **Agreement Remains Effective.** The Parties acknowledge and agree that the Agreement, as amended by this First Amendment, remains in full force and effective.
5. **Effective Date.** This First Amendment shall be effective when signed by authorized representatives of all of the Parties (the “**Effective Date**”).

(Signatures on Following Page)

City's Signature Page

SIGNED AND AGREED this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

Shelley B. George, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged be me, the undersigned authority, this ____ day of _____, 2022,
by Eric Ellwanger, City Manager of the City of Allen, a Texas home rule municipality, for and on
behalf of said municipality.

Notary Public, State of Texas

Company's Signature Page

SIGNED AND AGREED this _____ day of _____, 2022.

THE FARM DEVELOPMENT CO.

By: _____
Robert J. Johnson, Jr., Director

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged be me, the undersigned authority, this ____ day of _____, 2022,
by Robert J. Johnson, Jr., Director of The Farm Development Co., a Texas corporation, for and on
behalf of said corporation.

Notary Public, State of Texas

| |
|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to execute a contract addition with Unite Private Network/Fiber Platform for Leased Fiber Services for Ten (10) Years to add fiber for Stephen G. Terrell Recreation Center (STRC) and Fire Station 6 in the average annual amount of \$24,000 for those new locations for a total average annual contract value for all nine leased lines of approximately \$113,400. |
| STAFF RESOURCE: | Eric Matthews, IT Director |
| PREVIOUS COUNCIL ACTION: | On February 27, 2018, City Council authorized the City Manager to execute a contract with Unite Private Network for leased fiber services for ten (10) years with two optional five year renewals through an interlocal agreement with the Azle Independent School District. |
| STRATEGIC PLANNING GOAL: | Safe and Livable Community for All. |

BACKGROUND

In 2018, after a review of data connectivity options for our city facilities, Unite Private Network's dark fiber network was chosen to serve as the primary data backbone for several facilities. This change vastly improved both speed and capacity of the city's data network at a reasonable cost. The agreement with UPN allowed for future facilities to be added at the same monthly cost and no up-front construction costs.

The two additional facilities being added with the addition of the two attached service orders provide data connectivity for both Fire Station 6 and the Stephen G. Terrell Recreation Center, connecting both sites directly back to the City Hall data center. Because this is dark fiber service, City IT has full control of the speed of the network based on the capabilities of the switches connected at either end. In this case, it is planned to run a 10Gb network to each location, providing very high speed and capacity and allowing for significant future data growth as needed at those locations.

Without dark fiber services, the facilities would either be served by slower speed microwave connections or other carrier connectivity at an increased cost and added complexity. Using dark fiber and adding to our contract with UPN is a good value both from the capabilities of the network as well as the services they provide to fully maintain and service the connections.

The locations authorized previously and currently active on the UPN dark fiber network are:

- Allen Event Center
- Fire Station #4
- Fire Station #5
- Allen Senior Center
- The Courses at Watters Creek

- Prestige water tower
- CVB

BUDGETARY IMPACT

Funding is provided in the IT city-wide maintenance account for phone and data communications in the general fund. Because annual billing for this contract is estimated to exceed \$100,000 with the addition of these two new facilities, the additions are being brought to the Allen City Council for its approval.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a contract addition with Unite Private Network/Fiber Platform for Leased Fiber Services for Ten (10) Years to add fiber for STRC and Fire Station 6 in the average annual amount of \$24,000 for those new locations for a total average annual contract value for all nine leased lines of approximately \$113,400.

MOTION

I make a motion to authorize the City Manager to execute a contract addition with Unite Private Network/Fiber Platform for Leased Fiber Services for Ten (10) Years to add fiber for STRC and Fire Station 6 in the average annual amount of \$24,000 for those new locations for a total average annual contract value for all nine leased lines of approximately \$113,400.

ATTACHMENT(S)

Service Order
UPN Dark Fiber - STRC



Dark Fiber Service Order

Contact Information

| | | | |
|-------------------------------------|--|--------------------------------|---|
| Unite Private Networks, LLC ("UPN") | | City of Allen ("Customer") | |
| COMPANY CONTACT: | Linda Crocetti | COMPANY CONTACT: Eric Matthews | |
| EMAIL: | linda.crocetti@upnfiber.com | EMAIL: | italerts@cityofallen.org |
| PAYMENT ADDRESS: | Unite Private Networks, LLC 1511 Baltimore Ave., 2 nd Floor Kansas City, MO 64108 | BILLING ADDRESS: | City of Allen 305 Century Parkway Allen, TX 75013 |

Billing Information and Service Commitment Period

| | |
|-----------------------------|-----------------|
| Order Type: | New |
| UPN Service Order ID: | |
| Service Type(s): | Dark Fiber (DF) |
| Initial Service Order Term: | 120 months |

Circuit 1

| | |
|---|--|
| <u>Location A</u> Address: 305 Century Pkwy Allen, TX 75013 Point of Demarcation: UPN Demarc | <u>Location Z</u> Address: Allen, TX 75013 Point of Demarcation: MPOE |
|---|--|

Service and Pricing Schedule

| Type | Service | Term | Monthly Recurring Charge | Non-Recurring Charge |
|---------|-------------------------------|------------|--------------------------|----------------------|
| New | Circuit 1: two (2) strands DF | 120 months | \$ 950.00 | \$ 0.00 |
| Total = | | | \$ 950.00 | \$ 0.00 |

Acknowledgments: Customer shall be responsible for all cross connects. Customer acknowledges and agrees that the Dark Fiber provided to Customer in this Service Order ("Customer Fibers") will not be accessible to Customer other than at the Location A and Z Points of Demarcation listed above.

Service Order Term: The term of this Service Order shall commence upon installation of all Customer Fibers described herein and shall continue in effect for the term delineated above ("Initial Service Order Term"). Thereafter, this Service Order shall be automatically renewed for successive one (1) year periods (each such period, an "Additional Service Order Term" and, together with the Initial Service Order Term, the "Service Order Term") unless terminated by either party upon ninety (90) days' written notice to the other party prior to the end of the Initial Service Order Term or Additional Service Order Term, as applicable.

Points of Demarcation: Customer will meet UPN at the Minimum Point of Entry ("MPOE") unless otherwise noted above. The MPOE is the closest practical point to where the cable enters the building. In the event Customer desires the installation to occur somewhere other than the MPOE, Customer understands that there will be additional costs.

Customer approves and accepts this Service Order which includes and incorporates by reference Service Order for Dark Services () executed by and between Customer and UPN on February 28, 2018 ("Service Order "). Customer and UPN agree to be bound by the Additional Terms and Conditions Applying to Services within Service Order .

Unite Private Networks, LLC:

City of Allen:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Dark Fiber Service Order

Contact Information

| | | | |
|-------------------------------------|--|--------------------------------|---|
| Unite Private Networks, LLC ("UPN") | | City of Allen ("Customer") | |
| COMPANY CONTACT: | Linda Crocetti | COMPANY CONTACT: Eric Matthews | |
| EMAIL: | linda.crocetti@upnfiber.com | EMAIL: | italerts@cityofallen.org |
| PAYMENT ADDRESS: | Unite Private Networks, LLC 1511 Baltimore Ave., 2 nd Floor Kansas City, MO 64108 | BILLING ADDRESS: | City of Allen 305 Century Parkway Allen, TX 75013 |

Billing Information and Service Commitment Period

| | |
|-----------------------------|-----------------|
| Order Type: | New |
| UPN Service Order ID: | |
| Service Type(s): | Dark Fiber (DF) |
| Initial Service Order Term: | 120 months |

Circuit 1

| | |
|---|---|
| <u>Location A</u> Address: 305 Century Pkwy Allen, TX 75013 Point of Demarcation: UPN Demarc | <u>Location Z</u> Address: 1680 W Exchange Pkwy Allen, TX 75013 Point of Demarcation: MPOE |
|---|---|

Service and Pricing Schedule

| Type | Service | Term | Monthly Recurring Charge | Non-Recurring Charge |
|---------|-------------------------------|------------|--------------------------|----------------------|
| New | Circuit 1: two (2) strands DF | 120 months | \$ 950.00 | \$ 0.00 |
| Total = | | | \$ 950.00 | \$ 0.00 |

Acknowledgments: Customer shall be responsible for all cross connects. Customer acknowledges and agrees that the Dark Fiber provided to Customer in this Service Order ("Customer Fibers") will not be accessible to Customer other than at the Location A and Z Points of Demarcation listed above.

Service Order Term: The term of this Service Order shall commence upon installation of all Customer Fibers described herein and shall continue in effect for the term delineated above ("Initial Service Order Term"). Thereafter, this Service Order shall be automatically renewed for successive one (1) year periods (each such period, an "Additional Service Order Term" and, together with the Initial Service Order Term, the "Service Order Term") unless terminated by either party upon ninety (90) days' written notice to the other party prior to the end of the Initial Service Order Term or Additional Service Order Term, as applicable.

Points of Demarcation: Customer will meet UPN at the Minimum Point of Entry ("MPOE") unless otherwise noted above. The MPOE is the closest practical point to where the cable enters the building. In the event Customer desires the installation to occur somewhere other than the MPOE, Customer understands that there will be additional costs.

Customer approves and accepts this Service Order which includes and incorporates by reference Service Order for Dark Services () executed by and between Customer and UPN on February 28, 2018 ("Service Order "). Customer and UPN agree to be bound by the Additional Terms and Conditions Applying to Services within Service Order .

Unite Private Networks, LLC:

City of Allen:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Award bid and authorize the City Manager to execute a contract with S&J Officials, LLC, for officiating services for adult recreation leagues in the amount of \$165,721, for a one-year term with two additional one-year renewal options. |
| STAFF RESOURCE: | Kate Meacham, Parks and Recreation Director Kyle Benedict, Parks and Recreation Assistant Director |
| STRATEGIC PLANNING GOAL: | Financially Sound and Transparent City Government. |

BACKGROUND

The Athletic Programs Division submitted a request for proposal for officiating services for adult sports leagues including basketball, flag football, kickball, soccer, softball, and volleyball. Staff believes it is in the best interest of the City to award to the overall lowest-priced, most responsive bidder(s) based on the vendor which can provide officiating services which meet the specifications for each specific sport. Another bid was received by North Texas Softball Officials; however, their bid was for kickball and softball only.

BUDGETARY IMPACT

Funding will be provided through the Parks and Recreation Athletic Programs' divisional budget. The Athletic Programs Division generates league revenue via team entry fees which offset expenses associated with league officials.

STAFF RECOMMENDATION

Staff recommends that the City Council award bid and authorize the City Manager to execute a contract with S&J Officials, LLC, for officiating services for adult recreation leagues in the amount of \$165,721, for a one-year term with two additional one-year renewal options.

MOTION

I make a motion to award bid and authorize the City Manager to execute a contract with S&J Officials, LLC, for officiating services for adult recreation leagues in the amount of \$165,721, for a one-year term with two additional one-year renewal options.

ATTACHMENT(S)

[Bid Tab Agreement](#)



EXHIBIT A-PRICE SHEET
2022-6-108 ADULT SPORTS OFFICIATING SERVICES
North Texas Softball Officials (NTSO) - CURRENT LEAGUE FEES

| Sport | Gender & Divisions (Age Requirements) | Game Length | Number of Seasons Offered | Nightly League Offerings | Number of Fields/Cyms per Night | Number of Officials per Game | Cost of Officials per Game | Number of Scorekeepers per Game | Cost of Scorekeepers per Game | League Assignor Fees | Total Costs per Game | Total Number of Games Annually | Total Annual Costs |
|-----------------------|--|---------------|------------------------------|--------------------------|---------------------------------------|------------------------------------|----------------------------------|---------------------------------------|-------------------------------------|-------------------------|-------------------------|--------------------------------------|-----------------------|
| Bid #1: Basketball | Men's (18+) | 45-55 minutes | 3 | Tuesday | 4 Gyms | 2 | NB | 1 | NB | NB | NB | 333 | NB |
| Bid #2: Flag Football | Men's 5-on-5 (18+) | 35 minutes | 3 | Monday | 2 Fields | 2 | NB | N/A | N/A | NB | NB | 78 | NB |
| | Men's 8-on-8 (18+) | 45-55 minutes | 3 | Tuesday | 2 Fields | 3 | NB | N/A | N/A | NB | NB | 156 | NB |
| | | | | | | | | | | | | 234 | |
| Bid #3: Kickball | Co-Rec (15+) | 50 minutes | 3 | Friday | 3 Fields | 1 | \$37 | N/A | N/A | \$6.50 | \$43.50 | 138 | \$6,003 |
| Bid #4: Softball | Men's & Co-Rec (18+) | 50 minutes | 3 | Monday through Friday | 3-4 Fields | 2 | \$25 | N/A | N/A | \$6.50 | \$56.50 | 1206 | \$68,139 |
| Bid #5: Soccer | Men's & Co-Rec (15+) | 60-70 minutes | 2 | Monday & Thursday | 1-2 Fields | 1 | NB | 2 | NB | NB | NB | 104 | NB |
| Bid #6: Volleyball | Co-Rec & Women's (15+) | 55 minutes | 3 | Monday & Thursday | 4-5 Gyms | 1 | NB | N/A | N/A | NB | NB | 540 | NB |
| Grand Total | | | | | | | | | | | | | \$74,142 |

S&J Officials LLC - CURRENT LEAGUE FEES

| Sport | Gender & Divisions (Age Requirements) | Game Length | Number of Seasons Offered | Nightly League Offerings | Number of Fields/Cyms per Night | Number of Officials per Game | Cost of Officials per Game | Number of Scorekeepers per Game | Cost of Scorekeepers per Game | League Assignor Fees | Total Costs per Game | Total Number of Games Annually | Total Annual Costs |
|-----------------------|--|---------------|------------------------------|--------------------------|---------------------------------------|------------------------------------|----------------------------------|---------------------------------------|-------------------------------------|-------------------------|-------------------------|--------------------------------------|-----------------------|
| Bid #1: Basketball | Men's (18+) | 45-55 minutes | 3 | Tuesday | 4 Gyms | 2 | \$35 | 1 | \$15 | \$10 | \$95 | 333 | \$31,635 |
| Bid #2: Flag Football | Men's 5-on-5 (18+) | 35 minutes | 3 | Monday | 2 Fields | 2 | \$20 | N/A | N/A | \$5 | \$45 | 78 | \$3,510 |
| | Men's 8-on-8 (18+) | 45-55 minutes | 3 | Tuesday | 2 Fields | 3 | \$32 | N/A | N/A | \$10 | \$106 | 156 | \$16,536 |
| | | | | | | | | | | | | 234 | \$20,046 |
| Bid #3: Kickball | Co-Rec (15+) | 50 minutes | 3 | Friday | 3 Fields | 1 | \$30 | N/A | N/A | \$10.00 | \$40.00 | 138 | \$5,520 |
| Bid #4: Softball | Men's & Co-Rec (18+) | 50 minutes | 3 | Monday through Friday | 3-4 Fields | 2 | \$25 | N/A | N/A | \$10.00 | \$60.00 | 1206 | \$72,360 |
| Bid #5: Soccer | Men's & Co-Rec (15+) | 60-70 minutes | 2 | Monday & Thursday | 1-2 Fields | 1 | \$60 | 2 | \$35 | \$10 | \$140 | 104 | \$14,560 |
| Bid #6: Volleyball | Co-Rec & Women's (15+) | 55 minutes | 3 | Monday & Thursday | 4-5 Gyms | 1 | \$30 | N/A | N/A | \$10 | \$40 | 540 | \$21,600 |
| Grand Total | | | | | | | | | | | | | \$165,721 |

NOTE: Soccer does not have scorekeepers, but the scorekeepers' column will be utilized for the side officials.

NOTE: If your association is requesting to utilize more or less officials per game, then please specify. We currently utilize 3 officials for Men's 8-on-8 Flag Football and Men's & Co-Rec Soccer, 2 officials for Men's Basketball, Men's 5-on-5 Flag Football, and Men's & Co-Rec Softball, and 1 official for Co-Rec Kickball & Co-Rec Volleyball.

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and **S&J Officials, LLC**, a **Texas Limited Liability Company (LLC)** (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide the labor, goods, materials, equipment and services (collectively the “Services”) described in the Contract Documents (hereinafter defined) for **Adult Sports Officiating Services** (the “Project”); and

WHEREAS, the Contractor desires to provide the labor, goods, materials, equipment, installation and services described in the Contract Documents in accordance with the terms and conditions set forth in this Agreement (hereinafter defined as the “Work”); and

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term; Termination

1.1 **Term.** The term of this Agreement shall commence on the last date of execution hereof January 01, 2023 (the “Effective Date”) and continue until the completion of the Services by the Contractor unless sooner terminated as provided herein.

1.2 **Termination.** This Agreement may be terminated upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; or
- (c) upon written notice by City, if the Contractor suffers an event of Bankruptcy or Insolvency (for purpose of this section “Bankruptcy or Insolvency” shall mean the dissolution or termination of Contractor’s existence as a going business, insolvency, appointment of receiver for any part of Contractor’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and such proceeding is not dismissed within ninety (90) days after the filing thereof);

Article II

Scope of Work; Contract Documents

2.1 The Contract Documents shall include the documents identified below and are incorporated herein for all purposes. The Contract Documents are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence:

- A. This Agreement;
- B. The Contractor's Proposal attached hereto.

2.2 Contractor shall perform the Work (hereinafter defined) as set forth in the Contract Documents.

Article III

Project Scope of Work

3.1 General. Contractor shall perform the "Work" required, implied or reasonably inferable from the Contract Documents for the Services. The term "Work" shall mean whatever is done by the Contractor or required of the Contractor to perform and complete its duties under this Agreement including but not limited to the furnishing of any requested insurance, and the provision and furnishing of labor, supervision, goods, services, materials, tools, fuel, equipment and permits required by this Agreement necessary unless otherwise specified in the Contract Documents.

3.2 Notice to Proceed. Contractor shall not commence the Work necessary until receipt of a written notice to proceed from the City unless otherwise provided in the Contract Documents. Contractor shall commence the Work required under the Contract Documents within ten (10) calendar days after receipt of the City written notice to proceed. Any Work performed or expenses incurred by Contractor prior to Contractor receipt of the written notice to proceed shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.3 Change Orders.

(a) City, may from time to time, authorize change orders after the performance of the Work under the Contract has commenced necessary to decrease, increase the quantity of Work to be performed or materials, equipment or supplies to be furnished by the Contractor.

(b) The execution of a change order by the Contractor shall constitute the Contractor's agreement to the ordered changes to the Work under the Contract Documents. Contractor by executing the change order waives and releases any claim against the City for additional time or compensation relating to the Work included in the change order.

(c) Any Work performed, or expenses incurred by Contractor prior to execution of the approved change order shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.4 Cleaning the Project Site. Contractor shall cause the Project site to be kept reasonably clean during performance of the Project Work. Upon completion of the Project Work, Contractor shall cause the Project site to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials together with all of Contractor's property therefrom. Contractor shall cause the disposal of all refuse at a TCEQ approved landfill. Contractor shall cause the restoration of all property damaged during the prosecution of the Project Work and shall leave the Project site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the Project Price.

3.5 Suspension or Stoppage of Work.

(a) City shall have the right to immediately suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable considerations considered unfavorable for the proper prosecution of the Work or for failure of the Contractor to carry out the instructions from the City or if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action. During any period in which the Contractor shall not be compensated for periods of delay caused by suspension of Work by City. If Work is suspended due to no fault of Contractor, an extension of time shall be granted by City by change order upon written application, which extension shall not be unreasonably denied.

(b) If Contractor persistently fails or refuses to perform the Work in accordance with this Agreement, or if City has sufficient reason to believe that Contractor is not and will not complete the Work by the scheduled date for completion or if the best interests of the public health, safety or welfare so require, City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

3.6 Contractor Representations. Contractor represents and covenants that its forces can perform the Work for the Project and agrees to work simultaneously with any representatives assigned by or contracted by the City, as a part of the Project to ensure continuity of Project Work.

3.7 Contractor Representative. Contractor agrees to provide a representative on the Project site at all times Work is being performed, for communication with the City, receiving materials and equipment, directing Contractors Work, and to provide daily Project clean-up.

3.8 Compliance with applicable law. Contractor shall and shall cause its employees and sub-contractors to comply with all personnel safety programs applicable for the Project Work and to keep the Project area clean and free from debris on a daily-basis, and to keep noise and obnoxious odors to a minimum. Personnel safety programs include but are not limited to protective eyewear; protective clothing; appropriate footwear; ear protection; hard hat, and reflective vest. The Contractor shall comply with all applicable federal, State, and local laws regarding occupational safety and

health, as well as providing protection of the environment. This shall include but is not limited to compliance with the U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and the U.S. Environmental Protection Agency (EPA) guidelines and regulations.

3.9 Project Work Disturbance. In the event Project work by the Contractor and/or its subcontractors disrupts any City service, causes damage to City property, or causes harm to any person, Contractor agrees, at its sole cost and expense, to immediately contact the City Project Manager, while providing appropriate emergency response, including but not limited to, calling police, fire and/or the appropriate utility company regarding service.

3.10 Criminal Backgrounds. From time to time, at its sole discretion, the City may require criminal background checks on Contractor and its employees (and its sub-contractors and its employees) who will be performing after-hours Work, and/or require access to Public Safety or City facilities, technology rooms, or secure areas. Criminal background checks are conducted in accordance with Department of Public safety regulations at no charge to the Contractor. All information obtained as part of the criminal background process is kept strictly confidential. Contractor agrees to submit and cause its employees (and to cause its sub-contractor and its employees) to the criminal background process, if required by the City. All decisions regarding Contractor and its employees (and its sub-contractor and its employees) access to City facilities are final.

3.11 Contractor Conduct. Contractor (and its sub-contractors) representatives, and employees shall conduct themselves in a professional and workmanlike manner at all times when performing the Work and on the Project site, including wearing appropriate clean work attire consistent with the type of work being performed, and hard hat, reflective vest, and protective eyewear when required by the Contract Documents. The use of any tobacco product, including smokeless tobaccos, vapor and E-cigarettes, inside City facilities is prohibited. Smoking is permitted outside of City facilities, in designated smoking areas, if at least 50-feet from any facility door. City shall cause the removal of, and, to require Contractor to remove Contractor's (and its sub-contractor's) employees from the Project site if in violation of the foregoing standards.

Article IV

Compensation and Method of Payment

4.1 General.

(a) Contract Price. City shall pay, and Contractor shall accept, as full and complete payment for the Work required under the Contract Documents a total amount not to exceed One Hundred Sixty-Five Thousand, Seven Hundred Twenty-One and No/100 Dollars (\$165,721.00) (the "Contract Price") to be paid as set forth herein.

(b) Payment of the Contract Price. Unless otherwise provided in the Contract Documents the Contractor shall be paid on a monthly-basis within thirty (30) days after City receipt of the Contractor's detailed monthly itemized invoice for Work and City verification of the work and Services set forth in the Contractor's monthly invoice. Contractor shall submit a monthly invoice on or before the 5th calendar day of each month beginning with the first calendar month following the

date of the City notice to proceed for the Work provided during the previous ending calendar monthly period, in a form prescribed by the City of Allen, if applicable. The Contractor's detailed monthly itemized invoice shall, at a minimum include and show the Contract Price, the billing period, Project name, contract number issued by the City, amount of Work complete, percentage of the Work completed, the amount of Work being invoiced, amount of any City approved change orders and the amount of the Contract Price remaining to be paid.

4.2 Project Records and Audits. Contractor shall keep, and cause each sub-contractor to keep, a complete and accurate record to document the performance of the Work and to expedite any audit that might be conducted by City. Contractor shall maintain, and cause each contractor to maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for the Work; and Contractor shall make, and cause each contractor to make such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of City acceptance of the Work, or until any pending litigation or claims are resolved, whichever is later.

4.3 No Damages for Delay. No claim shall be made by the Contractor to City, and no damages, costs or extra compensation shall be allowed or paid by City to Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Agreement. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change order. Should the Contractor be delayed by an act of City, or should City order a stoppage of the Work for insufficient cause, an extension of time shall be granted by the City by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

Article V

Devotion of Time; Personnel; and Equipment

5.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the Work under this Agreement. Should the City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of the Work required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Contractor's standard hourly rate schedule, or as otherwise agreed in writing by the Parties.

5.2 To the extent reasonably necessary for the Contractor to perform the Work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the Work under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 Contractor shall furnish the facilities, equipment and personnel necessary to perform the Work required under this Agreement unless otherwise provided herein, without relying on City resources for water, sewage disposal, cleaning, or any other waste disposal.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Contractor may not assign this Agreement, without the prior written consent of the City.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All Work to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its work and services and shall be entitled to control the manner and means by which its work and services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Eric Ellwanger
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013
214.509.4110 - telephone
214.509.4118 - fax

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 – facsimile

If intended for Contractor:

S&J Officials, LLC
Attn: Shem Martin
370 Woodcreek Dr.
Princeton, TX 75407
210.317.5512 - telephone

6.9 Insurance.

(a) Contractor shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage, and minimum aggregate limit of not less than \$2,000,000.00 (this policy shall be primary to any policy or policies carried by or available to City and shall include products/completed operations coverage with a minimum aggregate of \$2,000,000.00 and personal and advertising injury coverage with a minimum occurrence limit of \$1,000,000.00); (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance and shall include bodily injury, occupational illness or disease coverage with Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000 covering all of Contractor's employees involved in the provision of services under this Agreement and shall contain an Alternate Employer Endorsement to include the City being named an Alternate Employer under the Workers Compensation policy. A copy of the endorsement shall be provided to the City and attached to the Certificate of insurance signed by person authorized by the insurer to confirm coverage on its behalf; and (iv) Excess Liability Insurance with a limit of not less than \$2,000,000.00. Such policy shall be in excess of the commercial general liability insurance, automobile insurance and employer's liability insurance. This insurance shall be primary to any policy or policies carried by or available to City and shall be provided on a "following form basis.

(b) All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its council, officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance and (3) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, and/or material changes of the policies of the insurance. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements Contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

(d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the Work and upon request by the City.

(e) Contractor shall cause its subcontractors performing the Work to obtain and maintain the insurance coverages as required in Section 6.9 (a) – (d) herein, which shall remain in full force and effect during the term of this Agreement.

6.10 Indemnification.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR’S NEGLIGENT PERFORMANCE OF THE WORK UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR’S

OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY OF ANY EMPLOYEE OF THE CONTRACTOR OR ANY OF CONTRACTORS'S SUB-CONTRACTORS AND CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF CITY.

6.11 Debarment and Suspension.

(a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.

(b) If during the Agreement period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.

(c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the contract.

(d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14 Prohibition of Boycott Israel. Contractor verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Consultant is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Consultant has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.15 Prohibition of Boycott of Energy Companies. By accepting this purchase order, Vendor verifies that is does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.16 Prohibition of Discrimination Against Firearm Entities and Firearm Trade Associations. By accepting this purchase order, Vendor verifies that is does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

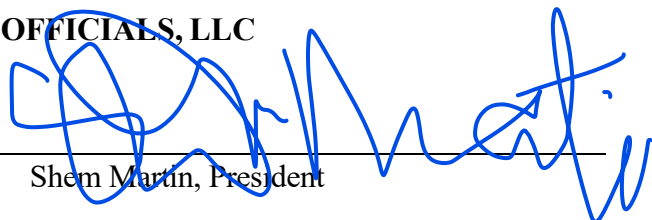
By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 2 day of Dec, 2022.

S&J OFFICIALS, LLC

By:  _____
Shem Martin, President

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to execute a contract with East Bay Restaurant Supply, Inc., for the purchase of food service equipment at the Stephen G. Terrell Recreation Center for \$163,311. |
| STAFF RESOURCE: | Kate Meacham, Parks and Recreation Director Teresa Thomason, Parks and Recreation Assistant Director |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

BACKGROUND

East Bay Restaurant Supply, Inc., has been chosen through a competitive bid process to provide food service and kitchen equipment for the concession stand area and catering kitchen at Stephen G. Terrell Recreation Center. This equipment will be used for concessions on a regular basis which will support operations at the facility including but not limited to general concessions, tournaments, rentals, birthday parties, special events and youth/adult leagues.

Thirty (30) pieces of equipment including the following will be part of this purchase: storage racks, food transportation carts, food heating cabinets and warmers, refrigeration units, freezer units, hot display case and mop room cabinet. Equipment orders such as this are necessary to finalize well before installation due to the lead time associated, with some items currently out multiple months.

BUDGETARY IMPACT

The purchase of food service and kitchen equipment is funded in the Stephen G. Terrell Recreation Center project budget and was anticipated within the original and current furniture, fixture and equipment (FF&E) budget. The slide from Kate Meacham's April 2022 workshop presentation has been included in the attachments and lists the Project Budget including FF&E expenditures.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with East Bay Restaurant Supply, Inc., for the purchase of food service equipment at the Stephen G. Terrell Recreation Center for \$163,311.

MOTION

I make a motion to authorize the City Manager to execute a contract with East Bay Restaurant Supply, Inc., for the purchase of food service equipment at the Stephen G. Terrell Recreation Center for \$163,311.

ATTACHMENT(S)

[Agreement](#)

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and **East Bay Restaurant Supply Inc., a California Corporation** (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide the labor, goods, materials, equipment and services (collectively the “Services”) described in the Contract Documents (hereinafter defined) for **Food Service Equipment & Installation for Stephen Terrell Recreation Center** (the “Project”); and

WHEREAS, the Contractor desires to provide the labor, goods, materials, equipment, installation and services described in the Contract Documents in accordance with the terms and conditions set forth in this Agreement (hereinafter defined as the “Work”); and

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term; Termination

1.1 **Term.** The term of this Agreement shall commence on the last date of execution hereof December 01, 2022 (the “Effective Date”) and continue until the completion of the Services by the Contractor unless sooner terminated as provided herein.

1.2 **Termination.** This Agreement may be terminated upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; or
- (c) upon written notice by City, if the Contractor suffers an event of Bankruptcy or Insolvency (for purpose of this section “Bankruptcy or Insolvency” shall mean the dissolution or termination of Contractor’s existence as a going business, insolvency, appointment of receiver for any part of Contractor’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and such proceeding is not dismissed within ninety (90) days after the filing thereof);

Article II

Scope of Work; Contract Documents

2.1 The Contract Documents shall include the documents identified below and are incorporated herein for all purposes. The Contract Documents are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence:

- A. This Agreement;
- B. The Contractor's Proposal attached hereto.

2.2 Contractor shall perform the Work (hereinafter defined) as set forth in the Contract Documents.

Article III

Project Scope of Work

3.1 General. Contractor shall perform the "Work" required, implied or reasonably inferable from the Contract Documents for the Services. The term "Work" shall mean whatever is done by the Contractor or required of the Contractor to perform and complete its duties under this Agreement including but not limited to the furnishing of any requested insurance, and the provision and furnishing of labor, supervision, goods, services, materials, tools, fuel, equipment and permits required by this Agreement necessary unless otherwise specified in the Contract Documents.

3.2 Notice to Proceed. Contractor shall not commence the Work necessary until receipt of a written notice to proceed from the City unless otherwise provided in the Contract Documents. Contractor shall commence the Work required under the Contract Documents within ten (10) calendar days after receipt of the City written notice to proceed. Any Work performed or expenses incurred by Contractor prior to Contractor receipt of the written notice to proceed shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.3 Change Orders.

(a) City, may from time to time, authorize change orders after the performance of the Work under the Contract has commenced necessary to decrease, increase the quantity of Work to be performed or materials, equipment or supplies to be furnished by the Contractor.

(b) The execution of a change order by the Contractor shall constitute the Contractor's agreement to the ordered changes to the Work under the Contract Documents. Contractor by executing the change order waives and releases any claim against the City for additional time or compensation relating to the Work included in the change order.

(c) Any Work performed, or expenses incurred by Contractor prior to execution of the approved change order shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.4 Cleaning the Project Site. Contractor shall cause the Project site to be kept reasonably clean during performance of the Project Work. Upon completion of the Project Work, Contractor shall cause the Project site to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials together with all of Contractor's property therefrom. Contractor shall cause the disposal of all refuse at a TCEQ approved landfill. Contractor shall cause the restoration of all property damaged during the prosecution of the Project Work and shall leave the Project site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the Project Price.

3.5 Suspension or Stoppage of Work.

(a) City shall have the right to immediately suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable considerations considered unfavorable for the proper prosecution of the Work or for failure of the Contractor to carry out the instructions from the City or if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action. During any period in which the Contractor shall not be compensated for periods of delay caused by suspension of Work by City. If Work is suspended due to no fault of Contractor, an extension of time shall be granted by City by change order upon written application, which extension shall not be unreasonably denied.

(b) If Contractor persistently fails or refuses to perform the Work in accordance with this Agreement, or if City has sufficient reason to believe that Contractor is not and will not complete the Work by the scheduled date for completion or if the best interests of the public health, safety or welfare so require, City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

3.6 Contractor Representations. Contractor represents and covenants that its forces can perform the Work for the Project and agrees to work simultaneously with any representatives assigned by or contracted by the City, as a part of the Project to ensure continuity of Project Work.

3.7 Contractor Representative. Contractor agrees to provide a representative on the Project site at all times Work is being performed, for communication with the City, receiving materials and equipment, directing Contractors Work, and to provide daily Project clean-up.

3.8 Compliance with applicable law. Contractor shall and shall cause its employees and sub-contractors to comply with all personnel safety programs applicable for the Project Work and to keep the Project area clean and free from debris on a daily-basis, and to keep noise and obnoxious odors to a minimum. Personnel safety programs include but are not limited to protective eyewear; protective clothing; appropriate footwear; ear protection; hard hat, and reflective vest. The Contractor

shall comply with all applicable federal, State, and local laws regarding occupational safety and health, as well as providing protection of the environment. This shall include but is not limited to compliance with the U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and the U.S. Environmental Protection Agency (EPA) guidelines and regulations.

3.9 Project Work Disturbance. In the event Project work by the Contractor and/or its subcontractors disrupts any City service, causes damage to City property, or causes harm to any person, Contractor agrees, at its sole cost and expense, to immediately contact the City Project Manager, while providing appropriate emergency response, including but not limited to, calling police, fire and/or the appropriate utility company regarding service.

3.10 Criminal Backgrounds. From time to time, at its sole discretion, the City may require criminal background checks on Contractor and its employees (and its sub-contractors and its employees) who will be performing after-hours Work, and/or require access to Public Safety or City facilities, technology rooms, or secure areas. Criminal background checks are conducted in accordance with Department of Public safety regulations at no charge to the Contractor. All information obtained as part of the criminal background process is kept strictly confidential. Contractor agrees to submit and cause its employees (and to cause its sub-contractor and its employees) to the criminal background process, if required by the City. All decisions regarding Contractor and its employees (and its sub-contractor and its employees) access to City facilities are final.

3.11 Contractor Conduct. Contractor (and its sub-contractors) representatives, and employees shall conduct themselves in a professional and workmanlike manner at all times when performing the Work and on the Project site, including wearing appropriate clean work attire consistent with the type of work being performed, and hard hat, reflective vest, and protective eyewear when required by the Contract Documents. The use of any tobacco product, including smokeless tobaccos, vapor and E-cigarettes, inside City facilities is prohibited. Smoking is permitted outside of City facilities, in designated smoking areas, if at least 50-feet from any facility door. City shall cause the removal of, and, to require Contractor to remove Contractor's (and its sub-contractor's) employees from the Project site if in violation of the foregoing standards.

Article IV

Compensation and Method of Payment

4.1 General.

(a) Contract Price. City shall pay, and Contractor shall accept, as full and complete payment for the Work required under the Contract Documents a total amount not to exceed One Hundred Sixty-Three Thousand Three Hundred Ten and Forty-Four Cents (\$163,310.44) (the "Contract Price") to be paid as set forth herein.

(b) Payment of the Contract Price. Unless otherwise provided in the Contract Documents the Contractor shall be paid on a monthly-basis within thirty (30) days after City receipt of the Contractor's detailed monthly itemized invoice for Work and City verification of the work and

Services set forth in the Contractor's monthly invoice. Contractor shall submit a monthly invoice on or before the 5th calendar day of each month beginning with the first calendar month following the date of the City notice to proceed for the Work provided during the previous ending calendar monthly period, in a form prescribed by the City of Allen, if applicable. The Contractor's detailed monthly itemized invoice shall, at a minimum include and show the Contract Price, the billing period, Project name, contract number issued by the City, amount of Work complete, percentage of the Work completed, the amount of Work being invoiced, amount of any City approved change orders and the amount of the Contract Price remaining to be paid.

4.2 Project Records and Audits. Contractor shall keep, and cause each sub-contractor to keep, a complete and accurate record to document the performance of the Work and to expedite any audit that might be conducted by City. Contractor shall maintain, and cause each contractor to maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for the Work; and Contractor shall make, and cause each contractor to make such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of City acceptance of the Work, or until any pending litigation or claims are resolved, whichever is later.

4.3 No Damages for Delay. No claim shall be made by the Contractor to City, and no damages, costs or extra compensation shall be allowed or paid by City to Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Agreement. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change order. Should the Contractor be delayed by an act of City, or should City order a stoppage of the Work for insufficient cause, an extension of time shall be granted by the City by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

Article V

Devotion of Time; Personnel; and Equipment

5.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the Work under this Agreement. Should the City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of the Work required under this Agreement and shall be compensated for such additional services on a time and materials basis, in accordance with Contractor's standard hourly rate schedule, or as otherwise agreed in writing by the Parties.

5.2 To the extent reasonably necessary for the Contractor to perform the Work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the Work under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 Contractor shall furnish the facilities, equipment and personnel necessary to perform the Work required under this Agreement unless otherwise provided herein, without relying on City resources for water, sewage disposal, cleaning, or any other waste disposal.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Contractor may not assign this Agreement, without the prior written consent of the City.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All Work to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its work and services and shall be entitled to control the manner and means by which its work and services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Eric Ellwanger
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013
214.509.4110 - telephone
214.509.4118 - fax

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 – facsimile

If intended for Contractor:

East Bay Restaurant Supply, Inc.
Attn: Danny Butler
8230 S. Choctaw Dr.
Baton Rouge, LA 70815
225-926-3657x108 - telephone

6.9 Insurance.

(a) Contractor shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage, and minimum aggregate limit of not less than \$2,000,000.00 (this policy shall be primary to any policy or policies carried by or available to City and shall include products/completed operations coverage with a minimum aggregate of \$2,000,000.00 and personal and advertising injury coverage with a minimum occurrence limit of \$1,000,000.00); (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance and shall include bodily injury, occupational illness or disease coverage with Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000 covering all of Contractor's employees involved in the provision of services under this Agreement and shall contain an Alternate Employer Endorsement to include the City being named an Alternate Employer under the Workers Compensation policy. A copy of the endorsement shall be provided to the City and attached to the Certificate of insurance signed by person authorized by the insurer to confirm coverage on its behalf; and (iv) Excess Liability Insurance with a limit of not less than \$2,000,000.00. Such policy shall be in excess of the commercial general liability insurance, automobile insurance and employer's liability insurance. This insurance shall be primary to any policy or policies carried by or available to City and shall be provided on a "following form basis.

(b) All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its council, officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance and (3) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, and/or material changes of the policies of the insurance. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements Contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

(d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the Work and upon request by the City.

(e) Contractor shall cause its subcontractors performing the Work to obtain and maintain the insurance coverages as required in Section 6.9 (a) – (d) herein, which shall remain in full force and effect during the term of this Agreement.

6.10 Indemnification.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR'S NEGLIGENT PERFORMANCE OF THE WORK UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED

BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY OF ANY EMPLOYEE OF THE CONTRACTOR OR ANY OF CONTRACTOR'S SUB-CONTRACTORS AND CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF CITY.

6.11 Debarment and Suspension.

(a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.

(b) If during the Agreement period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.

(c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the contract.

(d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14 Prohibition of Boycott Israel. Contractor verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Consultant is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Consultant has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.15 Prohibition of Boycott of Energy Companies. By accepting this purchase order, Vendor verifies that is does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.16 Prohibition of Discrimination Against Firearm Entities and Firearm Trade Associations. By accepting this purchase order, Vendor verifies that is does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 4th day of November, 2022.

EAST BAY RESTAURANT SUPPLY, INC.

By: Danny Butler
Danny Butler, Vice President



Invitation For Bid #2022-6-112
Bid Sheet - Food Service Equipment

VENDOR'S NAME:
BUCKEVIEW'S A DIVISION OF East Bay
Restaurant Supply, Inc.

| Item No. | DESCRIPTION | QTY: | UOM | UNIT PRICE | TOTAL PRICE |
|----------|---|------|------|--------------|--------------|
| 1 | DUNNAGE RACK - Metro Model No HP2248PD - Metro Bow-Tie Dunnage Rack, 22' x 48" x 12"H, slotted with sperate polymer tie for joining racks, corrosion proof polymer construction, NSF | 1 | EACH | \$ 182.52 | \$ 182.52 |
| 2 | BUSSING UTILITY TRANSPORT CART, METAL - Lakeside Manufacturing Model No. 522 Utility Cart, Open, Three (3) shelf, shelf size 27" x 18", U-Shaped frame, all welded stainless steel construction, 700 lb. capacity, Two (2) 5" swivel & two (2) 8" fixed casters, NSF, Made in USA (with bumpers per specs) | 2 | EACH | \$ 1,304.25 | \$ 2,608.50 |
| 3 | MOBILE HEATED CABINET - Cres Cor Model No. H137WSUA12D15A - Cabinet, Mobile Heated, with AquaTemp humidity cabinet, insulated, top-mount heater assembly, recessed push/pull handles, magnetic latch, twelve (12) sets of stainless steel wire universal angle slides on 4 1/2" adjustable 1 1/2" centers, LED digital display, field reversible Dutch doors, four (4) heavy duty 5" swivel casters two (2) braked, anti-microbial latches, stainless steel construction, NSF, CSA, ENERGY STAR | 5 | EACH | \$ 5,767.11 | \$ 28,835.55 |
| 4 | COMPACT PREP TABLE REFRIGERATOR - Traulsen Model No. UST6024-LR - Dealer's Choice Compact Prep Table Refrigerator with low-profile flat cover, Reach-in, two-section, 60" wide, holds twenty-four (24) 1/6 pans 4" deep (included), can accommodate up to 6" deep pans, stainless steel exterior top, sides & door with Santoprene EZ-Clean Gasket, hinged left/right, anodized aluminum interior, galvanized exterior back and bottom, rear mounted, self-contained refrigeration, six (6) 4" casters, 1/4 HP, Cetlus, NSF | 1 | EACH | \$ 6,188.92 | \$ 6,188.92 |
| 5 | PRO1 COMMERCIAL MICROWAVE OVEN, heavy volume, 1700 Watts, 0.6 cubic foot capacity, compact, fifteen (15) power levels, 5-stage cooking, 30 program memory capacity, self-diagnostics, oven cycle counter, LCD digital display with countdown see-thru left hinged door, programmable lock, stackable, LED interior light, cULus. | 1 | EACH | \$ 1,316.60 | \$ 1,316.60 |
| 6 | Designer Line Wide Refrigerator, reach-in, 28 1/2"W, one-section, self contained refrigeration, stainless steel exterior, aluminum interior, standard depth cabinet wide full-height solid door, cylinder lock, electronic control with digital display, hi-low alarm, unit comes standard with expansion valve, 6" stainless steel legs, R290 Hydrocarbon Refrigerant, 1/4 HP, cETLus, NSF, Made in USA ENERGY STAR (with 50177-4 casters and 50-P008A-E pan slides per specs) | 1 | EACH | \$ 6,876.19 | \$ 6,876.19 |
| 7 | Designer Line Wide Refrigerator, reach-in, 57"W, two-section, self-contained refrigeration, stainless steel exterior, aluminum interior, standard depth cabinet, wide full-height stainless steel doors, cylinder locks, electronic control with digital display, hi-low alarm, unit comes standard with expansion valve, 6" stainless steel legs, R290 Hydrocarbon Refrigerant, 1/3 HP, cETLus, NSF, Made in USA (with 50177-4 casters and 50-P008A-E pan slides per specs) | 2 | EACH | \$ 8,779.50 | \$ 17,559.00 |
| 8 | Designer Line Wide Freezer, reach-in, 28 1/2"W, one section, self-contained refrigeration, stainless steel legs, 1/2 HP, cETLus, NSF (with 50177-4 casters and 50-P008A-E pan slides per specs) | 1 | EACH | \$ 9,234.16 | \$ 9,234.16 |
| 9 | Designer Line Wide Freezer, reach-in, 57"W, two-section, self-contained refrigeration, stainless steel exterior, aluminum interior, standard depth cabinet, wide full-height glass doors, cylinder locks, electronic control with digital display, hi-low alarm, 6" stainless steel legs, 1 HP, cETLus, NSF (with 50177-4 casters and 50-P008A-E pan slides per specs) | 2 | EACH | \$ 13,924.98 | \$ 27,849.96 |
| 10 | MOBILE UTENSIL SHELF - Metro Model No. LOT, Packed 1 It four (4) Sections | 4 | EACH | \$ 1,040.11 | \$ 4,160.44 |

| | | | | | |
|----|---|---|------|--------------|--------------|
| 11 | Tornado 2 Rapid Cook Oven, electric, countertop, stackable, insulated cook chamber, 128 cooking profiles, internal catalytic converter, cool to touch pull down door with microwave seal, multi-speed convection blower, smart voltage sensor technology (US only), exposed bottom browning element, manual snooze mode, includes (2) mesh PTFE baskets, (1) oven cleaner, (1) oven guard, (1) aluminum paddle, (2) Trigger sprayers, (1) standard rack, stainless steel exterior with powder coated sides 4" legs, cULus, CE, ANSI, NSF, TUV | 2 | EACH | \$ 13,730.84 | \$ 27,461.68 |
| 12 | POPCORN POPPER - Gold Medal Products Model No. 2554 - Macho Pop Value Priced Popcorn Machine, electric, countertop. 16/18 oz. E-Z Kleen kettle, clamp-on elements, heated corn deck, LED lights, removable glass, lighted "Popcorn" sign, stainless steel welded frame, 1750 watts, 120v/60/1-ph, NEMA 5-15P, UL, NSF | 1 | EACH | \$ 1,754.04 | \$ 1,754.04 |
| 13 | UNDERCOUNTER REFRIGERATOR - True Mfg. - General Foodservice Model No. TUC-48-LP-HC, Low Profile Undercounter Refrigerator, 31 7/8" counter height, 33 - 38°F, (2) stainless steel doors, (4) PVC coated adjustable wire shelves, stainless steel top & sides, clear coated aluminum interior with stainless steel floor, 1 1/2" dual swivel castors, R290 Hydrocarbon refrigerant, 1/5 HP, 115v/60/1-ph, 3.0 amps, NEMA 5-15P, cULus, UL EPH Classified, CE, Made In USA (with bolt locks per specs) | 1 | EACH | \$ 4,197.38 | \$ 4,197.38 |
| 14 | MOP SINK CABINET - John Boos Model No. PBJC 303084 X | 2 | EACH | \$ 3,647.78 | \$ 7,295.56 |
| 15 | Thumaduke™ Solid Top Unit, Mobile utility counter, 74"W x 32"D x 36"H, 16ga stainless steel top, 20ga stainless steel body & undershelves, 5" dia. Gray poly swivel caster & brakes, NSF (per written specifications) | 1 | EACH | \$ 12,367.48 | \$ 12,367.48 |
| 16 | FOOD PAN WARMER, COUNTERTOP - APW Wyott Model No. W-48, Food Pan Warmer, electric, countertop, , 4 quart round inset, wet & dry operations, infinite control, stainless steel construction, cULus, UL | 1 | EACH | \$ 366.16 | \$ 366.16 |
| 17 | NACHO CHEESE / CHIPS WARMER, DISPLAY - Hatco Model No. FST-1MN, Macho Nacho Chip Warmer, rear loading & dispensing door, with main deck shelf only, approximately 40 lbs. capacity, forced air heat with display light, anodized bronze finish frame with tempered glass sides, 1245 watts, cULus, UL EPH Classified, Made in USA | 1 | EACH | \$ 2,516.65 | \$ 2,516.65 |
| 18 | DISPLAY CASE, HOT FOOD, COUNTERTOP, Hatco Model FSDT-1, Flav-R Savor holding & display cabinet, (1) door, (4) tier circle rack with motor, LED lighting, with 6 ft cord and plug, 1440 watts, CE, cULus, UL EPH Classified, Made In USA (with adjustable legs per specs) | 1 | EACH | \$ 2,539.65 | \$ 2,539.65 |

| |
|---------------|
| TOTAL AMOUNT: |
|---------------|

| | | |
|--|--|---------------|
| | | \$ 163,310.44 |
|--|--|---------------|

PROJECT BUDGET

| | |
|-------------------------------|---------------|
| • Architectural Design | \$3,960,177 |
| • Other Consulting, Testing | \$1,550,000 |
| • Construction | \$42,250,000* |
| • Contingency 5% | \$2,200,000 |
| • FF&E, Playground, A/V, etc. | \$5,200,000 |

Total Appropriations – \$55,160,177

*Includes \$1,843,500 Contingency in addition to \$2,200,000 contingency listed above for a total contingency of \$4,043,500 for cost escalation or market contingency.

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to execute a contract with Sunbelt Pools for the replacement of the indoor waterslide at Don Rodenbaugh Natatorium in the amount of \$596,070. |
| STAFF RESOURCE: | Kate Meacham, Parks and Recreation Director Teresa Thomason, Parks and Recreation Assistant Director |
| BOARD/COMMISSION ACTION: | For FY20, the Allen Community Development Corporation approved a project for \$852,274 to remove the aging indoor waterslide, design, purchase and install a new indoor waterslide. |
| STRATEGIC PLANNING GOAL: | High-Performing City Team Providing Resident-Focused Services. |

BACKGROUND

Sunbelt Pools has been chosen through a competitive bid process to provide full service removal and replacement of the aging indoor waterslide at Don Rodenbaugh Natatorium. The current waterslide has been in place for over 20 years and is considered to be one of the oldest, if not the oldest indoor waterslide in the DFW area. Due to the wear and tear from the many years of service, the entire system is in need of replacement. Replacements and updates such as this are essential to provide a high level of service and maintain a safe environment for Allen residents and other facilities users. It is a highlight for members as well as day use customers looking for an enhanced experience when visiting Don Rodenbaugh Natatorium. The updated slide will include a number of enhanced features while fitting within the same footprint and staying within the original budget identified. These features include a new 16 foot starting tower and stairway made from materials that are better suited for indoor aquatic environments (hot dipped galvanized steel, powder coated finishes and fiberglass treads), open and closed flume 120 foot fiberglass slide with LED lights and sounds throughout for greater immersive experience.

BUDGETARY IMPACT

This purchase will utilize Community Development Corporation funds approved for FY20.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Sunbelt Pools for the replacement of the indoor waterslide at Don Rodenbaugh Natatorium in the amount of \$596,070.

MOTION

I make a motion to authorize the City Manager to execute a contract with Sunbelt Pools for the replacement of the indoor waterslide at Don Rodenbaugh Natatorium in the amount of \$596,070.

ATTACHMENT(S)

Agreement

Bid Tabulation

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and **Sunbelt Pools, Inc.**, a **Texas Corporation** (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Contractor as an independent contractor, and not as an employee, to provide the labor, goods, materials, equipment and services (collectively the “Services”) described in the Contract Documents (hereinafter defined) for Aquatic Improvements – DRN Slide Replacement (the “Project”); and

WHEREAS, the Contractor desires to provide the labor, goods, materials, equipment, installation and services described in the Contract Documents in accordance with the terms and conditions set forth in this Agreement (hereinafter defined as the “Work”); and

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term; Termination

1.1 **Term.** The term of this Agreement shall commence on the last date of execution hereof December 19, 2022 (the “Effective Date”) and continue until the completion of the Services by the Contractor unless sooner terminated as provided herein.

1.2 **Termination.** This Agreement may be terminated upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; or
- (c) upon written notice by City, if the Contractor suffers an event of Bankruptcy or Insolvency (for purpose of this section “Bankruptcy or Insolvency” shall mean the dissolution or termination of Contractor’s existence as a going business, insolvency, appointment of receiver for any part of Contractor’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and such proceeding is not dismissed within ninety (90) days after the filing thereof);

Article II

Scope of Work; Contract Documents

2.1 The Contract Documents shall include the documents identified below and are incorporated herein for all purposes. The Contract Documents are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence:

- A. This Agreement;
- B. The Contractor's Proposal attached hereto.

2.2 Contractor shall perform the Work (hereinafter defined) as set forth in the Contract Documents.

Article III

Project Scope of Work

3.1 General. Contractor shall perform the "Work" required, implied or reasonably inferable from the Contract Documents for the Services. The term "Work" shall mean whatever is done by the Contractor or required of the Contractor to perform and complete its duties under this Agreement including but not limited to the furnishing of any requested insurance, and the provision and furnishing of labor, supervision, goods, services, materials, tools, fuel, equipment and permits required by this Agreement necessary unless otherwise specified in the Contract Documents.

3.2 Notice to Proceed. Contractor shall not commence the Work necessary until receipt of a written notice to proceed from the City unless otherwise provided in the Contract Documents. Contractor shall commence the Work required under the Contract Documents within ten (10) calendar days after receipt of the City written notice to proceed. Any Work performed or expenses incurred by Contractor prior to Contractor receipt of the written notice to proceed shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.3 Change Orders.

(a) City, may from time to time, authorize change orders after the performance of the Work under the Contract has commenced necessary to decrease, increase the quantity of Work to be performed or materials, equipment or supplies to be furnished by the Contractor.

(b) The execution of a change order by the Contractor shall constitute the Contractor's agreement to the ordered changes to the Work under the Contract Documents. Contractor by executing the change order waives and releases any claim against the City for additional time or compensation relating to the Work included in the change order.

(c) Any Work performed, or expenses incurred by Contractor prior to execution of the approved change order shall be at the sole risk and cost of the Contractor and shall not be eligible for payment by City under the Contract Documents.

3.4 Cleaning the Project Site. Contractor shall cause the Project site to be kept reasonably clean during performance of the Project Work. Upon completion of the Project Work, Contractor shall cause the Project site to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials together with all of Contractor's property therefrom. Contractor shall cause the disposal of all refuse at a TCEQ approved landfill. Contractor shall cause the restoration of all property damaged during the prosecution of the Project Work and shall leave the Project site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the Project Price.

3.5 Suspension or Stoppage of Work.

(a) City shall have the right to immediately suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable considerations considered unfavorable for the proper prosecution of the Work or for failure of the Contractor to carry out the instructions from the City or if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action. During any period in which the Contractor shall not be compensated for periods of delay caused by suspension of Work by City. If Work is suspended due to no fault of Contractor, an extension of time shall be granted by City by change order upon written application, which extension shall not be unreasonably denied.

(b) If Contractor persistently fails or refuses to perform the Work in accordance with this Agreement, or if City has sufficient reason to believe that Contractor is not and will not complete the Work by the scheduled date for completion or if the best interests of the public health, safety or welfare so require, City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

3.6 Contractor Representations. Contractor represents and covenants that its forces can perform the Work for the Project and agrees to work simultaneously with any representatives assigned by or contracted by the City, as a part of the Project to ensure continuity of Project Work.

3.7 Contractor Representative. Contractor agrees to provide a representative on the Project site at all times Work is being performed, for communication with the City, receiving materials and equipment, directing Contractors Work, and to provide daily Project clean-up.

3.8 Compliance with applicable law. Contractor shall and shall cause its employees and sub-contractors to comply with all personnel safety programs applicable for the Project Work and to keep the Project area clean and free from debris on a daily-basis, and to keep noise and obnoxious odors to a minimum. Personnel safety programs include but are not limited to protective eyewear; protective clothing; appropriate footwear; ear protection; hard hat, and reflective vest. The Contractor shall comply with all applicable federal, State, and local laws regarding occupational safety and health, as well as providing protection of the environment. This shall include but is not limited to compliance with the U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and the U.S. Environmental Protection Agency (EPA) guidelines and regulations.

3.9 Project Work Disturbance. In the event Project work by the Contractor and/or its subcontractors disrupts any City service, causes damage to City property, or causes harm to any person, Contractor agrees, at its sole cost and expense, to immediately contact the City Project Manager, while providing appropriate emergency response, including but not limited to, calling police, fire and/or the appropriate utility company regarding service.

3.10 Criminal Backgrounds. From time to time, at its sole discretion, the City may require criminal background checks on Contractor and its employees (and its sub-contractors and its employees) who will be performing after-hours Work, and/or require access to Public Safety or City facilities, technology rooms, or secure areas. Criminal background checks are conducted in accordance with Department of Public safety regulations at no charge to the Contractor. All information obtained as part of the criminal background process is kept strictly confidential. Contractor agrees to submit and cause its employees (and to cause its sub-contractor and its employees) to the criminal background process, if required by the City. All decisions regarding Contractor and its employees (and its sub-contractor and its employees) access to City facilities are final.

3.11 Contractor Conduct. Contractor (and its sub-contractors) representatives, and employees shall conduct themselves in a professional and workmanlike manner at all times when performing the Work and on the Project site, including wearing appropriate clean work attire consistent with the type of work being performed, and hard hat, reflective vest, and protective eyewear when required by the Contract Documents. The use of any tobacco product, including smokeless tobaccos, vapor and E-cigarettes, inside City facilities is prohibited. Smoking is permitted outside of City facilities, in designated smoking areas, if at least 50-feet from any facility door. City shall cause the removal of, and, to require Contractor to remove Contractor's (and its sub-contractor's) employees from the Project site if in violation of the foregoing standards.

Article IV

Compensation and Method of Payment

4.1 General.

(a) Contract Price. City shall pay, and Contractor shall accept, as full and complete payment for the Work required under the Contract Documents a total amount not to exceed Five Hundred Ninety-Six Thousand, Seventy and No/100 Dollar (\$596,070.00) (the "Contract Price") to be paid as set forth herein.

(b) Payment of the Contract Price. Unless otherwise provided in the Contract Documents the Contractor shall be paid on a monthly-basis within thirty (30) days after City receipt of the Contractor's detailed monthly itemized invoice for Work and City verification of the work and Services set forth in the Contractor's monthly invoice. Contractor shall submit a monthly invoice on or before the 5th calendar day of each month beginning with the first calendar month following the date of the City notice to proceed for the Work provided during the previous ending calendar monthly period, in a form prescribed by the City of Allen, if applicable. The Contractor's detailed monthly itemized invoice shall, at a minimum include and show the Contract Price, the billing period, Project

name, contract number issued by the City, amount of Work complete, percentage of the Work completed, the amount of Work being invoiced, amount of any City approved change orders and the amount of the Contract Price remaining to be paid.

4.2 Project Records and Audits. Contractor shall keep, and cause each sub-contractor to keep, a complete and accurate record to document the performance of the Work and to expedite any audit that might be conducted by City. Contractor shall maintain, and cause each contractor to maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for the Work; and Contractor shall make, and cause each contractor to make such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of City acceptance of the Work, or until any pending litigation or claims are resolved, whichever is later.

4.3 No Damages for Delay. No claim shall be made by the Contractor to City, and no damages, costs or extra compensation shall be allowed or paid by City to Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Agreement. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change order. Should the Contractor be delayed by an act of City, or should City order a stoppage of the Work for insufficient cause, an extension of time shall be granted by the City by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

Article V

Devotion of Time; Personnel; and Equipment

5.1 Contractor shall devote such time as reasonably necessary for the satisfactory performance of the Work under this Agreement. Should the City require additional services not included under this Agreement, Contractor shall make reasonable efforts to provide such additional services within the time schedule without decreasing the effectiveness of the performance of the Work required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Contractor's standard hourly rate schedule, or as otherwise agreed in writing by the Parties.

5.2 To the extent reasonably necessary for the Contractor to perform the Work under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the Work under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Contractor hereunder and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 Contractor shall furnish the facilities, equipment and personnel necessary to perform the Work required under this Agreement unless otherwise provided herein, without relying on City resources for water, sewage disposal, cleaning, or any other waste disposal.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Contractor may not assign this Agreement, without the prior written consent of the City.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All Work to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor shall supervise the performance of its work and services and shall be entitled to control the manner and means by which its work and services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Eric Ellwanger
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013
214.509.4110 - telephone
214.509.4118 - fax

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 – facsimile

If intended for Contractor:

Sunbelt Pools, Inc.
Attn: Rob Morgan
10555 Plano Road
Dallas, TX 75238
214.722.50820 - telephone

6.9 Insurance.

(a) Contractor shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage, and minimum aggregate limit of not less than \$2,000,000.00 (this policy shall be primary to any policy or policies carried by or available to City and shall include products/completed operations coverage with a minimum aggregate of \$2,000,000.00 and personal and advertising injury coverage with a minimum occurrence limit of \$1,000,000.00); (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance and shall include bodily injury, occupational illness or disease coverage with Employers Liability limits of \$1,000,000/\$1,000,000/\$1,000,000 covering all of Contractor's employees involved in the provision of services under this Agreement and shall contain an Alternate Employer Endorsement to include the City being named an Alternate Employer under the Workers Compensation policy. A copy of the endorsement shall be provided to the City and attached to the Certificate of insurance signed by person authorized by the insurer to confirm coverage on its behalf; and (iv) Excess Liability Insurance with a limit of not less than \$2,000,000.00. Such policy shall be in excess of the commercial general liability insurance, automobile insurance and employer's liability insurance. This insurance shall be primary to any policy or policies carried by or available to City and shall be provided on a "following form basis.

(b) All policies of insurance shall be endorsed to provide the following provisions: (1) name the City, its council, officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance and (3) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, and/or material changes of the policies of the insurance. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements Contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.

(d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of the Work and upon request by the City.

(e) Contractor shall cause its subcontractors performing the Work to obtain and maintain the insurance coverages as required in Section 6.9 (a) – (d) herein, which shall remain in full force and effect during the term of this Agreement.

6.10 Indemnification.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE WORK OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “CITY”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY’S OBLIGATIONS HEREUNDER. CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR’S NEGLIGENT PERFORMANCE OF THE WORK UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, SUBCONTRACTORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR’S

OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY DEFENDS, INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, INCURRED BY CITY IN CONNECTION WITH ANY ACTION AGAINST CITY FOR PERSONAL INJURY OF ANY EMPLOYEE OF THE CONTRACTOR OR ANY OF CONTRACTORS'S SUB-CONTRACTORS AND CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF CITY.

6.11 Debarment and Suspension.

(a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.

(b) If during the Agreement period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.

(c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors and will inform the City of any violations of this section by subcontractors to the contract.

(d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14 Prohibition of Boycott Israel. Contractor verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Consultant is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Consultant has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.15 Prohibition of Boycott of Energy Companies. By accepting this purchase order, Vendor verifies that is does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.16 Prohibition of Discrimination Against Firearm Entities and Firearm Trade Associations. By accepting this purchase order, Vendor verifies that is does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Professional (or Contractor) has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Professional (or Contractor) is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2022.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED this 2nd day of December, 2022.

SUNBELT POOLS, INC.

By:  _____
Rob Morgan, President

| | | | | | | | Sunbelt Pools | | Progressive Commercial Aquatics, Inc. | |
|--------|---|------|-------|-----|-----|-----------|---------------------|--------------|---------------------------------------|--------------|
| | | | | | | | Total Price | \$596,070.00 | Total Price | \$675,875.20 |
| Line # | Description | Mfgr | Mfgno | QTY | UOM | Estimated | Unit | Extended | Unit | Extended |
| 1 | A "Grand" design Price (The original amount \$557,195.00 + additional sound package \$26,250.00 + additional LED light \$15,625.00 = Total award amount \$599,070.00 – removing translucent bands \$3000.00) | | | 1 | EA | | | | | |
| | | | | | | | <u>\$596,070.00</u> | \$596,070.00 | \$675,875.20 | \$675,875.20 |

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Authorize the City Manager to execute the purchase and installation of fitness equipment from Team Marathon Fitness and Advanced Exercise for the Stephen G. Terrell Recreation Center for \$1,088,836. |
| STAFF RESOURCE: | Kate Meacham, Parks and Recreation Director Teresa Thomason, Parks and Recreation Assistant Director |
| STRATEGIC PLANNING GOAL: | Safe and Livable Community for All. |

BACKGROUND

Team Marathon Fitness and Advanced Exercise have been chosen through proposals to provide fitness equipment for Stephen G. Terrell Recreation Center. This highly functional and user friendly equipment will be used to support a large membership base and also will benefit the community with a significant increase in availability of health and wellness opportunities. The Fitness Floor is a major factor in membership development and retention which directly impacts and helps achieve revenue goals.

A broad range of equipment including but not limited to the following will be part of this purchase:

- Cardio Equipment (50+ stations): treadmills, ellipticals, upright bikes, recumbent bikes, spin bikes and Adaptive Motion Trainers
- Free Weights (15+ stations): multiple dumbbell (5lb – 100lb) and barbell sets, adjustable benches, Olympic bench systems, full squat racks and smith system.
- Selectorized Equipment (20+ stations): upper body, lower body and core machines
- Plate loaded equipment (10+ stations): upper body and lower body
- Functional Training Equipment (60+ items): medicine balls, kettlebells, tires, resistance tubes, and plyoboxes
- Group exercise Equipment (40+ stations): spin bikes and group exercise mats
- Outdoor Fitness Equipment (Fitness Deck): Beaver Fit Shred Shed with multiple workout stations

Team Marathon Fitness, Inc. and Advanced Exercise will provide all equipment and services including installation, training and preventative maintenance for one year.

BUDGETARY IMPACT

The purchase of fitness equipment is funded in the Stephen G. Terrell Recreation Center project budget and was anticipated within the original and current Furniture, Fixtures and Equipment (FF&E) budget. The slide from Kate Meacham's April 2022 workshop presentation has been included in the attachments and lists the project budget including FF&E expenditures.

This purchase will utilize cooperative agreements with BuyBoard,

- Contract ##665-22
 - Vendor: Team Marathon Fitness
 - Vendor: Advanced Exercise

STAFF RECOMMENDATION

Authorize the City Manager to execute the purchase and installation of fitness equipment from Team Marathon Fitness and Advanced Exercise for the Stephen G. Terrell Recreation Center for \$1,088,836.

MOTION

I make a motion to authorize the City Manager to execute the purchase and installation of fitness equipment from Team Marathon Fitness and Advanced Exercise for the Stephen G. Terrell Recreation Center for \$1,088,836.

ATTACHMENT(S)

Proposal - Advanced Exercise

Proposal - Marathon Fitness

Project Budget



advanced exercise

advancedexercise.com | 861 SouthPark Drive #100, Littleton, CO 80120 | 800.520.1112

CONSULTANT

Michelle Kesterson
mkesterson@advancedexercise.com
Phone:
Fax:

Date: October 13, 2022
Quote Expires: 15 day(s)
Proposal # 063560-R7

BILL TO




City of Allen
305 Century Parkway
Allen, TX 75013
Teresa Thomason
214-509-4702
theresa.thomason@cityofallen.org

SHIP TO

City of Allen
1680 W Exchange Pkwy
Allen, TX 75013
Teresa Thomason
214-509-4702
theresa.thomason@cityofallen.org




STRENGTH EQUIPMENT

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------|-----------------|---|--|------------|-----|------------|
| FW-AC | Hammer Strength | Arm Curl (Seated)  | <ul style="list-style-type: none">Adjustable seat to accommodate users of all sizes11-gauge steel frame with powder coat finishUrethane bar guards protects frameMade in USAMachine Weight: 160 lb.Dimensions: 39"L x 36" W x 43" H | 1,197.65 | 2 | \$2,395.30 |
| FW-BAR | Hammer Strength | Barbell Rack  | <ul style="list-style-type: none">Holds 10 fixed barbellsZinc coated bolt-on racking system protects frame11-gauge steel frame with powder coat finishMade in USAMachine Weight: 142 lb.Dimensions: 31"L x 28" W x 60" H | 1,087.15 | 2 | \$2,174.30 |
| O-IB | Hammer Strength | Olympic Incline Bench  | <ul style="list-style-type: none">Zinc coated bolt-on racking system protects frameRacking system allows for three lift off heights30-degree back pad angleSeat adjustable to 27 positions with 3/8 inch incrementsIntegrated spotter platform11-gauge steel frame with powder coat finishMade in USAMachine Weight: 198 lb.Dimensions: 51"L x 52" W x 58" H | 1,299.65 | 1 | \$1,299.65 |







advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-----------------|-----------------|---|---|------------|-----|------------|
| O-FB | Hammer Strength | Olympic Flat Bench  | <ul style="list-style-type: none">• Zinc coated bolt-on racking system protects frame• Racking system allows for three lift off heights• 11-gauge steel frame with powder coat finish• Made in USA• Machine Weight: 145 lb.• Dimensions: 52"L x 50" W x 50" H | 1,053.15 | 2 | \$2,106.30 |
| O-DB | Hammer Strength | Olympic Decline Bench  | <ul style="list-style-type: none">• Zinc coated bolt-on racking system protects frame• Racking system allows for three lift off heights• Adjustable knee pad• 15-degree back pad angle• 11-gauge steel frame with powder coat finish• Made in USA• Machine Weight: 190 lb.• Dimensions: 60"L x 53" W x 50" H | 1,342.15 | 1 | \$1,342.15 |
| O-BWS | Hammer Strength | Olympic Bench Weight Storage (4 Weight Horns)  | <ul style="list-style-type: none">• Bolt on frame with 8 olympic zinc coated weight horns• For use with OFB, OIB, ODB and OMB• 11-gauge steel frame with powder coat finish• Made in USA• Machine Weight: 62 lb.• Dimensions: 22"L x 15" W x 46" H | 502.35 | 4 | \$2,009.40 |
| HDLSTOR-SA-6201 | Hammer Strength | HD Elite Standard Storage (Stand Alone)  | <ul style="list-style-type: none">• Standard Storage for Stand Alone Racks• 5 Olympic Plate holders per side• 206lbs. | 1,333.65 | 2 | \$2,667.30 |
| TWP-4X8 | Hammer Strength | Traditional Wood Platform 4X8  | <ul style="list-style-type: none">• Oak Lifting Surface• Engineered Hardwood Underlayment• Drop Zone .75 in Rubber Surface 2.36 in Wooden Base• 1.5 in X 3" 11 Gauge Steel Tubing Frame• Steel Corner Brackets• 51.5 in L X 94.5 in W X 3.25 in H• 316lbs | 3,526.65 | 2 | \$7,053.30 |







advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------|-----------------|--|---|------------|-----|------------|
| IL-BPV | Hammer Strength | Iso-Lateral Bench Press (Vertical)  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent converging movement• Vertical grip position• Plate Loaded with 7 lb. starting resistance• 6 standard weight horns• Made in USA• 49"L x 52" W x 69" H• Machine weight: 350 lbs. | 2,897.65 | 1 | \$2,897.65 |
| IL-DCP | Hammer Strength | Iso-Lateral Decline Press  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent converging movement• Plate Loaded with 6 lb. starting resistance• 6 standard weight horns• Made in USA• 51"L x 54" W x 68" H• Machine weight: 315 lbs. | 2,897.65 | 1 | \$2,897.65 |
| IL-PD | Hammer Strength | Iso-Lateral Front Lat Pulldown  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent diverging movement• Plate Loaded with 1 lb. starting resistance• Adjustable thigh pad to keep user in stable position• Additional handle for stabilization during one arm exercise• 6 standard weight horns• Made in USA• 65"L x 41"W x 80"H• Machine weight: 315 lbs. | 2,897.65 | 1 | \$2,897.65 |
| IL-IPV | Hammer Strength | Iso-Lateral Incline Press (Vertical)  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent converging movement• Vertical grip position• Seat adjustable to 27 positions• Plate Loaded with 7 lb. starting resistance• 6 standard weight horns• Made in USA• 39"L x 52"W x 75"H• Machine weight: 350 lbs. | 2,897.65 | 1 | \$2,897.65 |






advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------|-----------------|---|---|------------|-----|------------|
| IL-KLC | Hammer Strength | Iso-Lateral Kneeling Leg Curl  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent movement• Plate Loaded with 8 lb. starting resistance• 2 weight horns• Made in USA• 43"L x 50" W x 47" H• Machine weight: 250 lbs. | 3,067.65 | 1 | \$3,067.65 |
| IL-LE | Hammer Strength | Iso-Lateral Leg Extension  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Start & Stop Range Limiter• Two resistance loading positions provide dual strength curves• Plate Loaded with 2 lb. starting resistance• 2 standard weight horns• Made in USA• 56"L x 54" W x 57" H• Machine weight: 295 lbs. | 2,880.65 | 1 | \$2,880.65 |
| IL-ROW | Hammer Strength | Iso-Lateral Rowing  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Patented independent diverging movement• Additional handle for stabilization during one arm exercise• Plate Loaded with 10 lb. starting resistance• Made in USA• 59"L x 50" W x 51" H• Machine weight: 280 lbs. | 2,625.65 | 1 | \$2,625.65 |
| HSLLP | Hammer Strength | Linear Leg Press  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Seat travels along stainless steel rails via wear-resistant wheels• ASTM/ EN957 certified to 2000 lbs. with the ability to load up to 24 plates• Frame shall be constructed of heavy-wall 1018 steel• Leg press will follow a traditional "hip sled" motion at a 40-degree angle• Back pad adjusts in two positions• Oversized polyethylene spray-coated foot platform• 8 standard weight horns for storage• Plate Loaded with 118 lb. starting resistance• Made in USA• 95"L x 65"W x 57"H• Machine weight: 630 | 5,770.65 | 1 | \$5,770.65 |






advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------------|-----------------|---|--|------------|-----|------------|
| PL-CALF | Hammer Strength | Seated Calf Raise  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Thigh pad restraint adjusts to accommodate different user sizes• Two areas to load plates• Plate Loaded with 60 lb. starting resistance• Made in USA• 50"L x 30"W x 55"H• Machine weight: 200 lbs | 1,605.65 | 1 | \$1,605.65 |
| PL-VSQ | Hammer Strength | V-Squat  | <ul style="list-style-type: none">• 11-gauge steel frame with powder coat finish• Angle of back pad and footpad ensures normal squatting motion• Curved arc of motion to reduce back and knee strain• Dual safety stops—one adjustable• 2 Standard weight horns• Plate Loaded with 80 lb. starting resistance• Made in USA• 91"L x 42"W x 81"H• Machine weight: 530 lbs. | 4,342.65 | 1 | \$4,342.65 |
| SS-SP | Life Fitness | Insignia Shoulder Press  | <ul style="list-style-type: none">• Independent Converging Press Arms• Counterbalanced Press Arms for Low Starting Resistance• Neutral & Pronated Grips• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 170 lbs• 57" L x 64" W x 73" H | 4,647.20 | 1 | \$4,647.20 |
| SS-SP-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Shoulder Press) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-SP-50001 | Life Fitness | Standard Full Shroud (Shoulder Press) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |





advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------------|--------------|--|--|------------|-----|------------|
| SS-CP | Life Fitness | Insignia Chest Press  | <ul style="list-style-type: none">• Independent Converging Press Arms• Adjustable Starting Position• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 57" L x 43" W x 58" H | 5,103.20 | 1 | \$5,103.20 |
| SS-CP-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Chest Press) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-CP-50001 | Life Fitness | Standard Full Shroud (Chest Press) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-RW | Life Fitness | Insignia Row/Rear Deltoid  | <ul style="list-style-type: none">• Independent Diverging Movement Arms• Adjustable Chest Pad• Fixed Center Grip for Single Arm Isolation• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 49" L x 54" W x 58" H | 4,647.20 | 1 | \$4,647.20 |
| SS-RW-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Row/Rear Deltoid) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-RW-50001 | Life Fitness | Standard Full Shroud (Row/Rear Deltoid) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-PD | Life Fitness | Insignia Pulldown  | <ul style="list-style-type: none">• Independent Diverging Movement Arms• Angled Adjustable Thigh Pad• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 57" L x 55" W x 76" H | 4,823.20 | 1 | \$4,823.20 |





advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|--------------|--|---|------------|-----|------------|
| SS-PD-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Pulldown) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-PD-50001 | Life Fitness | Standard Full Shroud (Pulldown) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-BCD-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Biceps Curl) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-BCD | Life Fitness | Insignia Biceps Curl (Dependant Arm)  | <ul style="list-style-type: none">• Seated Arm Curl Pad Biceps Curl• Angled Handles for Neutral Grip• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 170 lbs• 55.02" L x 39.59" W x 58.2" H | 4,135.20 | 1 | \$4,135.20 |
| SS-BCD-50001 | Life Fitness | Standard Full Shroud (Biceps Curl) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-TP | Life Fitness | Insignia Triceps Press  | <ul style="list-style-type: none">• Angled Back Pad Secures User Position• Open Pressing Handles Adjustable Width• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 52" L x 44" W x 58" H | 4,583.20 | 1 | \$4,583.20 |
| SS-TP-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Triceps Press) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-TP-50001 | Life Fitness | Standard Full Shroud (Triceps Press) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |






advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|--------------|---|--|------------|-----|------------|
| SS-FLY | Life Fitness | Insignia Pec Fly/Rear Deltoid  | <ul style="list-style-type: none">• Independent Variable Cams Provide Equal Resistance• Adjustable Range of Motion Increments• Articulating Arms Adjust to Users Range of Motion• Rear Delt Exercises• Four Bar Linkage Seat Design for Optimum Fit• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Full Front & Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 80" L x 78" W x 80" H | 5,031.20 | 1 | \$5,031.20 |
| SS-FLY-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Pec Fly/Rear Deltoid) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-FLY-50001 | Life Fitness | Standard Full Shroud (Pec Fly/Rear Deltoid) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-SLP | Life Fitness | Insignia Seated Leg Press  | <ul style="list-style-type: none">• Upright Design & Angled Seat for Optimal Fit• Adjustable Starting Position• Force is displaced on hips & glutes not the spine• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 335 lbs• 45" L x 79" W x 65" H | 7,391.20 | 1 | \$7,391.20 |
| SS-SLP-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Seated Leg Press) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-SLP-50001 | Life Fitness | Standard Full Shroud (Seated Leg Press) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |







advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|--------------|--|---|------------|-----|------------|
| SS-SLC | Life Fitness | Insignia Seated Leg Curl  | <ul style="list-style-type: none">• Variable Cam Design Allows Proper Range of Motion• Adjustable Starting Position• Adjustable Back Pad• Adjustable Tibia Pad• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 40" L x 61" W x 58" H | 5,143.20 | 1 | \$5,143.20 |
| SS-SLC-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Seated Leg Curl) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-SLC-50001 | Life Fitness | Standard Full Shroud (Seated Leg Curl) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-LE | Life Fitness | Insignia Leg Extension  | <ul style="list-style-type: none">• Variable Cam Design Allows Proper Range of Motion• 100° Degree Angle between back pad & seat for comfort• Adjustable Starting Position• Adjustable Back Pad• Adjustable Tibia Pad• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 40" L x 69" W x 58" H | 5,031.20 | 1 | \$5,031.20 |
| SS-LE-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Leg Extension) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-LE-50001 | Life Fitness | Standard Full Shroud (Leg Extension) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| IS-HAA | Life Fitness | Insignia Hip Abduction/Adduction  | <ul style="list-style-type: none">• Advanced Cam Mechanism Provides Biomechanically Correct Strength Profiles - No Need to Change Weight Setting Between Exercises• Kneepads and Dual Foot Positions• Elevated Weight Stack Easily Accessible From Seated Position• Workarm Adjusts to 10 Positions• Machine Weight: 624 lbs• Standard Weight Stack: 260 lbs• 67" L x 65" W x 58.1" H | 5,543.20 | 1 | \$5,543.20 |






advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|--------------|---|--|------------|-----|------------|
| IS-HAA-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Hip Adduction/Abduction) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| IS-HAA-50001 | Life Fitness | Standard Full Shroud (Hip Adduction/Abduction) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| MJ-CORE | Life Fitness | Cable Motion Multi-Jungle MJ Core  | <ul style="list-style-type: none">• Oval Steel Frame with Powder Coat Finish• For Use with Cable Motion Stations• Total Weight: 225lb.• Dimensions: 32.5"L x 32.5"W x 94"H• Made in USA | 1,415.20 | 1 | \$1,415.20 |
| MJAP41-STA | Life Fitness | Cable Motion Multi-Jungle Adjustable Pulley 4:1 Ratio  | <ul style="list-style-type: none">• Oval Steel Frame with Powder Coat Finish• 1" Solid Steel Weight Plates• 4:1 resistance ratio• Adjustable Pulley Height• Includes Molded Grip Handle• Total Weight: 460lb.• Weight Stack: 390lb.• Dimensions: 14.5"L x 18.5"W x 92"H• Made in USA | 2,847.20 | 1 | \$2,847.20 |
| MJLP-STA | Life Fitness | Cable Motion Multi-Jungle Lat Pulldown  | <ul style="list-style-type: none">• Oval Steel Frame with Powder Coat Finish• 1" Solid Steel Weight Plates• Contoured Cushions with Molded Foam• Dual High Pulleys• Includes Lat Bar• Total Weight: 340lb.• Weight Stack: 260lb.• Dimensions: 26.75"L x 37.25"W x 92"H• Made in USA | 2,567.20 | 1 | \$2,567.20 |
| MJAP-STA | Life Fitness | Cable Motion Multi-Jungle Adjustable Pulley 2:1 Ratio  | <ul style="list-style-type: none">• Oval Steel Frame with Powder Coat Finish• 1" Solid Steel Weight Plates• 2:1 resistance ratio• Adjustable Pulley Height• Includes Molded Grip Handle• Total Weight: 260lb.• Weight Stack: 190lb.• Dimensions: 14.5"L x 18.5"W x 92"H• Made in USA | 2,455.20 | 1 | \$2,455.20 |







advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|--------------|---|---|------------|-----|------------|
| MJRW-STA | Life Fitness | Cable Motion Multi-Jungle Row  | <ul style="list-style-type: none">• Oval Steel Frame with Powder Coat Finish• 1" Solid Steel Weight Plates• Contoured Cushions with Molded Foam• Single Low Pulley Includes V-Bar Handle• Total Weight: 360lb.• Weight Stack: 260lb.• Dimensions: 26.75"L x 37.25"W x 92"H• Made in USA | 2,567.20 | 1 | \$2,567.20 |
| SS-ADC | Life Fitness | Insignia Assist Dip Chin  | <ul style="list-style-type: none">• Knee pad folds under for unassisted training• Dip Bars adjust in width• Multi Grip handles for variety of movements• Steps for easy access• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 170 lbs• 58" L x 64" W x 87" H | 5,103.20 | 1 | \$5,103.20 |
| SS-ADC-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Assist Dip Chin) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-ADC-50001 | Life Fitness | Standard Full Shroud (Assist Dip Chin) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| SS-BE | Life Fitness | Insignia Back Extension  | <ul style="list-style-type: none">• Two Foot Peg heights to accommodate user size• Five Adjustable Starting Positions• Lumbar Pad allows for complete range of motion• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 260 lbs• 55" L x 42" W x 58" H | 4,823.20 | 1 | \$4,823.20 |
| SS-BE-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Back Extension) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-BE-50001 | Life Fitness | Standard Full Shroud (Back Extension) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |








advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------------|--------------|--|---|------------|-----|------------|
| SS-LC | Life Fitness | Insignia Leg Curl  | <ul style="list-style-type: none">• Variable Cam Design Allows Proper Range of Motion• Diverging Hip & Chest Pad Minimize Low Back Stress• Adjustable Starting Position• Low Profile Shroud Design• Adjustment Knobs & Levers Color Coded• Rear Weight Stacks Shrouds• Large Color Exercise Graphic• QR Code to log workout on LF Connect• Standard Weight Stack: 170 lbs• 63" L x 42" W x 58" H | 4,647.20 | 1 | \$4,647.20 |
| SS-LC-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Leg Curl) | <ul style="list-style-type: none">• Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-LC-50001 | Life Fitness | Standard Full Shroud (Leg Curl) | <ul style="list-style-type: none">• Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |
| OP-FS. | Life Fitness | Flexibility Trainer  | <ul style="list-style-type: none">• Supports proper body position for stretching• Small wheels for easy transport• Large instructional placard• Dimensions 54"x23"x43"• Weight 78 lbs• Max User Weight 300 lbs | 759.20 | 2 | \$1,518.40 |
| SADB | Life Fitness | Signature Series Adjustable Decline/Abdominal Crunch  | <ul style="list-style-type: none">• Oval frame 11-gauge tubing with powder coat finish• Contoured cushions with molded foam• Adjustment angles: -10.5, -15.5, -20.5, -25.5 deg• Handle and wheels for easy mobility• Machine Weight: 125lb.• Dimensions: 61"L x 44"W x 32"H | 1,111.20 | 1 | \$1,111.20 |
| SCDLR | Life Fitness | Signature Series Chin/Dip/Leg Raise  | <ul style="list-style-type: none">• Oval frame 11-gauge tubing with powder coat finish• Contoured cushions with molded foam• Multiple pull-up grip handles• Contoured elbow pads• Oversized dip handles• Molded urethane guards protect frame• Machine Weight: 245lb.• Dimensions: 45"L x 50"W x 91.5"H | 1,775.20 | 1 | \$1,775.20 |




advanced exercise

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------|-----------------|---|---|------------|-----|-------------|
| SLR | Life Fitness | Signature Series Leg Raise  | <ul style="list-style-type: none">• Oval frame 11-gauge tubing with powder coat finish• Contoured cushions with molded foam• Unique back pad provides optimal stabilization and support• Step up foot platform• Machine Weight: 140lb.• Dimensions: 46"L x 33"W x 64"H | 1,543.20 | 1 | \$1,543.20 |
| HS-SC | Hammer Strength | Hammer Select Standing Calf  | <ul style="list-style-type: none">• 2" x 4" and 2" x 3" 11 gauge steel tubing• Start Position is adjusted in five 10-degree increments• Rear Weight Stack Shroud• Add On Incremental Weight System• Nine pad height positions• Contoured non-slip foot plate• Machine Weight: 680lb.• Weight Stack: 390lb.• Dimensions: 58"L x 45"W x 72"H• Made in USA | 4,096.15 | 1 | \$4,096.15 |
| HSSM | Hammer Strength | Smith Machine  | <ul style="list-style-type: none">• ASTM/EN957 certified for a 650 lb load rating• Walk through design• Natural 7 Degree Angle• 20 lb Counterbalanced Starting Weight• Dual Adjustable Safety Catches• 8 Olympic Zinc Coated Weight Horns• Made in USA• Machine Weight: 635 lb.• Dimensions: 50"L x 86.5" W x 93" H | 5,413.65 | 2 | \$10,827.30 |
| BW-BE | Hammer Strength | BW Back Extension  | <ul style="list-style-type: none">• Lift and lock adjustable thigh pad• 7 user adjustment positions• Polyethylene spray-coated foot platform• 11-gauge steel frame with powder coat finish• Made in USA• Machine Weight: 135 lb.• Dimensions: 59"L x 28"W x 43"H | 1,078.65 | 1 | \$1,078.65 |
| HDLPR | Hammer Strength | HD Elite Power Rack  | <ul style="list-style-type: none">• Use as Stand Alone or Combo Rack• Requires Plate Storage Option• Anvil Bracing and Spider Gusset for rigidity• Hammer Lock bolting mechanism• Spotters Arms Included• Standard Chin Up Bar• Bar, Band and Chain Storage• 3" x 3" 7 Gauge Steel Tubing• Laser Cut numbers on uprights• Weight: 557lbs. Rack Only• 10 Year Frame Warranty• Made in the USA with American Steel | 3,509.65 | 2 | \$7,019.30 |





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| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-----------------|-----------------|--|--|------------|-----|------------|
| HDLPRMR-STD-INS | Hammer Strength | HD Elite Power/Multi Rack Standard Base Platform Insert | <ul style="list-style-type: none"> • Wooden Oak Platform Insert • For TWP & ISP Platforms | 1,240.15 | 2 | \$2,480.30 |
| SS-AB | Life Fitness | Insignia Abdominal |  <ul style="list-style-type: none"> • Overhead Design for Abdominal Isolation • Four Bar Linkage Seat Design for Optimum Fit • Low Profile Shroud Design • Adjustment Knobs & Levers Color Coded • Rear Weight Stacks Shrouds • Large Color Exercise Graphic • QR Code to log workout on LF Connect • Standard Weight Stack: 170 lbs • 53" L x 46" W x 58" H | 4,647.20 | 1 | \$4,647.20 |
| SS-AB-4003 | Life Fitness | Standard Weight Stack w/Dial Increment (LB) (Abdominal) | <ul style="list-style-type: none"> • Adds Dial Increment System | 157.60 | 1 | \$157.60 |
| SS-AB-50001 | Life Fitness | Standard Full Shroud (Abdominal) | <ul style="list-style-type: none"> • Full Weight Stack Shroud | 208.80 | 1 | \$208.80 |







GROUP EXERCISE

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-----------|--------------|---|---|------------|-----|-------------|
| FXT-BM | Life Fitness | Synrgy360 Cable Crossover Boom Connector | <ul style="list-style-type: none"> • Boom Connects MJ Cores & Synrgy • Multi Grip Chin Up Handles  | 788.00 | 1 | \$788.00 |
| FXTX-CCVV | Life Fitness | Synrgy360XS Cable-Cable-Versa-Versa |  | 11,039.20 | 1 | \$11,039.20 |



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| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|---------|--------------|---|----------------|------------|-----|------------|
| FXT-RPL | Life Fitness | Rope Pull  | | 2,007.20 | 1 | \$2,007.20 |
| FXT-DIP | Life Fitness | Synrgy360 Dip Handle Attachment  | | 372.80 | 1 | \$372.80 |
| PP | Life Fitness | Synrgy360 Power Pivot  | | 854.25 | 1 | \$854.25 |
| FXT-STP | Life Fitness | Synrgy360 Step-Up Platform Attachment  | | 500.00 | 1 | \$500.00 |
| FXT-BX | Life Fitness | Punching Bag Connector <ul style="list-style-type: none">• Synrgy Boxing Bag Connector Boom For use with existing Synrgy• No Shelf• Cannot fit on front of Cable Station | | 631.20 | 1 | \$631.20 |



advanced exercise



FREE WEIGHTS

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------------|--------------|---|---|------------|-----|------------|
| GOB-1200 | Troy Barbell | 7ft. Hard Chrome Olympic Power Bar  | <ul style="list-style-type: none">• 90,000 psi 800 lb. test bar• 32mm, no center knurling, hard chrome finish• Beater Bar | 212.24 | 6 | \$1,273.44 |
| AOT-56 | Troy Barbell | Olympic Hex Bar (56 in)  | | 229.92 | 1 | \$229.92 |
| 820TR | TKO | 24 Tricep Rope  | | 22.40 | 1 | \$22.40 |
| LJC-ONE-BLK | Avus Designs | Lock-Jaw One Barbell Collar (Black)  | <ul style="list-style-type: none">• 1" Standard Barbell Collar• Secure Lock Design• For use with non Olympic lifts | 21.24 | 6 | \$127.44 |



TRAINING TOOLS

| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|-------|-------------------|---|----------------|------------|-----|-----------|
| MISC | Advanced Exercise | Power Systems 61898 Cable Bar Storage Rack with Twelve Attachment Bars | | 913.00 | 1 | \$913.00 |

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| Model | Brand | Description | Specifications | Unit Price | Qty | Total Ext |
|--------------|-------|---|---|------------|-----|-----------|
| FM-602LMT-75 | UFG | Fight Monkey 75 lbs Heavy Bag- Full Commercial PVC | <ul style="list-style-type: none">• Commercial 2mm Canvas Lining• Hydraulically Filled with Dense Fibers• Includes Chain Assembly and Bottom Hook• 48 in. Long x 14 in. Diameter• 75 lbs. | 118.15 | 1 | \$118.15 |

Comments:
Buy Board 665-22

7 foot cable cross boom

PMF Install

Subtotal: **\$195,905.90**
Discount: -11,754.35
Net Total: **\$184,151.55**
Freight, Delivery and Install: **28,179.00**
Taxes As Applicable
Total: \$212,330.55



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Terms & Conditions

Terms: All new customers are required to pay 50% down and balance due prior to install. Residential customers, personal trainers, and orders for resale, require 100% payment before the order can be placed. All other terms and credit lines are subject to credit approval. Invoice will be due and payable, based on the original requested installation date, unless Advanced Exercise is notified in writing 60 days prior to the requested installation date with a change of the installation date. We accept checks, money orders, ACH and credit cards (under \$2000). A late payment fee will be assessed at a rate of 1.5% (18% annual) per month on any unpaid balance remaining 30 days after the due date. Special Orders: A 100% prepayment is required for all customized products including but not limited to custom colors, sports flooring and products with logos such as plates, dumbbells and platforms.

Return Policy: Any returns require approval in writing by Advanced Exercise Project Management. A minimum 25% restocking fee, plus freight, will be incurred for all non-custom products returned. Customized products are nonreturnable. All products with color choices are defined as custom products.

Bolt Down Requirements: Life Fitness recommends that all strength training equipment be secured to the floor in order to prevent tipping, rocking or displacement which might occur in the event of unanticipated use of the equipment. Life Fitness requires that certain strength training equipment (specifically the Synrgy 360 90, T, XS, XM, HD Elite Half Rack/Short Base, Athletic Series Rigs, Athletic Series Racks with Wing option, Cybex PWR Play, Synrgy Outdoor BlueSky and other products to be used for body weight strap training) be secured to the floor. In the case of Synrgy 360S, T, XS, XM and the Elite HD Half Rack Short Base, the customer acknowledges:

- Customer has determined the proper placement of the equipment to be secured. **Customer Initial** _____
- Customer has identified and informed Advanced Exercise of the location of any utility, service lines, including but not limited to post tension cables. It is the customer's responsibility to identify the locations of any cables or lines prior to installation.

Customer Initial _____

- Customer has confirmed that the subfloor consists of no less than 4.75 inches of concrete. (Synrgy Outdoor BlueSky requires a minimum 4.5 inches of concrete **Customer Initial** _____)
- Customer has obtained any and all consents to the drilling of holes in the flooring and subflooring. **Customer Initial** _____

If your order includes any of the equipment requiring bolting to the floor, initials are required above and an additional signed waiver will be required to place the order. Additional products may require bolting to the floor, wall or ceiling. Bolting is not included on these products unless otherwise noted on the quotation. Customer is responsible for bolting these products to meet the manufacturer's requirements. This includes TRX, Core Energy, Boxing mounts and other products that require bolting to the facility structure.

Wall & Ceiling Attached Items: The installation of any items such as TRX Multi Mounts., X Mounts, Wall Mat Racks, etc. that require bolting to walls or ceilings are not included in the proposal unless otherwise noted.

Flooring Installation: Refer to the product specifications to ensure that the sub floor meets the material installation requirements. Freight offloading, inside delivery, adhesive, moisture tests, moisture reducers, base boards, sub floor prep, sub floor cleaning, transition strips and existing floor removal and disposal are not included unless otherwise noted on the quotation.

Storage: We reserve the right to assess storage fees not to exceed 1.5% per month, or fraction thereof and request payment in full on the related customer's invoice, when a customer's original requested delivery date is delayed by circumstances beyond our control.

Taxes: We collect sales or use taxes only in jurisdictions where we are licensed to do so. Customer agrees to accept sole liability and responsibility to pay for any and all uncollected sales or use tax liabilities, related penalties and interest that arise as a result of the purchase of products and/or services from our company.

Security: Until all products are paid in full, customer hereby grants to, and Advanced Exercise shall retain, a security interest in and lien on all products sold to the customer.

I accept the terms and conditions of this quote.

Signature: _____

Name: Teresa Thomason

Date: _____ **Customer Requested Install Date:** _____



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P.O. Box 17705
Sugar Land, TX 77496
Tel:(800) 391-9496 Fax:(888) 240-9360

Sales Proposal

| | |
|-------------------------------------|----------------------------|
| Date Sep 9, 2022 | Page Page 1 of 7 |
| Proposal Number QT0031326 | |

Printed On 11/9/2022
At 2:52:45PM

Bill To:

City of Allen Purchasing Division
City of Allen Purchasing Division
305 Century Parkway
Allen, TX 75013

Ship To:

CITY OF ALLEN STEPHEN TERRELL REC CENTER
1680 W EXCHANGE PARKWAY
ALLEN, TX 75013
TERESA THOMASON

| Salesperson | | Proposal Valid Until | | Terms | |
|-------------|-------------------|--|--------------|-------------|----------------|
| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 20 | NOTE | CARDIO EQUIPMENT | | | |
| | TRM 885-B | Precor 885 Treadmill - P82 Console w/15" Touchscreen TV(120V)(Tungsten Shroud/Black Frame) | \$ 14,010.00 | \$ 9,516.50 | \$ 190,330.00 |
| 5 | EFX 885-B | Precor 885 EFX - Dual action w/adjustable Crossramp - P82Console w/15" Touchscreen/TV/(120V) (Tungsten Shroud/Black Frame) | \$ 12,670.00 | \$ 8,641.50 | \$ 43,207.50 |
| 5 | EFX 883-B | Precor 883 EFX - Fixed handrail w/adjustable Crossramp-P82Console w/15" Touchscreen TV (120V) (Tungsten Shroud/Black Frame) | \$ 11,600.00 | \$ 7,941.50 | \$ 39,707.50 |
| 6 | AMT 885-B | Precor 885 AMT with Open Stride - P82 Console w/15"Touchscreen/TV (120V) (Tungsten Shroud/Black Frame) | \$ 14,440.00 | \$ 9,796.50 | \$ 58,779.00 |
| 6 | RBK 885-B | Precor 885 Recumbent Bike. P82 Console w/15" TouchscreenTV Connectivity (120V) (Tungsten Shroud/Black Frame) | \$ 8,430.00 | \$ 5,862.50 | \$ 35,175.00 |
| 6 | SCL 835-B PRO PVS | Precor Climb with Exclusive Dynamic Step Control (120V) 31P31 Console w/ Pro Idiom PVS (Tungsten Shroud/Black Frame) | \$ 12,350.00 | \$ 8,080.80 | \$ 48,484.80 |
| 1 | 20003 | NuStep Upper Body Ergometer (UE8 MAX) with standard (22" seat) with 360° access; accommodates users up to 600 lbs MSRP \$9181.25 (BB discount is 20%) | \$ 9,181.25 | \$ 7,245.00 | \$ 7,245.00 |

Quotation continued on next page ...





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| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 3 | TSPA | Aviron Tough Series Rower (Includes 1 x Tough Series Rower aSeries Rower and 1 x 22" HD Touchscreen, 120V, Wi-Fi Enabled)5 Year Commercial Subscription | \$ 5,499.00 | \$ 4,499.00 | \$ 13,497.00 |
| 41 | 971-0017 | Stages SC3.20 Indoor Cycle - (Bike, Power Meter, Console) | \$ 3,445.00 | \$ 2,531.25 | \$ 103,781.25 |
| 41 | 40GS | Super Mats 2'5" x 5' x 1/8" Bike Mat | \$ 56.30 | \$ 31.20 | \$ 1,279.20 |
| | NOTE | SELECTORIZED EQUIPMENT & CABLE EQUIPMENT | | | |
| 2 | G624-03 | FreeMotion Dual Cable Cross (Black Frame) | \$ 8,999.00 | \$ 7,199.20 | \$ 14,398.40 |
| | NOTE | BENCHES | | | |
| 8 | PWDBR0119-B | Precor Multi-Adjustable Bench (Black Frame) 5 for Dumbbells, 2 for Smith Machines | \$ 1,360.00 | \$ 1,000.00 | \$ 8,000.00 |
| 1 | PWDBR0113 | Precor Adjustable Decline Bench | \$ 1,240.00 | \$ 912.00 | \$ 912.00 |
| | NOTE | FREEWEIGHT: DUMBBELLS, RACKS, PLATES, BARBEL | | | |
| 3 | PWDBR0815-B | Precor Dumbbell Rack - 3 Tier, 15 Pairs (Black Frame) | \$ 1,690.00 | \$ 1,244.00 | \$ 3,732.00 |
| 2 | TSD-005-050U | Troy 12 sided Urethane Dumbbells 5-50 lbs | \$ 4,727.26 | \$ 3,781.81 | \$ 7,563.62 |
| 2 | TSD-055-075U | Troy 12 sided Urethane Dumbbells 55-75 lbs | \$ 3,948.76 | \$ 3,159.01 | \$ 6,318.02 |
| 4 | TSD-007U | Troy 12 sided Urethane Dumbbell 7.5 lbs (EACH) | \$ 152.26 | \$ 121.81 | \$ 487.23 |
| 4 | TSD-012U | Troy 12 sided Urethane Dumbbell 12.5 lbs (EACH) | \$ 164.16 | \$ 131.33 | \$ 525.31 |
| 4 | TSD-017U | Troy 12 sided Urethane Dumbbell 17.5 lbs (EACH) | \$ 179.52 | \$ 143.62 | \$ 574.46 |
| 4 | TSD-022U | Troy 12 sided Urethane Dumbbell 22.5 lbs (EACH) | \$ 204.12 | \$ 163.30 | \$ 653.18 |

Quotation continued on next page ...





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| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 4 | TSD-027U | Troy 12 sided Urethane Dumbbell 27.5 lbs (EACH) | \$ 229.86 | \$ 183.89 | \$ 735.55 |
| 1 | TSD-080-100U | Troy 12 sided Urethane Dumbbells 80-100 lbs | \$ 5,467.50 | \$ 4,374.00 | \$ 4,374.00 |
| 1 | GOZ-47 | Troy Olympic style "economy" EZ curl bar | \$ 82.98 | \$ 66.38 | \$ 66.38 |
| 60 | GO-045U | Troy 45 lb Urethane Encased Olympic "Inter-locking" Plate | \$ 204.08 | \$ 163.26 | \$ 9,795.84 |
| 24 | GO-035U | Troy 35 lb Urethane Encased Olympic "Inter-locking" Plate | \$ 158.72 | \$ 126.98 | \$ 3,047.42 |
| 60 | GO-025U | Troy 25 lb Urethane Encased Olympic "Inter-locking" Plate | \$ 113.38 | \$ 90.70 | \$ 5,442.24 |
| 60 | GO-010U | Troy 10 lb Urethane Encased Olympic "Inter-locking" Plate (Does not have Grips) | \$ 53.50 | \$ 42.80 | \$ 2,568.00 |
| 60 | GO-005U | Troy 5 lb Urethane Encased Olympic "Inter-locking" Plate (Does not have Grips) | \$ 32.70 | \$ 26.16 | \$ 1,569.60 |
| 40 | GO-002U | Troy 2.5 lb Urethane Encased Olympic "Inter-locking" Plate(Does not have Grips) | \$ 23.70 | \$ 18.96 | \$ 758.40 |
| 16 | BCO-055SBP | Troy 55 lb. Black Competition Bumper Plates | \$ 301.21 | \$ 240.97 | \$ 3,855.49 |
| 16 | O-045SBP | Troy 45 lb Olympic 2" Bumper Plate With Steel Insert (Red) | \$ 166.96 | \$ 133.57 | \$ 2,137.09 |
| 16 | O-025SBP | Troy 25 lb Olympic 2" Bumper Plate With Steel Insert (Yellow) | \$ 95.26 | \$ 76.21 | \$ 1,219.33 |
| 16 | O-010SBP | Troy 10 lb Olympic 2" Bumper Plate With Steel Insert (Green) | \$ 56.80 | \$ 45.44 | \$ 727.04 |
| 2 | PWDBR0808 | Precor Barbell Rack - 10 Bars | \$ 1,460.00 | \$ 1,072.00 | \$ 2,144.00 |
| 1 | TSB-020-110R | Troy 12 sided Solid Rubber Straight Barbells 20-110 lbs | \$ 3,080.20 | \$ 2,464.16 | \$ 2,464.16 |

Quotation continued on next page ...





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| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 1 | TZB-020-110R | Troy Rubber 12 Sided Curl Bar Set 20-110 Set 10lb Increments | \$ 3,195.70 | \$ 2,556.56 | \$ 2,556.56 |
| 12 | KAMCOL2 NOTE | Escape Olympic Clamp Collar PRECOR STORAGE SOLUTIONS AND TRAINING EQUIPMENT | \$ 22.00 | \$ 17.20 | \$ 206.40 |
| 2 | PWVBR6820-B | Precor Vitality 2-Tier Kettlebell Shelf with Utility and Accessory Rack (Black) | \$ 1,280.00 | \$ 936.00 | \$ 1,872.00 |
| 2 | SBP55 | Escape 55cm/21.5" Steadyball Pro - Light Grey | \$ 40.00 | \$ 32.13 | \$ 64.26 |
| 2 | SBP65 | Escape 65cm/25" Steadyball Pro - Dark Grey | \$ 49.50 | \$ 39.27 | \$ 78.54 |
| 2 | 10850-PQ | Ball Bounce Bosu Pro | \$ 189.99 | \$ 170.99 | \$ 341.98 |
| 2 | VERT03 | Escape 3kg/6.6lb Vertball - Green | \$ 75.00 | \$ 55.25 | \$ 110.50 |
| 2 | VERT04 | Escape 4kg/8.8lb Vertball - Blue | \$ 79.50 | \$ 58.23 | \$ 116.45 |
| 2 | VERT05 | Escape 5kg/11lb Vertball - Red | \$ 84.00 | \$ 61.20 | \$ 122.40 |
| 2 | ATGMED04 | Escape 4lb Total Grip Medball | \$ 39.50 | \$ 30.63 | \$ 61.27 |
| 2 | ATGMED06 | Escape 6lb Total Grip Medball | \$ 48.00 | \$ 36.86 | \$ 73.71 |
| 2 | ATGMED08 | Escape 8lb Total Grip Medball | \$ 56.50 | \$ 43.08 | \$ 86.16 |
| 2 | ATGMED10 | Escape 10lb Total Grip Medball | \$ 65.00 | \$ 50.25 | \$ 100.50 |
| 2 | CKB-010 | Troy VTX Rubber Kettlebell 10lb | \$ 34.04 | \$ 27.23 | \$ 54.46 |
| 2 | CKB-015 | Troy VTX Rubber Kettlebell 15lb | \$ 51.06 | \$ 40.85 | \$ 81.70 |
| 2 | CKB-020 | Troy VTX Rubber Kettlebell 20lb | \$ 68.06 | \$ 54.45 | \$ 108.90 |

Quotation continued on next page ...





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| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 2 | CKB-025 | Troy VTX Rubber Kettlebell 25lb | \$ 85.08 | \$ 68.06 | \$ 136.13 |
| 2 | CKB-030 | Troy VTX Rubber Kettlebell 30lb | \$ 102.10 | \$ 81.68 | \$ 163.36 |
| 2 | CKB-035 | Troy VTX Rubber Kettlebell 35lb | \$ 119.12 | \$ 95.30 | \$ 190.59 |
| 2 | CKB-040 | Troy VTX Rubber Kettlebell 40lb | \$ 136.12 | \$ 108.90 | \$ 217.79 |
| 2 | CKB-045 | Troy VTX Rubber Kettlebell 45lb | \$ 153.14 | \$ 122.51 | \$ 245.02 |
| 4 | USR001 | Escape Ubersoft Roller - Grey | \$ 69.50 | \$ 57.38 | \$ 229.50 |
| 4 | EST-HFR | Escape Ultra Flex Hard Roller (Green) | \$ 66.50 | \$ 51.22 | \$ 204.88 |
| | NOTE | BEAVER FIT EQUIPMENT | | | |
| 1 | MISC EQUIPMENT | BeaverFit custom dual shred shed as per rendering includes 2 Heavy accessory packages MSRP \$105,235 | \$ 89,450.00 | \$ 89,450.00 | \$ 89,450.00 |
| 1 | FREIGHT | BeaverFit Freight from Reno to Allen | \$ 5,750.00 | \$ 5,750.00 | \$ 5,750.00 |
| 1 | EQUIP INSTALL | BeaverFit Installation to second floor deck | \$ 6,990.00 | \$ 6,990.00 | \$ 6,990.00 |
| | NOTE | FUNCTIONAL TRAINING EQUIPMENT | | | |
| 1 | TIREFLIP 180 XL | Abs Company TireFlip 180 XL - ABS4002 | \$ 2,699.00 | \$ 2,159.20 | \$ 2,159.20 |
| 1 | TIYR01 | Escape TiyR Level 1 - 40Kg /90lbs (Green) | \$ 1,500.00 | \$ 1,220.60 | \$ 1,220.60 |
| 2 | TIYR02 | Escape TiyR Level 2 - 60Kg /130lbs (Blue) | \$ 1,880.00 | \$ 1,579.30 | \$ 3,158.60 |
| 2 | TIYR03 | Escape TiyR Level 3 - 80 Kg/175lbs (Red) | \$ 2,120.00 | \$ 1,782.45 | \$ 3,564.90 |
| 1 | TIYR04 | Escape TiyR Level 4 - 100 Kg/220lbs (Black) | \$ 2,535.00 | \$ 2,137.75 | \$ 2,137.75 |
| 1 | CPLYS3 | Escape Plyosoft Box Set (01 to 03) | \$ 1,928.00 | \$ 1,638.80 | \$ 1,638.80 |

Quotation continued on next page ...





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| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 2 | MULTIP1 | Escape Multiplyo | \$ 930.00 | \$ 790.50 | \$ 1,581.00 |
| 2 | XTTM4-PH | Torque Fitness Tank M4, Performance Handle Package | \$ 2,600.00 | \$ 1,720.00 | \$ 3,440.00 |
| 1 | BARROW1 | Escape Barrow | \$ 1,745.00 | \$ 1,483.25 | \$ 1,483.25 |
| 3 | LF2RACK | Escape Freestanding Mat Storage Rack (Silver) includes CASTERS for mobility | \$ 330.00 | \$ 272.00 | \$ 816.00 |
| 60 | EST-FMGRY | Escape Flex Mat (Grey) | \$ 64.00 | \$ 49.33 | \$ 2,960.04 |
| | NOTE | GROUP EXERCISE EQUIPMENT | | | |
| 2 | MDR-VPAC | Troy Aerobic Pac Dumbbell System - locking rack and 43 pairsof vinyl coated dumbbellsQTY: 14each 1lb, QTY: 12 each 2lb, QTY: 18 each 3lb,QTY: 16 each 5lb QTY: 14 each 8lb, QTY: 12 each 10lbQTY: 1 MDR D/BELL RACK | \$ 1,540.36 | \$ 1,232.29 | \$ 2,464.58 |
| 2 | MDR-CASTERS | Troy Optional casters for Aerobic Pac | \$ 132.00 | \$ 105.60 | \$ 211.20 |
| 65 | EST-DECK | Escape Deck (black/grey/green color scheme) | \$ 210.00 | \$ 178.50 | \$ 11,602.50 |
| 25 | XT-VL | SPRI The Original Xertube - Very Light Resistance (Yellow) | \$ 15.98 | \$ 13.58 | \$ 339.58 |
| 25 | XT-L | SPRI The Original Xertube - Light Resistance (Green) | \$ 16.98 | \$ 14.43 | \$ 360.83 |
| 25 | XT-M | SPRI The Original Xertube - Medium Resistance (Red) | \$ 17.98 | \$ 15.28 | \$ 382.08 |
| 20 | XT-H | SPRI The Original Xertube - Heavy Resistance (Blue) | \$ 18.98 | \$ 16.13 | \$ 322.66 |
| 15 | XT-UHP | SPRI The Original Xertube - Ultra Heavy Resistance (Purple) | \$ 19.98 | \$ 16.98 | \$ 254.75 |

Quotation continued on next page ...





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| | | 12/15/2022 | | Net 30 | |
| Qty. | Item Number | Description | Unit Retail | Sales Price | Extended Price |
| 12 | TRXCLUB4 | TRX Commercial Suspension Trainer v.4(rubber handles, locking carabiner) | \$ 239.95 | \$ 178.46 | \$ 2,141.49 |
| 1 | FREIGHT | Freight | \$ 59,090.00 | \$ 59,090.00 | \$ 59,090.00 |
| 1 | EQUIP INSTALL | Equipment Installation | \$ 40,007.00 | \$ 40,007.00 | \$ 40,007.00 |
| 1 | BUY BOARD 22 | BUY BOARD Contract: #665-22 Vendor: Team Marathon Fitness, Address: PO Box 17705, Sugar Land, TX 77496 Phone: (281) 565-2307, Contact: Paul Croegaert, Email: paul@marathonfitness.com Federal ID: 68-05446644, Contract: Athletic, PE & Gym. Supplies H.D. Exercise Eq. & Accessories #665-22, Effective Date: 4/1/2022 | \$ 0.00 | \$ 0.00 | \$ 0.00 |
| 1 | MFW42 | Comprehensive Commercial P62/P82 3 Years Parts/3 Years Labor Warranty for Precor Treadmill, EFX, AMT and SCL 835 Additional 2years labor warranty on Precor Cardio | \$ 650.00 | \$ 0.00 | \$ 0.00 |
| 1 | PREV MAINTENANCE QTI | On-site Service Call to perform Quarterly Preventative Maint 1yr Quarterly PM complimentry (\$2200/visit value) | \$ 0.00 | \$ 0.00 | \$ 0.00 |
| 1 | MISC EQUIPMENT | STAGES Cycling University In-Studio Training choice of ONE, BEATS, or POWER, 8 hours live (\$3490 value) | \$ 0.00 | \$ 0.00 | \$ 0.00 |

Subtotal \$ 876,504.88
Sales Tax 0.00% \$ 0.00

Total \$ 876,504.88

I accept the terms and conditions of this proposal. Prices are valid for 30 days. Equipment remains the property of Marathon Fitness until paid in full.

Mastercard, American Express, or VISA are accepted and subject to a 3% convenience fee.

Signature: _____ PO# _____

Printed Name: _____ Title: _____

DELIVERY INSTRUCTIONS:

Must arrive by ____ / ____ / ____ Loading Dock: Yes ____ No ____



PROJECT BUDGET

| | |
|-------------------------------|---------------|
| • Architectural Design | \$3,960,177 |
| • Other Consulting, Testing | \$1,550,000 |
| • Construction | \$42,250,000* |
| • Contingency 5% | \$2,200,000 |
| • FF&E, Playground, A/V, etc. | \$5,200,000 |

Total Appropriations – \$55,160,177

*Includes \$1,843,500 Contingency in addition to \$2,200,000 contingency listed above for a total contingency of \$4,043,500 for cost escalation or market contingency.

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Conduct a Public Hearing and adopt an Ordinance to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, Landscape Plan, and Building Elevations for property generally located northwest of US Highway 75 and Curtis Lane. [Montfort Capital] |
| STAFF RESOURCE: | Kim Yockey, Senior Planner |
| BOARD/COMMISSION ACTION: | <p>This request has been reviewed by the Technical Review Committee.</p> <p>The Planning and Zoning Commission recommended unanimous approval of the request at the November 29, 2022 meeting.</p> |
| PREVIOUS COUNCIL ACTION: | June 25, 2002 - Rezoning Approved - Ordinance No. 2066-6-02 |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

The subject property is generally located northwest of US-75 and Curtis Lane. The surrounding properties are zoned as follows:

- North: Corridor Commercial (CC)
- East (across US-75): Community Facilities (CF)
- South (across Curtis Lane): Planned Development No. 132 with a base zoning of CC
- West: Planned Development No. 118 with a base zoning of Residential (R-7)

The subject property retains a base zoning of CC. The applicant is requesting to establish a Planned Development and adopt Development Regulations to allow "Mini-Warehouse" and "Office Showroom/Warehouse" uses as being allowed by right.

The Allen Land Development Code (ALDC) does not permit "Mini-warehouse" uses in the CC zoning district. The "Office Showroom/Warehouse" use is permitted in the CC zoning district with a minimum floor area of 75 percent of total floor area not accessible to the general public. The remaining area may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

The Concept Plan shows a 3-story building with 124,650 square feet of "Mini-Warehouse" and 3,600 square feet of "Office Showroom/Warehouse" space on 6.673± acres. There are two access points off

Curtis Lane with an internal drive around the perimeter of the building. There is an existing ten foot bike trail along the northern portion of the property that connects to the City Trail system. A five foot sidewalk along US-75 is proposed that will also connect to the trail system.

The ordinance will establish a Planned Development zoning district and allow "Mini Warehouses" and "Office Showroom/Warehouse" as permitted uses. In order to deviate from the ALDC definition of "Office Showroom/Warehouse", a new definition, specifically for this development, for "Office Showroom/Warehouse" is as follows:

"An establishment with not less than 50 percent of its total floor area devoted to and used for storage and warehousing, which floor area is not made accessible to the general public. The remaining floor areas may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas".

While we cannot regulate building materials, the Building Elevations include E.I.F.S, concrete masonry block, stone veneer, and metal accents with a building height of approximately 40 feet. The conceptual landscape plan provides landscape buffers along US-75 and Curtis Lane.

LEGAL NOTICES:

Public Hearing Sign - November 4, 2022
Public Hearing Letters - November 9, 2022
Newspaper Notice - November 20, 2022

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to establish Planned Development No. 148 with a base zoning of Corridor Commercial.

ATTACHMENT(S)

[Ordinance](#)
[Property Notification Map](#)
[Planning and Zoning Commission Minutes - November 29, 2022](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE REGULATIONS RELATING TO THE DEVELOPMENT AND USE OF 6.673± ACRES LOCATED IN THE L.K PEQUES SURVEY AND ABSTRACT NO. 702, AND F.C WILMETH SURVEY, ABSTRACT NO. 999, BY CHANGING THE ZONING FROM CORRIDOR COMMERCIAL “CC” TO PLANNED DEVELOPMENT “PD” NO. 148 FOR CORRIDOR COMMERCIAL “CC”; ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, A ZONING EXHIBIT, A CONCEPTUAL LANDSCAPE PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, as previously amended, be further amended by amending relating to the development and use of 6.673± acres located in the L.K Peques Survey, Abstract No. 702, and F.C Wilmeth Survey, Abstract No. 999, an addition to the City of Allen, Collin County, Texas, and depicted in Exhibit “A,” attached hereto and incorporated herein by reference (“the Property”) by changing the zoning from Corridor Commercial “CC” to Planned Development “PD” No. 148 for Corridor Commercial “CC” subject to Section 2 of this Ordinance.

SECTION 2. The Property shall be developed and used in accordance with the applicable provisions of the Allen Land Development Code, as amended (“ALDC”), except to the extent modified by the Development Regulations set forth below:

- A. BASE ZONING DISTRICT:** The Property shall be developed and used in accordance with the use and development regulations of Corridor Commercial “CC” except as otherwise provided below.
- B. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “B” and incorporated herein by reference (the “Concept Plan”).
- C. PERMITTED USES:** In addition to all uses otherwise permitted within the Corridor Commercial “CC” zoning district, the Property may be developed and used for the following additional purposes:
 - (1) Mini-warehouse; and

- (2) Office-Showroom/Warehouse, for the purpose of this ordinance, means an establishment with not less than 30 percent of its total floor area devoted to and used for office, which floor area is not made accessible to the general public. The remaining floor areas may include storage and warehousing, retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

D. BUILDING ELEVATIONS: The building constructed on the Property shall be designed and constructed in general conformance with the Building Elevations attached hereto as Exhibit “C” and incorporated herein by reference (“Building Elevations”).

E. CONCEPTUAL LANDSCAPE PLAN: The landscaping improvements constructed on the Property shall be installed in general conformance with the Conceptual Landscape Plan attached hereto as Exhibit “D” and incorporated herein by reference (“Conceptual Landscape Plan”).

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 7. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, City Attorney
(kbl:X7/26/2021:1237)

Shelley B. George, TRMC, City Secretary

EXHIBIT "A"
ZONING EXHIBIT



BGE, Inc.
777 Main St., Suite 1900
Fort Worth, TX 76102
Tel: 972-887-6130 • www.bgeinc.com
TBPE Registration No. F-1046
Contact: David Greer
Tel: 817-872-6005

DEVELOPER
**MONTFORT CAPITAL
PARTNERS, LLC**
5151 BELT LINE RD, STE. 725
DALLAS, TX 75254
CONTACT:
Shrenik Shah
Tel: 469-368-2035

PLANNED DEVELOPMENT
ZONING EXHIBIT

NEIGHBORHOOD MIXED USE BUILDING

6.671 ACRE TRACT
L.K. PEGUES SURVEY, ABSTRACT NO. 702
F.C. WILMETH SURVEY, ABSTRACT NO. 969

CITY OF ALLEN
COLLIN COUNTY, TEXAS

THESE PLANS ARE ISSUED FOR
THE PURPOSE OF PRELIMINARY
REVIEW AND ARE NOT INTENDED
FOR CONSTRUCTION.
WHEN ISSUED IN
FINAL FORM THEY WILL BE
SEALED, SIGNED AND DATED.

RESPONSIBLE ENGINEER:
BGE, INC.
TEXAS REGISTERED ENGINEERING
FIRM F-1046
DAVID A. GREER, P.E.
TEXAS REGISTRATION NO. 109928
OCTOBER 26, 2022

!!CAUTION !!
CONTRACTOR TO VERIFY EXACT LOCATION &
DEPTH OF EXIST FACILITIES PRIOR TO ANY
CONSTRUCTION ACTIVITIES

!! CAUTION !!
CONTACT: 1-800-DIG-TESS
48 HOURS PRIOR TO CONSTRUCTION

| REVISIONS | | |
|-----------|------|-------------|
| REV NO. | DATE | DESCRIPTION |
| | | |
| | | |
| | | |
| | | |
| | | |

DRAWN BY: CA

CHECKED BY: JS

DATE: 10/18/22

PROJECT NUMBER: 10827-00

SHEET NO.

PD-148

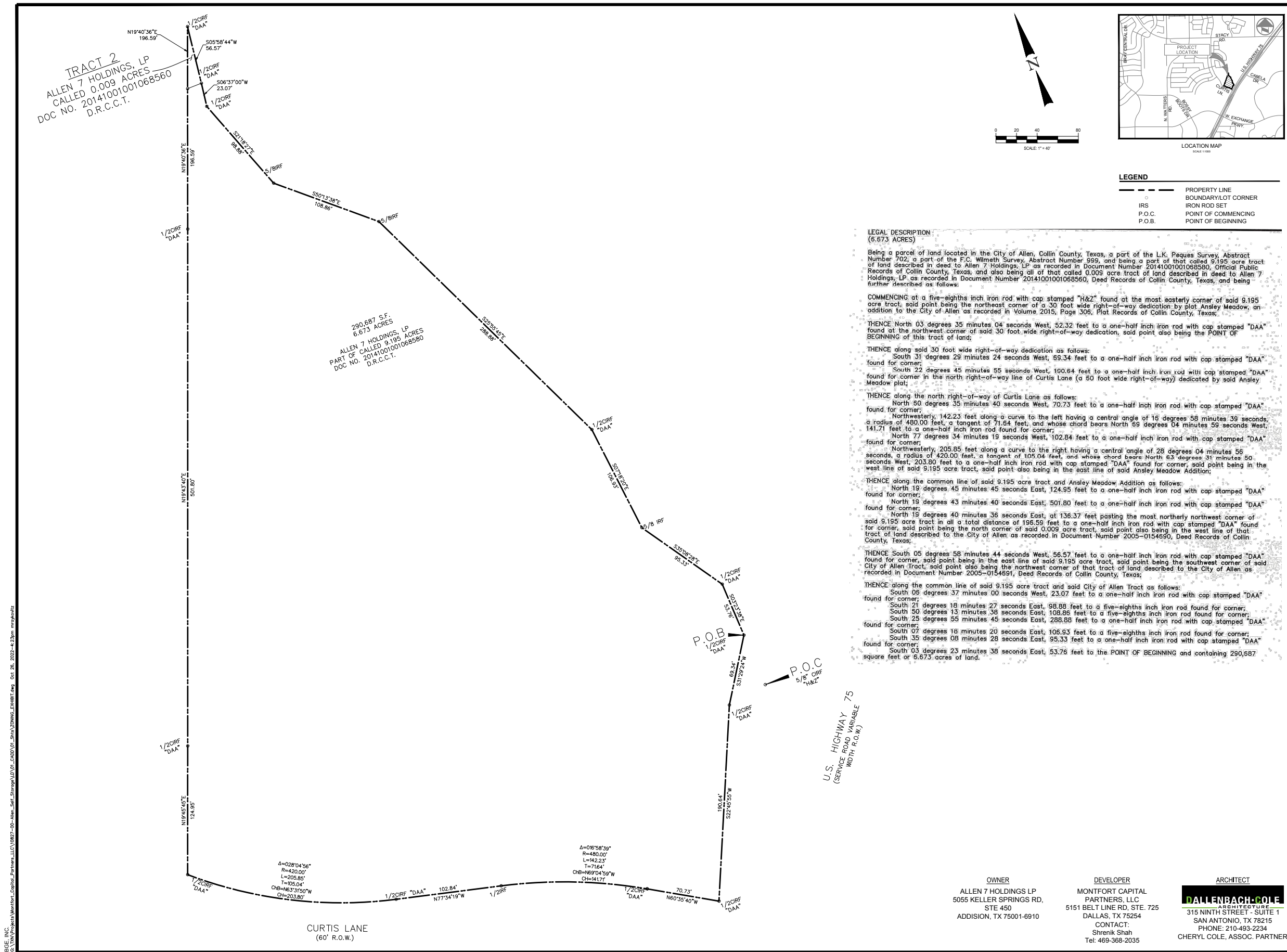


EXHIBIT "B"
CONCEPT PLAN



BGE, Inc.
777 Main St., Suite 1900
Fort Worth, TX 76102
Tel: 972-887-6130 • www.bgeinc.com
TBPE Registration No. F-1046
Contact: David Greer
Tel: 817-872-6005

DEVELOPER
MONTFORT CAPITAL PARTNERS, LLC
5151 BELT LINE RD, STE. 725
DALLAS, TX 75254
CONTACT:
Shrenik Shah
Tel: 469-368-2035

PLANNED DEVELOPMENT
DISTRICT CONCEPT PLAN

NEIGHBORHOOD MIXED USE BUILDING

6.671 ACRE TRACT
L.K. PEGUES SURVEY, ABSTRACT NO. 702
F.C. WILMETH SURVEY, ABSTRACT NO. 989
CITY OF ALLEN
COLLIN COUNTY, TEXAS

THESE PLANS ARE ISSUED FOR THE PURPOSE OF PRELIMINARY REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION. WHEN ISSUED IN FINAL FORM THEY WILL BE SEALED, SIGNED AND DATED.

RESPONSIBLE ENGINEER:
BGE, INC.
TEXAS REGISTERED ENGINEERING FIRM F-1046
DAVID A. GREER, P.E.
TEXAS REGISTRATION NO. 109928
NOVEMBER 17, 2022

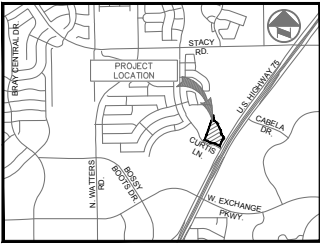
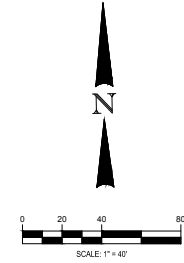
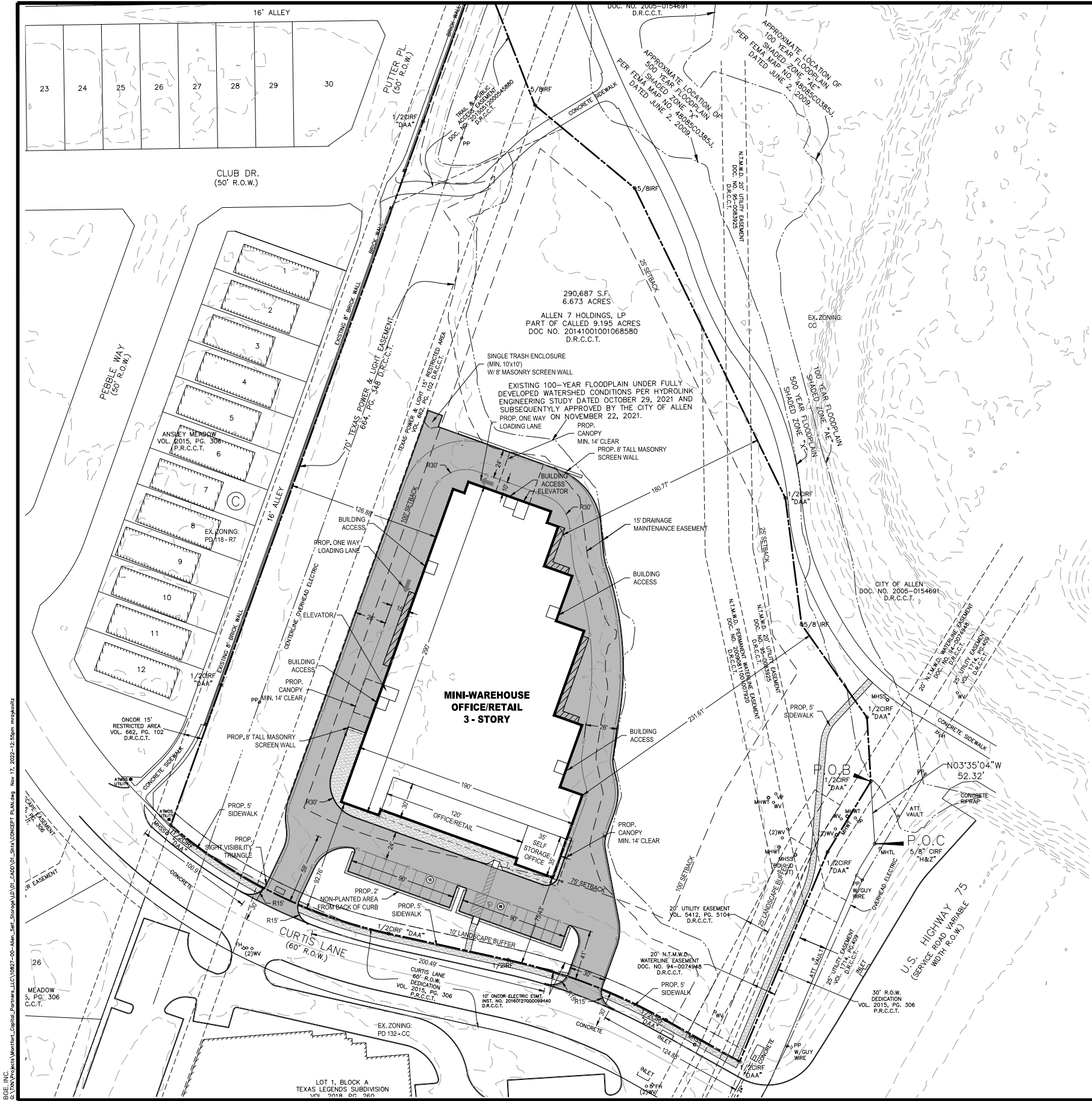
!! CAUTION !!
CONTRACTOR TO VERIFY EXACT LOCATION & DEPTH OF EXIST FACILITIES PRIOR TO ANY CONSTRUCTION ACTIVITIES

!! CAUTION !!
CONTACT: 1-800-DIG-TESS
48 HOURS PRIOR TO CONSTRUCTION

| REVISIONS | | |
|-----------|------|-------------|
| REV. NO. | DATE | DESCRIPTION |
| | | |
| | | |
| | | |
| | | |

DRAWN BY: CA
CHECKED BY: JS
DATE: 11/17/22
PROJECT NUMBER: 10827-00
SHEET NO.

PD-148



| KEY | |
|------|----------------------------|
| TYP | TYPICAL |
| BFR | BARRIER FREE RAMP |
| FH | FIRE HYDRANT |
| SSMH | SEWER MANHOLE |
| LP | LIGHT POLE |
| CI | CURB INLET |
| PP | POWER POLE |
| ESMT | EASEMENT |
| ○ | NUMBER OF PARKING SPACES |
| STMH | STORM MANHOLE |
| WYE | WYE INLET |
| FDC | FIRE DEPARTMENT CONNECTION |

| LEGEND | |
|--------|-----------------------|
| --- | PROPERTY LINE |
| --- | EASEMENT LINE |
| --- | EXISTING WATER LINE |
| --- | EXISTING SEWER LINE |
| --- | EXISTING MANHOLE |
| --- | EXISTING FIRE HYDRANT |
| --- | BARRIER FREE RAMP |
| --- | EXISTING POWER POLE |

- NOTES:
- CONTRACTOR TO NOTIFY ENGINEER IF EXISTING CONDITIONS VARY FROM THOSE SHOWN.
 - ALL WORK AND MATERIALS SHALL COMPLY WITH CITY AND COUNTY REGULATIONS AS WELL AS O.S.H. STANDARDS.
 - ALL DIMENSIONS ARE TO THE FACE OR CURB UNLESS OTHERWISE NOTED.
 - ALL FIRE LANE RADII ARE 10-FEET MINIMUM INSIDE ON LANES 30' WIDE AND 35-FEET MINIMUM INSIDE ON LANES 24' WIDE.
 - ALL FIRE LINES ARE 24-FEET WIDE MINIMUM.
 - HANDICAP PARKING AND MARKING SHALL BE IN ACCORDANCE WITH ADA STANDARDS.
 - REFER TO CITY OF ALLEN CONSTRUCTION DETAILS AND SPECIFICATIONS.
 - ALL SCREENING SHALL BE IN ACCORDANCE WITH CITY OF ALLEN REQUIREMENTS.
 - REFER TO LANDSCAPE AND ARCHITECTURAL PLANS FOR FINAL SIDEWALK LAYOUT.
 - CONTRACTOR TO COORDINATE WITH RESPECTIVE COMPANY FOR ANY RELOCATIONS, INCLUDING POWER POLES, LIGHT POLES, AND ELECTRICAL BOXES.

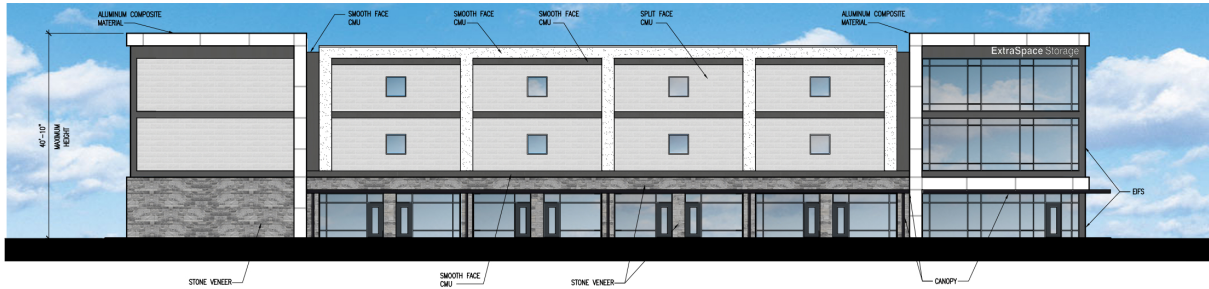
| SITE SUMMARY TABLE | | | |
|---------------------------|----------------------------------|------------------|--------------|
| SITE INFORMATION | | | |
| GROSS SITE AREA | 6.67 ACRES | 290,687 SQ. FEET | |
| EXISTING ZONING | CORRIDOR COMMERCIAL (CC) | | |
| PROPOSED ZONING | PD WITH CC BASE ZONING | | |
| PROPOSED USE | MINI-WAREHOUSE / OFFICE / RETAIL | | |
| BUILDING INFORMATION | | | |
| | STORAGE | OFFICE/RETAIL | TOTAL AREA |
| 1st FLOOR | 39,150 | 3,600 | 42,750 SF |
| 2nd FLOOR | 42,750 | | 42,750 SF |
| 3rd FLOOR | 42,750 | | 42,750 SF |
| TOTAL | 124,650 | 3,600 | 128,250 SF |
| LOT COVERAGE | | | |
| MAX. ALLOWED LOT COVERAGE | N/A | | |
| PROPOSED LOT COVERAGE | 15% | | 44,950 SF |
| FLOOR AREA RATIO | 0.44 | | |
| MAX. HEIGHT | 3 STORIES | | 45 FT |
| PERVIOUS AREA | | | |
| PERVIOUS AREA | 70% | | 202,665 SF |
| IMPERVIOUS AREA | 30% | | 88,022 SF |
| LANDSCAPE AREA | | | |
| REQUIRED OPEN AREA | 10% | | 29,069 SF |
| PROPOSED OPEN AREA | 70% | | 202,665 SF |
| PARKING | | | |
| | STORAGE | OFFICE/RETAIL | TOTAL SPACES |
| REQUIRED PARKING | 6 | 1/300 SF (12) | 18 |
| PROVIDED PARKING | 6 | 14 | 20 |
| LOADING | | | |
| LOADING REQUIRED | 3 SPACES | | |
| LOADING PROVIDED | 3 SPACES | | |

OWNER
ALLEN 7 HOLDINGS LP
5055 KELLER SPRINGS RD,
STE 450
ADDITION, TX 75001-6910

DEVELOPER
MONTFORT CAPITAL PARTNERS, LLC
5151 BELT LINE RD, STE. 725
DALLAS, TX 75254
CONTACT:
Shrenik Shah
Tel: 469-368-2035

ARCHITECT
DALLENBACH COLE
ARCHITECTURE
315 NINTH STREET - SUITE 1
SAN ANTONIO, TX 78215
PHONE: 210-493-2234
CHERYL COLE, ASSOC. PARTNER

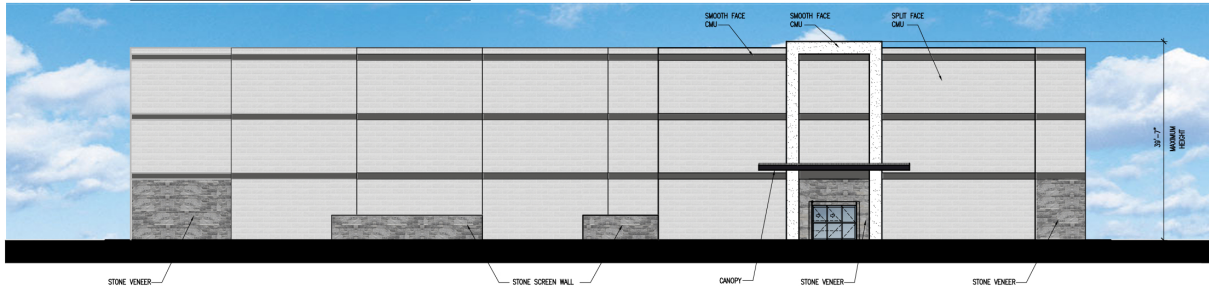
BGE, INC.
C:\Users\David Greer\Desktop\Projects\110110827-00-Allen_Self_Storage\110110827-00-Allen_Self_Storage\110110827-00-Allen_Self_Storage\PLAN.dwg Nov 17, 2022 12:52pm mwg/mwg



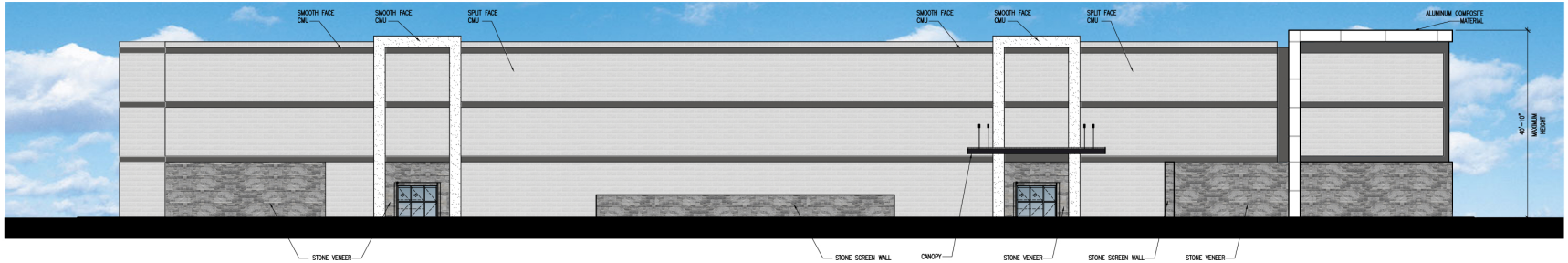
1 SOUTH ELEVATION



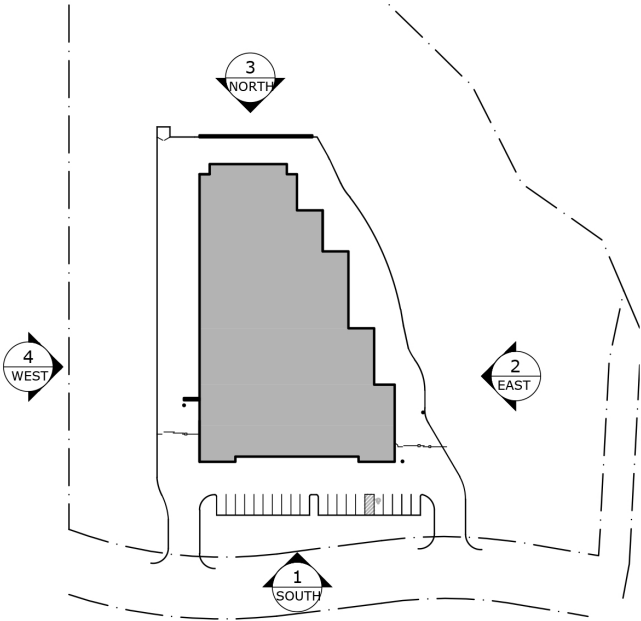
2 EAST ELEVATION



3 NORTH ELEVATION



4 WEST ELEVATION



SITE PLAN

| 1 SOUTH ELEVATION | MATERIAL | SQ. FT. | % |
|----------------------|----------|----------|-------|
| OVERALL | | 7,462.88 | - |
| GLASS, DOORS, CANOPY | | 1,241.57 | - |
| NET | | 6,221.31 | - |
| STONE VENEER | | 940.95 | 15.12 |
| SPLIT FACE CMU | | 2,622.73 | 42.15 |
| ACM | | 495.61 | 7.96 |
| SMOOTH FACE CMU | | 1,860.95 | 31.51 |
| EPS | | 201.08 | 3.23 |

| 2 EAST ELEVATION | MATERIAL | SQ. FT. | % |
|----------------------|----------|-----------|-------|
| OVERALL | | 11,285.57 | - |
| GLASS, DOORS, CANOPY | | 1,171.28 | - |
| NET | | 10,084.28 | - |
| STONE VENEER | | 1,193.58 | 11.80 |
| SPLIT FACE CMU | | 6,912.48 | 68.50 |
| ACM | | 268.30 | 2.70 |
| SMOOTH FACE CMU | | 1,507.71 | 15.00 |
| EPS | | 202.2 | 2.00 |

| 3 NORTH ELEVATION | MATERIAL | SQ. FT. | % |
|----------------------|----------|----------|-------|
| OVERALL | | 7,307.04 | - |
| GLASS, DOORS, CANOPY | | 60.32 | - |
| NET | | 7,246.72 | - |
| STONE VENEER | | 562.00 | 7.80 |
| SPLIT FACE CMU | | 5,700.21 | 78.70 |
| ACM | | 214 | 1.90 |
| SMOOTH FACE CMU | | 984.51 | 13.50 |
| EPS | | - | - |

| 4 WEST ELEVATION | MATERIAL | SQ. FT. | % |
|----------------------|----------|-----------|-------|
| OVERALL | | 11,252.2 | - |
| GLASS, DOORS, CANOPY | | 165.03 | - |
| NET | | 11,135.97 | - |
| STONE VENEER | | 1,728.85 | 17.50 |
| SPLIT FACE CMU | | 7,581.78 | 67.60 |
| ACM | | 214 | 1.90 |
| SMOOTH FACE CMU | | 1,444.47 | 13.00 |
| EPS | | - | - |

ELEVATIONS

SCALE: 1" = 30'-0"

09.21.2022



NEIGHBORHOOD MIXED USE BUILDING

ALLEN, TX

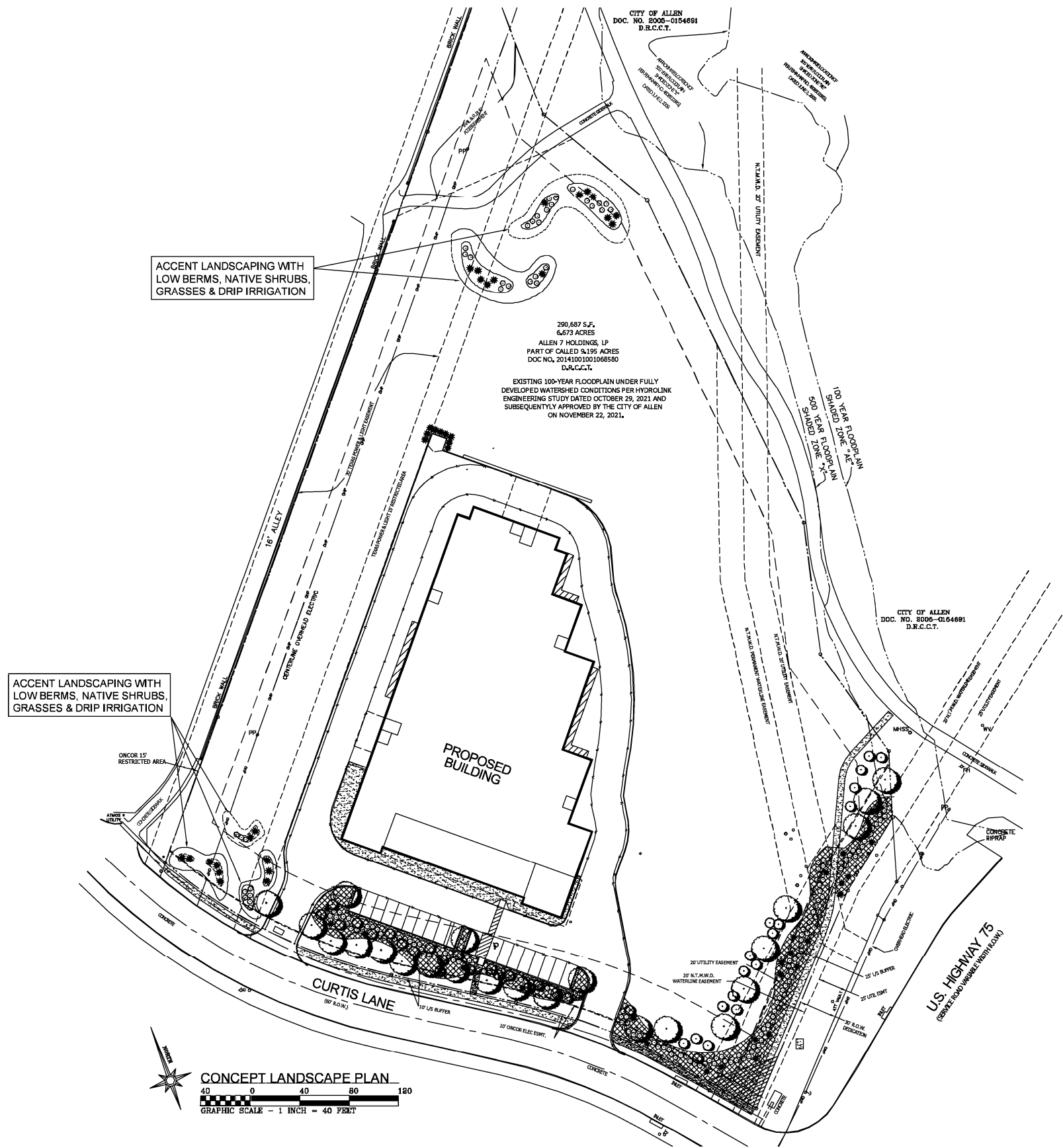
THIS DOCUMENT IS NOT FOR REGULATORY
APPROVAL, PERMITTING, OR CONSTRUCTION.

JEFFREY S. DALLENBACH, AIA
TX REGISTRATION NO. 15128

CONCEPTUAL SITE PLAN HAS BEEN
DEVELOPED WITHOUT SURVEY, SETBACK,
EASEMENT, OR CIVIL ENGINEERING
INFORMATION.

DALLENBACH·COLE
ARCHITECTURE

315 NINTH STREET - SUITE 1
SAN ANTONIO, TEXAS 78215
WWW.DALLENBACHCOLE.COM
P 210.493.2234



LANDSCAPE CALCULATIONS:

LOT = 6.673 ACRES (290,687 SQ. FT.)
 REQUIRED LANDSCAPE AREA = 10% = 29,069 SQ. FT.
 PROVIDED LANDSCAPE AREA = 70% = 202,665 SQ. FT.

STREET BUFFER:
HWY. 75 = 25 FT. WIDE x 260' LONG = 6,500 SQ. FT.
CURTIS LANE = 10 FT. WIDE x 522' LONG = 5,220 SQ. FT.

STREET BUFFER PLANTS REQUIRED

2 ORNAMENTAL TREES PER EACH CANOPY TREE

HWY 75 = 260/40 = 7 CANOPY TREES AND 14 ORN. TREES REQ'D.
7 CANOPY TREES AND 14 ORNAMENTAL TREES PROVIDED

CURTIS LANE = $522/40 = 13$ CANOPY TREES AND 26 ORN. TREES REQ'D.
13 CANOPY TREES AND 26 ORNAMENTAL TREES PROVIDED

MAX. GRASS AREA IN BUFFER = 50%

PD 148

FOR REVIEW ONLY
THESE DOCUMENTS
ARE FOR INTERIM REVIEW
ONLY AND ARE NOT
INTENDED FOR BIDDING,
PERMIT, OR CONSTRUCTION
PURPOSES.
DON C. WHEELER - TEXAS
LANDSCAPE ARCHITECT # 767

DON C. WHEELER, LANDSCAPE ARCHITECT

LANDSCAPE ARCHITECTURE PLANNING PREPARATION DESIGN

P.O. BOX 470885
(817) 339-1405

FORT WORTH, TEXAS 76147
dncdclw@a.com

DESIGNED: DCW DRAWN: DCW CHECKED: DCW DATE: 10-27-22

PLANNED DEVELOPMENT
CONCEPT LANDSCAPE PLAN - PD 148

ALLEN SELF STORAGE

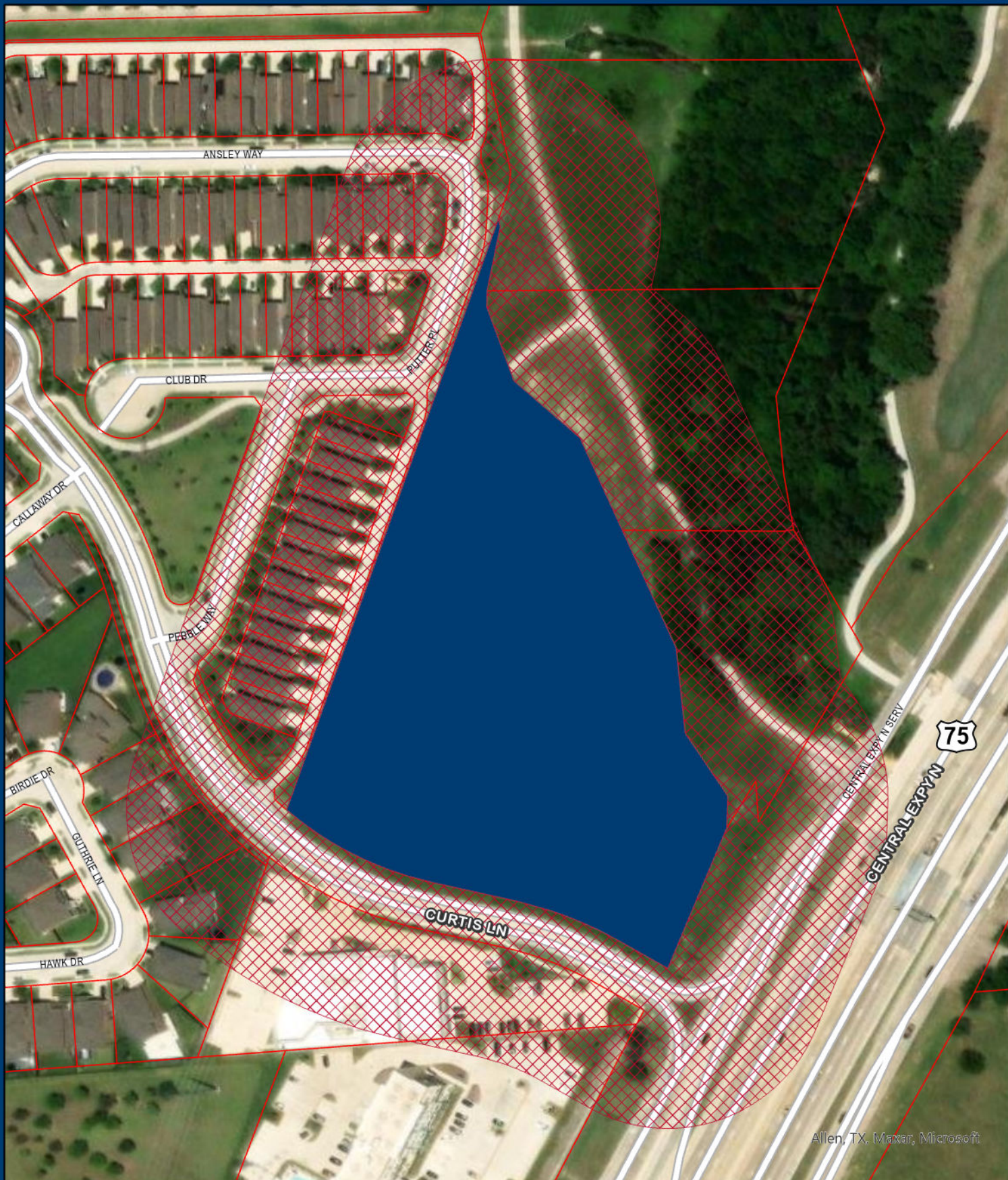
ALLEN,
TEXAS

[illegible]

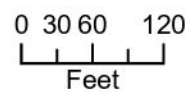
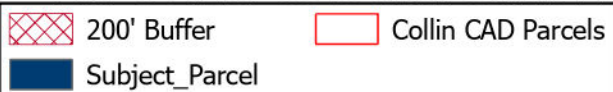
PROJECT NO:
2k22-36

SHEET TITLE:
LANDSCAPE PLAN
SCHEDULES. DETAIL

SHEET NO:
L-1
OF X L SHEETS



Montfort Capital Allen
 NW Corner US75 and Curtis Ln.



Note: This map is for illustrative purposes
 only please contact Community Development
 for more details. 214-509-4160

November 29, 2022 Planning and Zoning Commission Meeting Minutes

Conduct a Public Hearing and consider a request to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, Landscape Plan, and Building Elevations, to allow "Mini- Warehouse" and "Office Showroom/Warehouse" uses by right for 6.673 acres located in the L.K Peques Survey, Abstract No. 702, and F.C Wilmeth Survey, Abstract No. 999, generally located northeast of US Highway 75 and Curtis Lane. (ZN-092322-0018) [Montfort Capital]

Ms. Yockey, Senior Planner, presented the item to the Commission.

Ms. Yockey noted that staff is in support of the agenda item.

Maxwell Fisher, applicant, 2502 Grandview Drive, Richardson, TX presented.

Chair Metevier opened the public hearing.

The following letters were received in support of the item:

- Sanath K. Reddy, 908 Devonshire Drive, Allen, TX
- Prashanti & Niti Reddy, 1914 Natchez Trace, Allen, TX
- Sandeep Jay Rampuria, 1707 Woodsboro Court, Allen, TX
- David Heidenreich, 1521 Farm Dale, Allen, TX

Chair Metevier closed the public hearing.

The Commission discussed the following:

- Lighting standards;
- Proposed office/showroom/warehouse use;
- Loading areas;
- Public engagement; and
- Traffic.

Motion: Upon a motion by Commissioner Wright and a second by Commissioner Stocker, the Commission voted 7 IN FAVOR and 0 OPPOSED to recommend approval of an ordinance to establish a Planned Development with a base zoning of Corridor Commercial and to adopt Development Regulations, Zoning Exhibit, a Concept Plan, a Landscape Plan, and Building Elevations, as presented. The motion carried.

ATTENDANCE:

Commissioners Present:

Dan Metevier, Chair

Michael Smiddy, 1st Vice-Chair

Kenneth Cook, 2nd Vice-Chair

Todd Price
Elias Shaikh
Gary Stocker
Jason Wright

| |
|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Conduct a Public Hearing and adopt an Ordinance to amend the development regulations of Planned Development. No. 98 with a base zoning of Single Family and adopt a Concept Plan, Building Elevations, and a Landscape Plan for Lots 1 - 18, Block A, Lots 1 - 9, Block B, and Lots 1 - 3, Block X, Ridgeview Villas, generally located south of Ridgeview Drive and east of Exchange Parkway. [Ridgeview Villas] |
| STAFF RESOURCE: | Hayley Angel, Planning Manager |
| BOARD/COMMISSION ACTION: | The Planning and Zoning Commission voted to recommend denial of the request at the November 15, 2022 meeting in a 4-3 vote. |
| PREVIOUS COUNCIL ACTION: | January 10, 2006 - Planned Development Zoning - Ordinance No. 2477-1-06 April 12, 2011 - Planned Development Amendment - Ordinance No. 3004-9-11 February 23, 2016 - Planned Development Amendment - Ordinance No. 3364-2-16 |
| STRATEGIC PLANNING GOAL: | Safe and Livable Community for All. |

BACKGROUND

The subject property is generally located south of Ridgeview Drive and west of Alma Drive. The surrounding properties are zoned as follows:

- North (across Ridgeview Drive): Planned Development No. 135 with a base zoning of Corridor Commercial and Planned Development No. 142 with a base zoning of Mixed Use
- East and South: Planned Development No. 98 (PD-98) with a base zoning of Single Family Residential R-5
- West: Planned Development No. 111 with a base zoning of Single Family Residential R-5

The subject property retains a zoning designation of PD-98 with a base zoning of Single Family Residential R-7. In February 2016, City Council adopted a planned Development Amendment to allow for the development of the subject property as a single family residential subdivision. While homes have been built on the majority of the lots in the subdivision, the applicant is requesting deviations to the side yard setbacks on the remaining four undeveloped lots.

The primary purpose of this request is to allow for deviations from the side yard setbacks adopted in 2016 on Lots 18, 19, 23, and 27 of the Concept Plan.

- Lot 18 (platted as Lot 1, Block A): reduce side yard setback from 7.0-ft to 3.5-ft.

- Lot 19 (platted as Lot 9, Block B): reduce side yard setback from 7.0-ft to 3.0-ft
- Lot 23 (platted as Lot 5, Block B): reduce side yard setback from 7.0-ft to 6.5-ft
- Lot 27 (platted as Lot 1, Block B): reduce side yard setback from 7.0-ft to 5.0-ft

After zoning and platting, it was determined that four lots would not be buildable using the regulations adopted by the most recent Planned Development Amendment. The additional easements necessary for development made it difficult to meet the minimum dwelling unit size. The deviations the applicant is requesting allow the four lots to maintain the same dwelling unit size and building massing as the rest of the neighborhood. There are no other deviations from the 2016 ordinance. Plot plans for these four lots have been attached for informational purposes.

The development regulations amend and restate the regulations codified in the 2016 ordinance. It includes the previous Concept Plan, Open Space Exhibit, and Building Elevations. The only change to the development regulations is to the table in Section 2.F.

The requested has been reviewed by the Technical Review Committee.

LEGAL NOTICES

Public Hearing Sign - November 4, 2022
Public Hearing Letters - November 4, 2022
Newspaper Notice - November 20, 2022

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to amend the development regulations of PD-98 with a base zoning of Single Family Residential R-7.

ATTACHMENT(S)

[Ordinance](#)
[Notification Map](#)
[Planning and Zoning Commission Minutes - November 15, 2022](#)
[Informational Use Only: Plot Plans](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING AND RESTATING SECTION TWO OF, AND THE EXHIBITS TO, ORDINANCE NO. 3364-2-16 ENACTING THE DEVELOPMENT AND USE REGULATIONS FOR TRACT C-1 OF PLANNED DEVELOPMENT NO. 98 (“PD-98”) FOR SINGLE FAMILY RESIDENTIAL R7 SET FORTH IN; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, as previously amended, be further amended by amending and restating to read as follows Section 2 of, and Exhibits “A,” “B,” “C,” and “D” attached to, Ordinance No. 3364-2-16 adopting the use and development regulations of Tract C-1 of Planned Development No. 98 (“PD-98”) consisting of 4.247± acres of land located in the J.W. Parsons Survey, Abstract No. 705, City of Allen, Collin County, Texas, being more particularly described in Exhibit “A” attached to Ordinance No. 3364-2-16 and as Exhibit “A” hereto and incorporated herein by reference (“the Property”):

“SECTION 2. The Property shall be developed and used in accordance with the applicable provisions of the Allen Land Development Code, as amended, (“ALDC”) except to the extent modified by the Development Regulations set forth below:

- A. DESIGNATION OF TRACT C-1:** The portion of Tract C of PD-98 depicted on the Concept Plan attached hereto as Exhibit “A” and incorporated herein by reference, and any remaining portion of Tract C not previously re-designated as Tract C-2, is hereby re-designated as “Tract C-1”.
- B. BASE ZONING DISTRICT:** The Property shall be developed and used only in accordance with the Single-Family Residential District R-7 standards of the ALDC, except as otherwise provided herein.
- C. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “B” and incorporated herein by reference. Minor modifications to streets that do not alter the general alignment shown on the Concept Plan may be made at the time of platting.

- D. OPEN SPACE EXHIBIT:** The Property shall be developed in general conformance with the Open Space Exhibit attached hereto as Exhibit “C” and incorporated herein by reference.
- E. BUILDING ELEVATIONS:** The Property shall be developed in general conformance with the Building Elevations attached hereto as Exhibit “D”, and incorporated herein by reference.
- F. LOT DESIGN AND CRITERIA AND BUILDING SETBACKS:** The minimum lot dimensions and building setbacks for the lot types shown on the Concept Plan shall be modified as follows:

| | |
|---|---|
| Front Yard Setback | 15 feet |
| Side Yard Setback (Lots 1 – 17, 20 – 22, 24 – 26) | 3 feet on one side and 7 feet on the other side |
| Side Yard Setback (Lot 18) | 3 feet on the east side and 3.5 feet on the west side |
| Side Yard Setback (Lot 19) | 3 feet on the east side and 3 feet on the west side |
| Side Yard Setback (Lot 23) | 3 feet on the east side and 6.5 feet on the west side |
| Side Yard Setback (Lot 27) | 3 feet on the north side and 5 feet on the south side |
| Minimum Lot Area | 2,948 square feet |
| Minimum Lot Width | 44 feet |
| Minimum Lot Depth | 67 feet |
| Minimum Dwelling Unit Size | 2,200 square feet |
| Maximum Density | 6.35 units/acre |
| Minimum Garage Setback | 20 feet |

- G. DRIVEWAYS:** Driveways shall be treated with a decorative concrete aggregate.
- H. SCREENING:** Screening on the Property shall be developed in general conformance with the Concept Plan (Exhibit “B”).”

SECTION 2. To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 4. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City

of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 6. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13th DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:12/9/2022:132131)

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT "A"
DESCRIPTION OF THE PROPERTY

BEING a tract of land situated in the J. W. Parsons, Survey, Abstract No. 705, in the City of Allen, Collin County, Texas, being part of a tract of land in Deed to HP-Ridgeview, as described in Clerk's File No. 20060330000412510 and Clerk's File No. 2006033000041250, in the Deed Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING, at a 5/8 inch iron rod found with a cap stamped "KHA" at the Northeast corner of Fall Creek Phase I, an addition to the City of Allen, as described in Doc. No. 2012-424, in the Plat Records of Collin County, Texas, being in the South line of Ridgeview Drive (120' R.O.W.), same being on the right, having a radius of 940.00 feet, a central angle of 27 degrees 07 minutes 28 seconds and a tangent of 226.75 feet;

THENCE, along the South line of said Ridgeview Drive and with said curve to the right for an arc distance of 445.01 feet (Chord Bearing South 85 degrees 41 minutes 46 seconds East - 440.86 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc." at the point of tangency;

THENCE, South 72 degrees 08 minutes 02 seconds East, continuing along said South line, for a distance of 176.23 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", at the point of curvature of a curve to the left, having a radius of 1060.00 feet, a central angle of 06 degrees 33 minutes 26 seconds, and a tangent of 60.72 feet;

THENCE, continuing along said South line and with said curve to the left for an arc distance of 121.31 feet (Chord Bearing South 75 degrees 24 minutes 45 seconds East - 121.24 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", being in the North line of Cumberland Crossing Phase III, an addition to the City of Allen, as described in Doc. No. 2012-45, in said Plat Records;

THENCE, South 53 degrees 00 minutes 00 seconds West, departing said South line and along the North line of said Cumberland Crossing Phase III and with the approximate centerline of a creek, for a distance of 79.99 feet, to a point for corner;

THENCE, South 60 degrees 03 minutes 00 seconds West, continuing along said South North line and with said creek, for a distance of 142.00 feet, to a point for corner;

THENCE, North 85 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 75.00 feet, to a point for corner;

THENCE, South 69 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 245.00 feet, to a point for corner;

THENCE, South 75 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 35.00 feet, to a point for corner;

THENCE, South 45 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 10.00 feet, to a point for corner;

EXHIBIT "A"
DESCRIPTION OF THE PROPERTY (cont.)

THENCE, South 00 degrees 00 minutes 00 seconds East, continuing along said lines, for a distance of 20.00 feet, to a point for corner;

THENCE, South 45 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 66.00 feet, to a point for corner;

THENCE, South 80 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 30.00 feet, to a point for corner;

THENCE, South 60 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 15.00 feet, to a point for corner;

THENCE, South 90 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 15.00 feet, to a point for corner;

THENCE, North 60 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 18.00 feet, to a point for corner;

THENCE, South 50 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 25.00 feet, to a point for corner;

THENCE, South 30 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 30.00 feet, to a point for corner;

THENCE, South 00 degrees 00 minutes 00 seconds East, continuing along said lines, for a distance of 20.00 feet, to a point for corner;

THENCE, South 50 degrees 00 minutes 00 seconds West, continuing along said lines, for a distance of 45.00 feet, to a point in the East line of said Fall Creek Phase I and being the most westerly Northwest corner of said Cumberland Crossing Phase III;

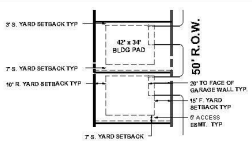
THENCE, North 00 degrees 34 minutes 54 seconds West, along the East line of said Fall Creek Phase I, for a distance of 495.49 feet, to the POINT OF BEGINNING and containing 4.247 acres of land.

| Site Data Summary Chart | | |
|------------------------------------|---------|----------|
| Lots | 49.65% | 2.11 ac. |
| Open Space/Access | 11.29% | .48 ac. |
| (Required: 1ac./75 Lots = .36 ac.) | | |
| Dedicated Internal R.O.W. | 20.00% | .85 ac. |
| Parkway/Landscape Buffer | 4.47% | .19 ac. |
| Floodplain | 14.59% | .62 ac. |
| Res. Gross Acreage | 100.00% | 4.25 ac. |

| | |
|--------------------------------------|----------------|
| Site Data | |
| Gross Acreage | 4.25 ac. |
| Gross Density | 6.35 units/ac. |
| Parking Spaces Required: | 54 Spaces |
| Parking Spaces Provided: (2 per Lot) | 54 Spaces |

| | |
|-----------------------------------|------------|
| Lot Summary | |
| Residential Lots - (44'x67' MIN.) | 27 |
| Minimum Lot Area | 2,948 s.f. |
| Maximum Building Height | 35 ft |

Typ. Lot Detail



Legend:

- [illegible]

Cross Section: Ornamental Metal Fence and Retaining Wall



GENERAL NOTES:

1. No A/C units in side yards less than 7'.
2. Gas meters shall be located on the building.
3. 1 hour rated fire wall and roof assembly requirements shall be met.
4. All 4 Architectural designs shall be equally represented.

[illegible]

SURVEYORS' CERTIFICATE

I do hereby certify that a survey was made on the ground under my supervision in May 2014, and that this map correctly represents the facts found of the line of survey and that this professional service conforms to the current Texas Society of Professional Land Surveyors Standards and



Owner:
Kamil Naval
15400 Winchester Blvd. #37,
Los Gatos, CA. 95030

Planner: 

SAGE GROUP, INC.
Master Planning
Urban Design
Architecture

Landscape Architecture

1130 N. Carroll Ave. Ste. 200

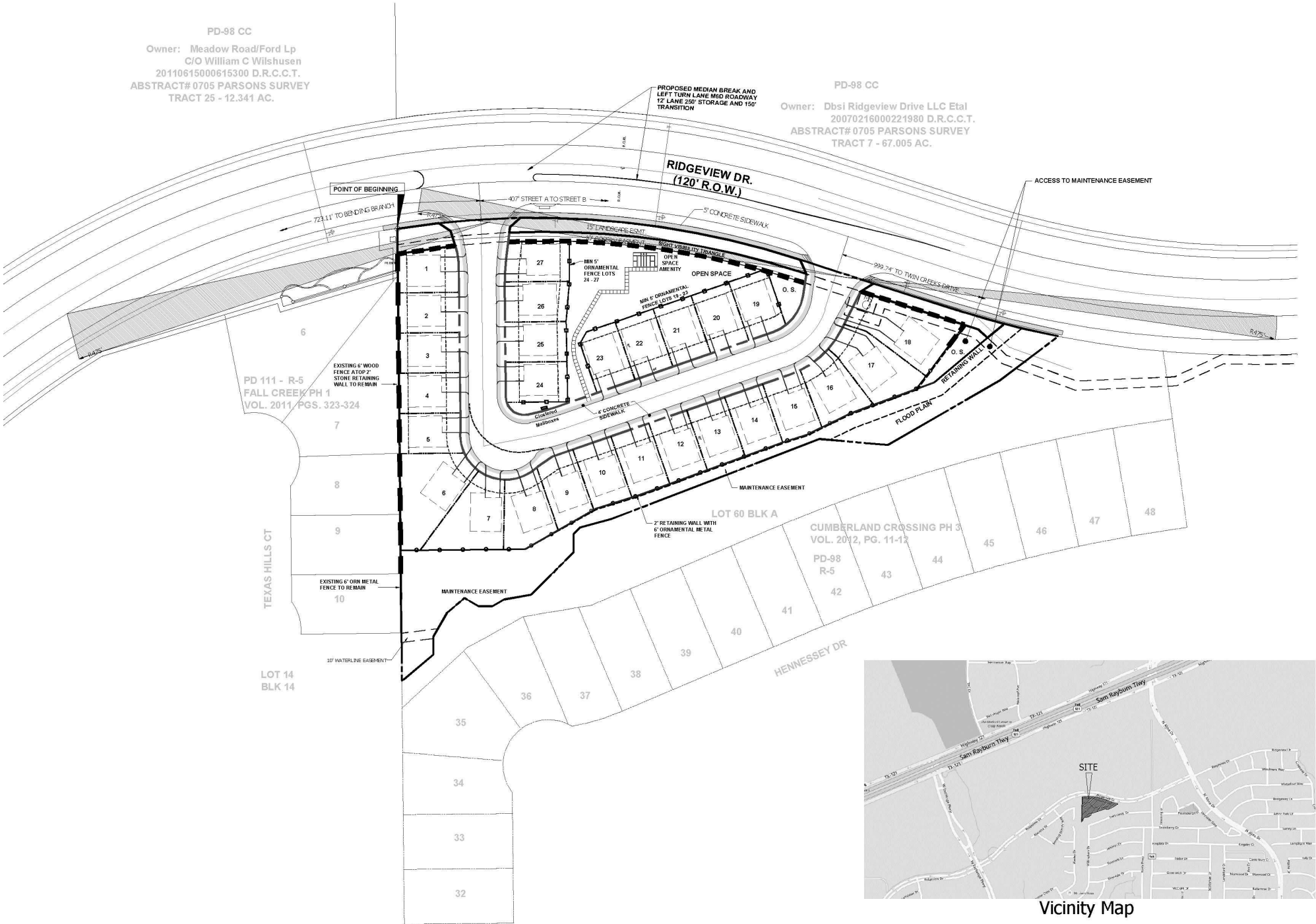
Geithler, Texas 76002

18 FEB 16



0 50' 100' 200'

Concept Plan



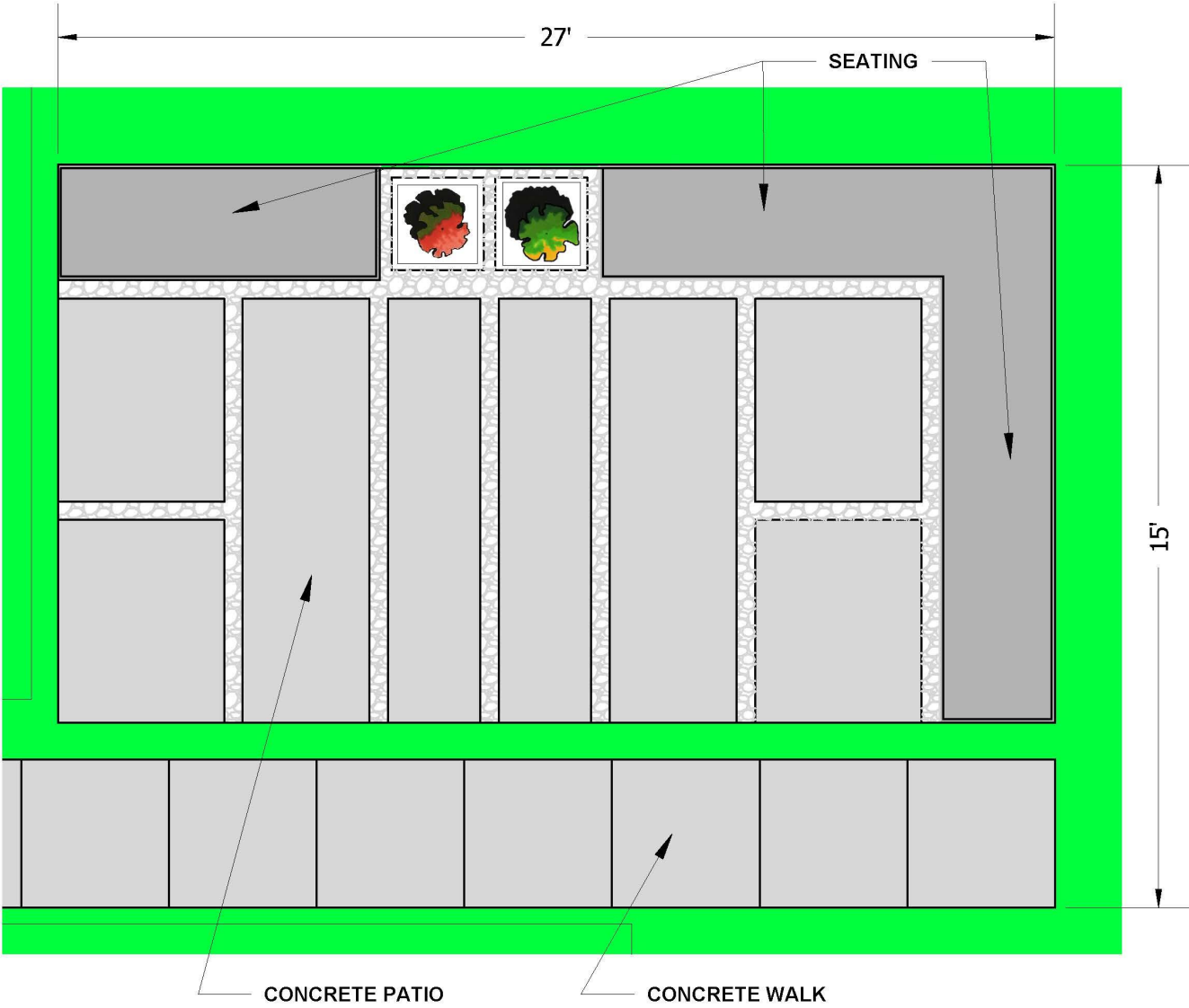
Vicinity Map

Ridgeview Villas

Allen, Texas



OPEN SPACE AMENITY ELEVATION



OPEN SPACE AMENITY PLAN



LEFT ELEVATION – FRENCH



FRONT ELEVATION – FRENCH



RIGHT ELEVATION – FRENCH



REAR ELEVATION – FRENCH



LEFT ELEVATION – HILL COUNTRY 1



FRONT ELEVATION – HILL COUNTRY 1



RIGHT ELEVATION – HILL COUNTRY 1



REAR ELEVATION – HILL COUNTRY 1



LEFT ELEVATION – HILL COUNTRY 2



FRONT ELEVATION – HILL COUNTRY 2



RIGHT ELEVATION – HILL COUNTRY 2



REAR ELEVATION – HILL COUNTRY 2



LEFT ELEVATION – TUDOR



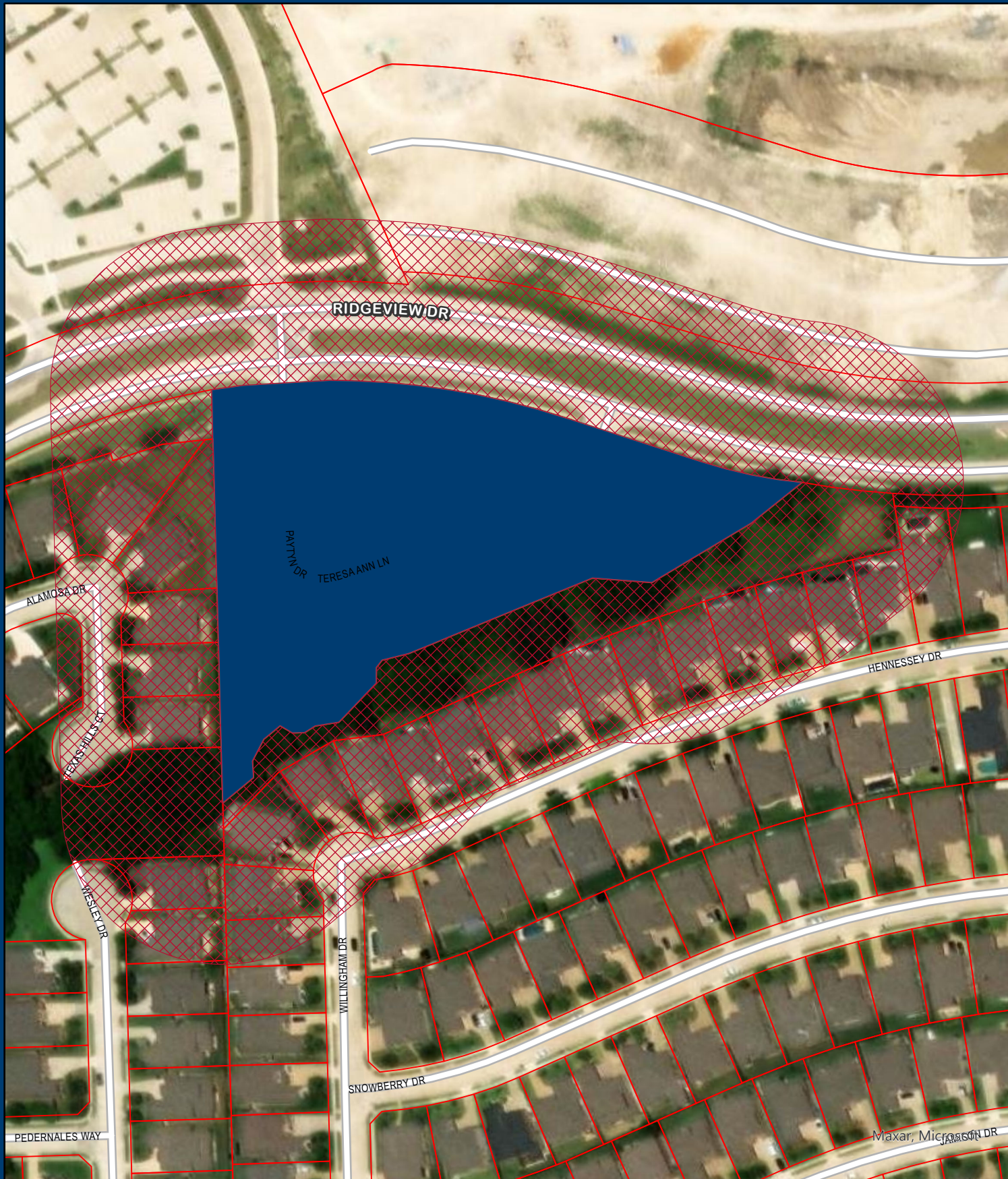
FRONT ELEVATION – TUDOR






RIGHT ELEVATION – TUDOR



REAR ELEVATION – TUDOR



Ridgeview Villas

| | | | |
|---|----------------|---|--------------------|
|  | 200' Buffer |  | Collin CAD Parcels |
|  | Subject_Parcel | | |

0 30 60 120
Feet



Note: This map is for illustrative purposes only please contact Community Development for more details. 214-509-4160 **226**

November 15, 2022 Planning and Zoning Commission Meeting Minutes

Conduct a Public Hearing and consider a request to amend the development regulations of Planned Development. No 98 with a base zoning of Single Family and adopt a Concept Plan, Building Elevations, and a Landscape Plan for Lots 1 - 18, Block A, Lots 1 - 9, Block B, and Lots 1 - 3, Block X, Ridgeview Villas, generally located south of Ridgeview Drive and 1,860± feet west of Alma Drive. (ZN-091622-0017) [Ridgeview Villas]

Ms. Angel, Planner, presented the item to the Commission.

Ms. Angel noted that staff is in support of the agenda item.

Justin Duncan, applicant, 1116 Stonebridge Pass, Gunter, TX spoke on the item.

Chair Metevier opened the public hearing.

Chair Metevier mentioned receipt of the following letters in opposition of the item:

- Sameer Joshi, 1532 Hennessey Drive, Allen, TX
- Kevin Ghademi, 1536 Hennessey Drive, Allen, TX
- Tariq Hasan, 1526 Hennessey Drive, Allen, TX
- Robert Kitts, 1518 Hennessey Drive, Allen, TX
- Huhying Lu, 1528 Hennessey, Drive, Allen, TX
- Ademola Akande, 1702 Texas Hills Court, Allen, TX
- Kapil Sahasrabudhe, 1542 Hennessey Drive, Allen, TX
- Rajeev Chowdhry, 1704 Texas Hills Court, Allen, TX
- Rajeev Shekar, 1619 Willingham Drive, Allen, TX
- Volodymyr Chernyb, 1520 Hennessey Drive, Allen, TX

The following individual registered his opposition but did not speak on the item:

- Kevin Ghademi, 1536 Hennessey Drive, Allen, TX

The following individuals registered their opposition and spoke on the item:

- Rob Kitts, 1518 Hennessey Drive, Allen, TX
- Tariq Hasan, 1526 Hennessey Drive, Allen, TX

Chair Metevier closed the public hearing.

The Commission discussed the following:

- Trails and sidewalks;
- Dwelling unit size;
- Building separation;
- Building and fire code requirements;
- Consent from all property owners in subject property;
- Determination of when the easements were established;

- Drainage;
- Grading;
- Tree replacement; and
- Short term rentals.

Motion: Upon a motion by 2nd Vice-Chair Cook, and a second by Commissioner Price, the Commission voted 7 IN FAVOR and 0 OPPOSED to recess the meeting at 7:39 p.m.

The Commission reconvened at 7:48 p.m.

Tariq Hassan, 1526 Hennessey Drive, Allen, TX presented.

Motion: Upon a motion by 1st Vice-Chair Smiddy, and a second by Commission Shaikh, the Commission voted 3 IN FAVOR and 4 OPPOSED to recommend approval of the request to amend the development regulations of PD-98 with a base zoning of Single Family Residential R-7, as presented. The motion failed to pass.

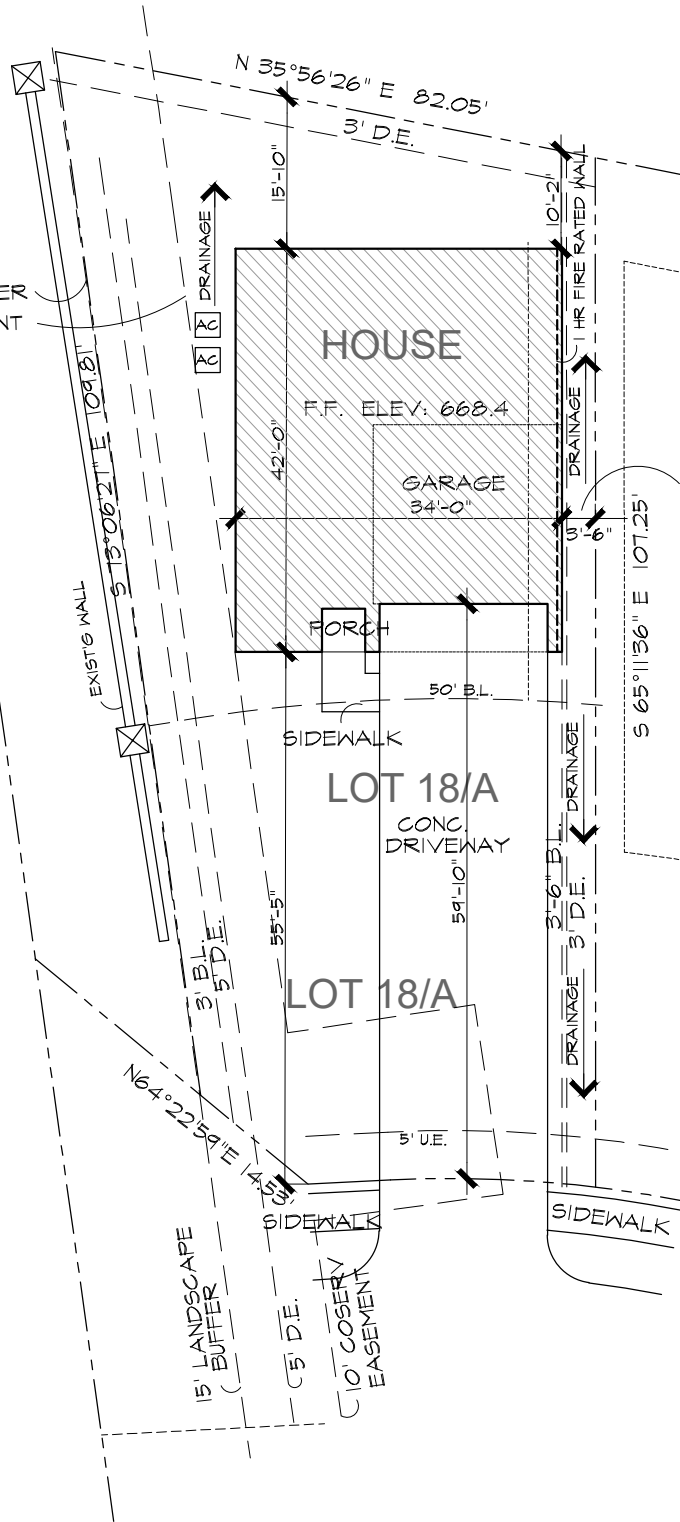
Motion: Upon a motion by Commissioner Wright, and a second by 2nd Vice-Chair Cook, the Commission voted 4 IN FAVOR and 3 OPPOSED to recommend denial of the request to amend the development regulations of PD-98 with a base zoning of Single Family Residential R-7, as presented. The motion carried.

ATTENDANCE:

Commissioners Present:

Dan Metevier, Chair
Michael Smiddy, 1st Vice-Chair
Kenneth Cook, 2nd Vice-Chair
Todd Price
Elias Shaikh
Gary Stocker
Jason Wright

15' LANDSCAPE BUFFER
10' COSERV EASEMENT



NO HVAC EQUIPMENT
WILL BE SET IN SIDE
YARDS LESS THAN 7'

PROPOSED 3'-6" SETBACK
(REQUIRES 7'-0" PER PD98 SEC. 2/F/2)

17/A

HOUSE

F.F. ELEV. 668.4

GARAGE

34'-0"

PORCH

50' B.L.

SIDEWALK

LOT 18/A

CONC.
DRIVEWAY

LOT 18/A

SIDEWALK

SIDEWALK

LOT AREA
= 5,304 SF

SLAB AREA
= 1,428 SF

HABITABLE AREA
= 2,213 SF

GARAGE AREA
= 410 SF

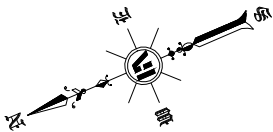
TOTAL SF
= 2,705 SF

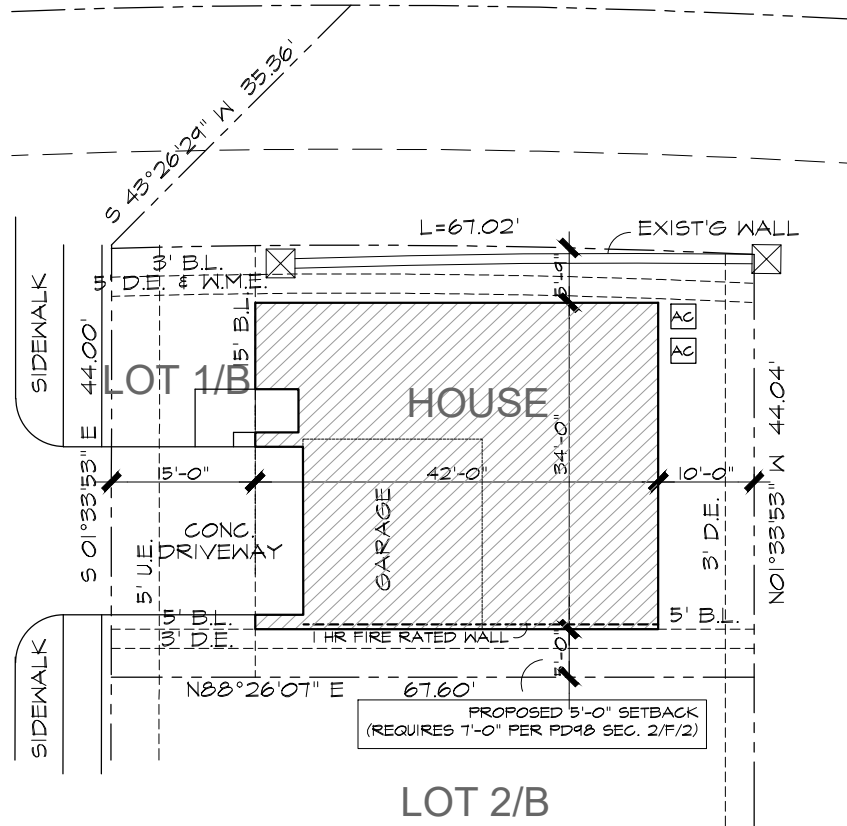
1519 TERESA ANN DR
(50' R.O.W.)

PLOT PLAN

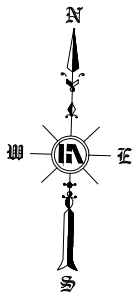
LOT: 18 Block: A
1519 Teresa Ann Dr.
Allen, Texas

SCALE: 1"=20'-0"



1712 PAYTUN DR.
(50' R.O.W.)

| |
|-----------|
| TOTAL SF |
| =2,705 SF |



LOT: 1 Block: B
1712 Paytyn Dr.
Allen, Texas

SCALE: 1"=20'-0"

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Conduct a Public Hearing and adopt an Ordinance for a Specific Use Permit authorizing approximately 2,087± square foot portion of a building for a Medical or Dental Office use generally located at the northeast corner of the intersection of Exchange Parkway and Twin Creeks Drive and commonly known as 1420 Exchange Parkway B130, to be developed and used as a Medical or Dental Office. [ClearLife PLLC] |
| STAFF RESOURCE: | Jordan Caudle, Planner |
| BOARD/COMMISSION ACTION: | The Planning and Zoning Commission recommended unanimous approval of the request at the November 15, 2022 meeting. |
| PREVIOUS COUNCIL ACTION: | September 4, 1986 - Planned Development Zoning - Ordinance No. 729-9-86 May 6, 1993 - Planned Development Zoning - Ordinance No. 1171-5-93 January 23, 2007 - Planned Development Amendment - Ordinance No. 2587-1-07 May 27, 2008 - Planned Development Amendment - Ordinance No. 2742-5-08 |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

The subject property is generally located at the northeastern corner of Exchange Parkway and Twin Creeks Drive, and is commonly known as 1420 Exchange Parkway, Building B, Suite 130. The zoning designations of the surrounding properties are as follows:

- North (across Wallace Drive): Planned Development No. 53 (PD-53) with a base zoning of Single Family
- East: PD-53 with a base zoning of Community Facilities (CF)
- South (across Exchange Parkway): Planned Development No. 54 with a base zoning of CF
- West (across Twin Creeks Drive): CF

The applicant is proposing to occupy a 2,087± square foot portion of an existing building for a Medical or Dental Office Use. The property is currently zoned PD-53 with a base zoning of CF. The Allen Land Development Code (ALDC) requires a Specific Use Permit for a Medical or Dental Office Use within the CF zoning district.

Parking on site complies with ALDC standards and no changes are being proposed for the exterior of

the building.

LEGAL NOTICES

Public Hearing Sign - November 4, 2022

Public Hearing Letters - November 4, 2022

Newspaper Notice - November 20, 2022

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ granting Specific Use Permit No. 185 for a Medical or Dental Office use.

ATTACHMENT(S)

[Ordinance](#)

[Notification Map](#)

[Planning and Zoning Commission Minutes - November 15, 2022](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP AS PREVIOUSLY AMENDED BY GRANTING SPECIFIC USE PERMIT NO. 185 AUTHORIZING AN APPROXIMATELY 2,097± SQUARE FOOT PORTION OF A BUILDING LOCATED ON LOT 1R, BLOCK A, THE READING RANCH ADDITION (AND COMMONLY KNOWN AS 1420 W. EXCHANGE PARKWAY, BUILDING B, UNIT 130) PRESENTLY ZONED FOR PLANNED DEVELOPMENT “PD” NO. 53 COMMUNITY FACILITIES “CF” TO BE USED FOR A MEDICAL OR DENTAL OFFICE USE; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Allen, Texas, and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Collin County, Texas, be amended by granting Specific Use Permit No. 185 authorizing an approximately 2,097± square foot portion of the building shown on Exhibit “A,” attached hereto and incorporated herein by reference located on property described as Lot 1R, Block A, The Reading Ranch Addition, an addition to the City of Allen, Collin County, Texas, according to the plat recorded in Volume 2008, Page 603, Plat Records, Collin County, Texas (being Building B, Unit 130, Glendover Professional Center Condominium, 1420 W Exchange Parkway) (the “Property”), which is presently zoned Planned Development “PD” No. 53 Community Facilities “CF,” to be used for a Medical or Dental Office use.

SECTION 2. The Property shall be used only in the manner and for the purposes provided for in the Allen Land Development Code Zoning Regulations, as heretofore amended, and, if developed and used as a Medical or Dental Office use in accordance with this Specific Use Permit No. 185, such use shall be limited to the area of the Property (i.e., Building B, Unit 130) shown on Exhibit “A” and nowhere else on the Property; provided, however, the common parking and pedestrian areas located on said Lot 1R may be used for parking in association with such Medical or Dental Office use.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the

Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 7. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

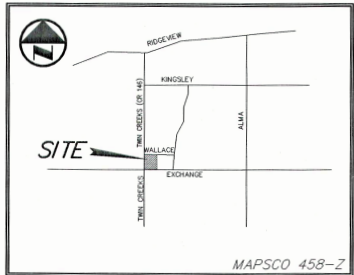
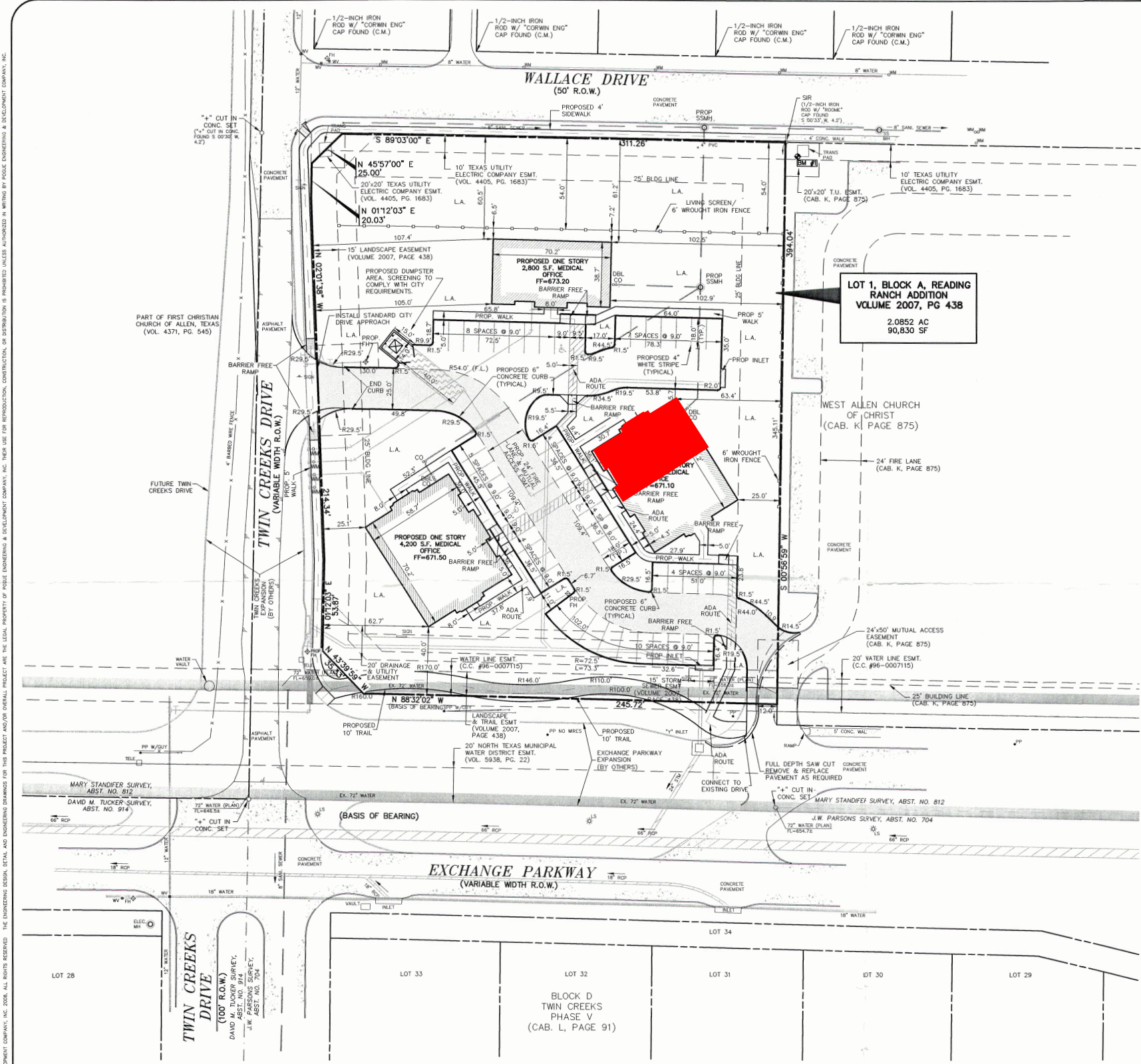
ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:10/31/2022:132127)

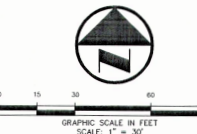
Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT "A"
SUP SITE PLAN

TWIN CREEKS PROFESSIONAL CENTER



VICINITY MAP
NOT TO SCALE



- LEGEND**
- BOLLARD
 - ELECTRIC METER
 - POWER POLE
 - LIGHT STANDARD
 - WATER METER
 - WATER VALVE
 - IRRIGATION CONTROL VALVE
 - FIRE HYDRANT
 - FIRE DEPARTMENT CONNECTION
 - CLEAN OUT
 - GAS METER
 - TRAFFIC SIGNAL CONTROL
 - TRAFFIC SIGNAL POLE
 - TRAFFIC SIGN
 - TELEPHONE BOX
 - TV BOX
 - FLAG POLE
 - LANDSCAPE AREA
 - PROPERTY LINE
 - O.H. POWER LINES
 - U/G TELEPHONE LINES
 - U/G WATER LINES
 - U/G GAS LINES
 - FENCE
 - EXISTING CONTOURS
 - PROPOSED CONTOURS
 - EXISTING SPOT GRADES
 - PROPOSED SPOT GRADES
 - PROPOSED EROSION CONTROL
 - PROPOSED DRAINAGE DIVIDES

- PAVEMENT LEGEND**
- STANDARD PAVEMENT
 - FIRE LANE PAVEMENT
 - DUMPSTER PAD AND APRON

ADA ROUTE
NOTE:
MAXIMUM SLOPE FOR ALL ADA PATHS 3% MAX. CROSS FALL IS 2% FOR THE FIRST FIVE FEET FROM THE DOOR. A 2% SLOPE (MAX.) MUST BE MAINTAINED.

NOTE:
OFF-SITE PAVING, GRADING, DRAINAGE, AND EROSION CONTROL IMPROVEMENTS TO BE APPROVED BY ADJACENT PROPERTY OWNER VIA A LETTER OF PERMISSION.

- FRANCHISE UTILITY NOTES:**
- COSEV ELECTRIC & GAS - MS. LOREN SMITH @ (940) 321-7888
 - ATMOS ENERGY - MR. CHIP MERRITT @ (972) 485-6270
 - AT&T TELEPHONE - MS. CASEY WISEMAN @ (972) 569-3070
 - TIME WARNER CABLE - MS. KARLA MARTIN @ (972) 830-3635

CAUTION!
UNDERGROUND UTILITIES ARE LOCATED IN THIS AREA. 48 HOURS PRIOR TO ANY CONSTRUCTION ACTIVITIES, CONTACT LINE LOCATES FOR FRANCHISE UTILITY INFO. CALL BEFORE YOU DIG!
TEXAS EXCAVATION SAFETY SYSTEM (TESS)
1-800-344-8377
TEXAS ONE CALL SYSTEMS
1-800-245-4545
LONE STAR NOTIFICATION CENTER
1-800-668-8344 EXT. 5
BEFORE YOU DIG...

PARKING TABULATION:

| | |
|----------------------------------|--------------------------------|
| PARKING RATIOS: | |
| MEDICAL OFFICE: | 1 SPACE / 250 SF |
| PROPOSED BUILDINGS: | |
| OFFICE: | 11,200 SF TOTAL |
| FAR: | 11,200 SF / 90,830 SF = 12.33% |
| REQUIRED PARKING: | |
| 11,200 SF / 250 SF = 45 | |
| TOTAL REQUIRED PARKING = 45 | |
| PARKING PROVIDED: | |
| 46 REGULAR PARKING SPACES | |
| 3 HANDICAPPED PARKING SPACES | |
| 49 TOTAL PARKING SPACES PROVIDED | |

| NO. | DATE | REVISION / DESCRIPTION |
|----------|-------|------------------------|
| DESIGN | DRAWN | DATE |
| RPP | MJR | 08-22-08 |
| AS SHOWN | NOTES | |

OWNER
EDWARD JONES-TORSTEN HOLMES
1223 WEST McDERMOTT, SUITE 10
ALLEN, TEXAS 75013
MR. TORSTEN HOLMES
(972) 747-7560 PHONE

DEVELOPER
STONEBRIAR CONSTRUCTION, INC.
13237 MONTFORT, SUITE 335
DALLAS, TEXAS 75420
MR. MICHAEL EIKELBARNER
(214) 514-6163 PHONE
(214) 547-1347 FAX

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF RANDALL P. FOGLE, P.E. 84782 ON 08-22-08. IT IS NOT TO BE USED FOR CONSTRUCTION, DESIGN OR PERMIT PURPOSES.

PRELIMINARY
FOR INTERIM REVIEW ONLY
NOT TO BE USED FOR CONSTRUCTION OR DESIGN PURPOSES.
Engineer: RANDALL P. FOGLE, P.E.
P.E. No.: 84782
Date: 08-22-08
P. FOGLE

P. FOGLE
ENGINEERING & DEVELOPMENT COMPANY, INC.
1515 HERITAGE DRIVE
SUITE 105
MCKINNEY, TEXAS 75069
(214) 544-8880 PHONE
(214) 544-5882 FAX
www.PogueEngineering.com

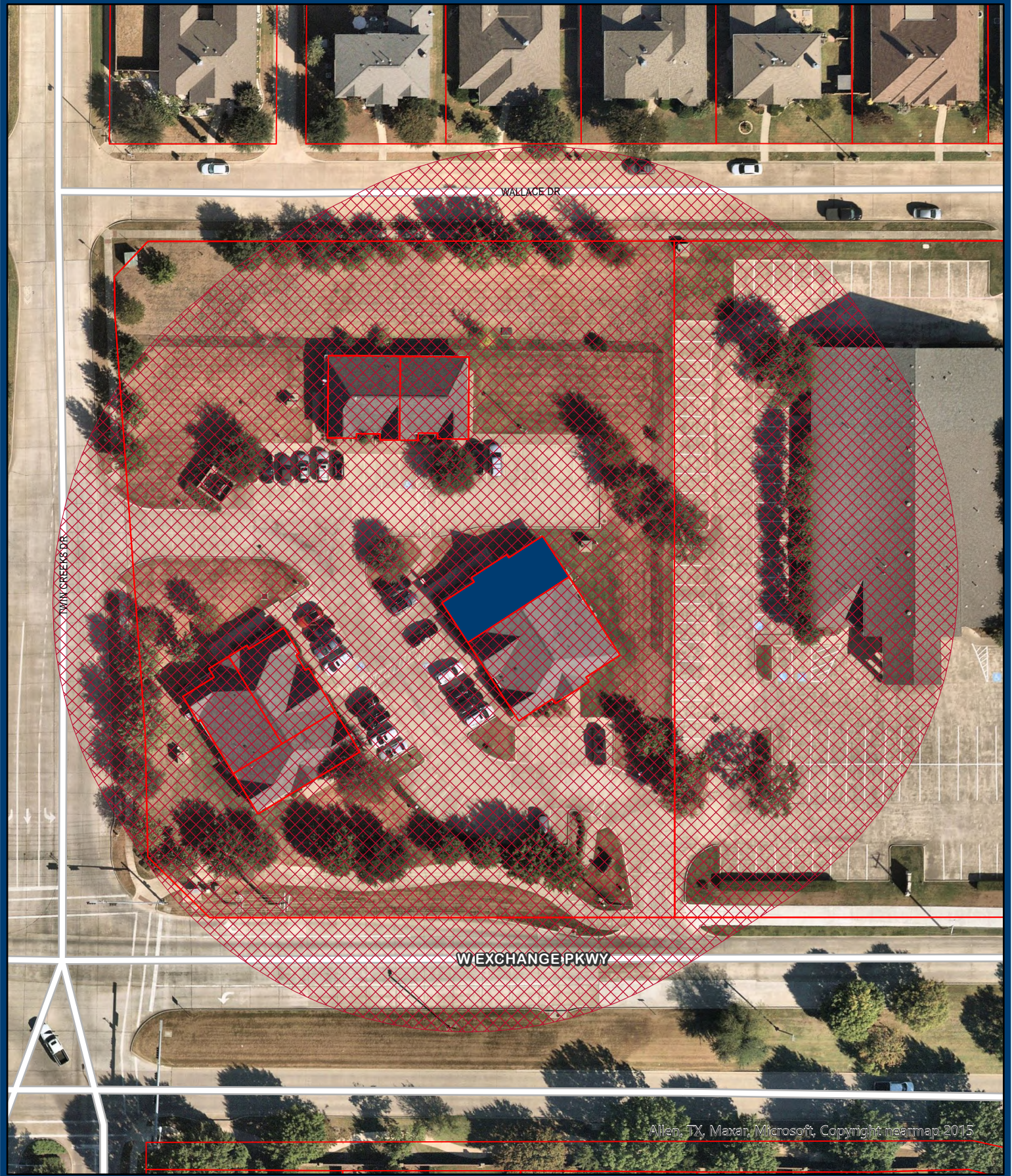
SITE PLAN
TWIN CREEKS PROFESSIONAL CENTER
BLOCK A, LOT 1R, THE READING RANCH
MARY STANDIFER SURVEY, ABSTRACT NO. 812
CITY OF ALLEN, TEXAS

SHEET NO.
C1.01

MR. BENJAMIN 08/24/2008 - 6:37PM
N:\085\1300-1308\1318-08-049\DWG\1318-08-049-07A.DWG
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PI NO: 1318-08-049

DWG NO: 1318-08-049-07A.DWG



November 15, 2022 Planning and Zoning Commission Meeting Minutes

Conduct a Public Hearing and consider a request for a Specific Use Permit authorizing a 2,087± square foot portion of a building located on Lot 1R, Block A, The Reading Ranch Addition; generally located northeast of Exchange Parkway and Twin Creeks Drive and commonly known as 1420 Exchange Parkway, Building B, Suite 130, to be developed and used as a Medical or Dental Office. (SUP-102722-0004) [ClearLife PLLC]

Mr. Caudle, Planner, presented the item to the Commission.

Mr. Caudle, Planner, noted that staff is in support of the agenda item.

Chair Metevier opened the public hearing.

The following letters were received in support of the item:

- Don & Debbie Hail, 8013 Blacktail Trail, Allen, TX

Chair Metevier closed the public hearing.

Motion: Upon a motion by 1st Vice-Chair Cook, and a second by Commissioner Wright, the Commission voted 7 IN FAVOR and 0 OPPOSED to recommend approval of the request to for a Specific Use Permit for a Medical or Dental Office use for a portion of Lot 1R, Block A, The Reading Ranch Addition, as presented. The motion carried.

ATTENDANCE:

Commissioners Present:

Dan Metevier, Chair
Michael Smiddy, 1st Vice-Chair
Kenneth Cook, 2nd Vice-Chair
Todd Price
Elias Shaikh
Gary Stocker
Jason Wright

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

| | |
|---------------------------------|--|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Conduct a Public Hearing and adopt an Ordinance to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, and Building Elevations for a Property generally located south of State Highway 121 and approximately 600 feet west of Watters Road. [TX-121 Commerce Center] |
| STAFF RESOURCE: | Kim Yockey, Senior Planner |
| BOARD/COMMISSION ACTION: | <p>The request has been reviewed by the Technical Review Committee.</p> <p>The Planning and Zoning Commission recommended approval of the request at the November 29, 2022 meeting in a 6-1 vote.</p> |
| PREVIOUS COUNCIL ACTION: | <p>October 2, 1986 - Planned Development No. 40 - Approved - Ordinance No. 751-10-86</p> <p>July 13, 2004 - Planned Development No. 40 - Approved - Ordinance No. 2307-7-04</p> <p>June 11, 2019 - Planned Development No. 40 - Approved - Ordinance No. 3675-6-19</p> |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

The subject property is generally located south of SH-121 and approximately 600 feet west of Watters Road. The surrounding properties are zoned as follows:

- North (across SH-121): City of McKinney
- East: Planned Development No. 92 with a base zoning Corridor Commercial (CC).
- South: Planned Development No. 137 with a base zoning of Townhomes
- West: Planned Development No. 40 with a base zoning of CC

The subject property has a zoning designation of Planned Development No. 40 (PD-40) with a base zoning of CC. The applicant is requesting to establish a new Planned Development and adopt Development Regulations to allow "Warehouse/Distribution" uses as being allowed by right and to adopt a new Concept Plan and Building Elevations. In 1986, the subject properties were annexed and zoned PD-40 with a base zoning of CC. In 2019, City Council adopted a concept plan that showed one building on the most eastern lot. The proposed concept plan deviates from the approved concept plan and must be adopted by the City Council.

The Concept Plan shows two buildings on two lots totaling approximately 12.875 acres. Building "A" is approximately 70,453 square feet. Building "B" is approximately 72,403 square feet, which includes an approximately 11,280 square foot mezzanine. There are two access points from SH-121 with an internal service drive. A deceleration turn lane is proposed on SH-121 for the eastern driveway that will allow traffic to enter the site without slowing the main flow of traffic. A ten-foot-wide hike and bike trail is proposed along SH-121. A significant amount of floodplain is located along the southern property line which prohibits development of that portion of the property.

While we cannot regulate building materials, the Building Elevations include primarily textured concrete panels, brick veneer, and metal accents with building heights of approximately 43 feet.

The Ordinance establishes development regulations that allow "Warehouse/Distribution" as permitted uses across two lots. Notable regulations for this proposal are outlined in the Development Regulations and include the following:

- A minimum of 20% of each building must contain office space.
- The building elevations limit the amount of dock doors on Building "A" to sixteen (16).
- Outlines the required screening of service courts with walls and landscaping.
- Outlines the cross access limitations to the property east of the subject site.

Additional details to ensure that the proposed development remains compatible with surrounding uses include larger building setbacks as shown on the site plan, the service court areas screened with 14-foot high masonry walls, and additional landscape screening required along the east and west property lines. Internal cross access between Building "A" and Building "B" is also addressed in the Development Regulations. The northern cross access between the subject property and the property to the east of the site will be constructed as a controlled Fire Access Lane. The southern cross access between the subject site and the property to the east will only be constructed if a cross access easement is recorded. If cross access is constructed, a nine-foot two-inch-tall headache bar shall be installed on the connecting drive between the properties.

Adopting a new PD and development regulations as presented allows the City to ensure that the proposed development will be compatible with the surrounding uses. As a result, Staff supports this request.

This request has been reviewed by the Technical Review Committee.

LEGAL NOTICES

Public Hearing Sign - November 4, 2022
Public Hearing Letters - November 9, 2022
Newspaper Notice - November 20, 2022

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to establish Planned Development 149 with a base zoning of Corridor Commercial.

ATTACHMENT(S)

Ordinance

Property Notification Map

Planning and Zoning Commission Minutes - November 29, 2022

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE REGULATIONS RELATING TO THE USE AND DEVELOPMENT OF A 12.785+/- ACRE TRACT OF LAND SITUATED IN THE H. SEABORN AND R. CLEMENTS SURVEY, ABSTRACT NO. 879; PRESENTLY LOCATED IN PLANNED DEVELOPMENT “PD” NO. 40 CORRIDOR COMMERCIAL, BY CHANGING THE ZONING AND CREATING PLANNED DEVELOPMENT “PD” NO. 149 FOR CORRIDOR COMMERCIAL “CC” AND ADOPTING DEVELOPMENT REGULATIONS, A ZONING EXHIBIT, A CONCEPT PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, as previously amended, are hereby further amended by changing the zoning regulations relating to the development and use of 12.785+/- acres out of the H. Seaborn and R. Clements Survey, Abstract No. 879, City of Allen, Collin County, Texas, more fully described in Exhibit “A,” attached hereto and incorporated herein by reference (the “Property”), which is presently zoned as Planned Development “PD” No. 40 Corridor Commercial by changing the zoning and creating Planned Development “PD” No. 149 for Corridor Commercial uses subject to the use and development regulations set forth in Section 2 of this ordinance.

SECTION 2. The Property shall be developed and used in accordance with the provisions of the Allen Land Development Code, as amended (“ALDC”), applicable to the use and development of property located within a Corridor Commercial “CC” zoning district except to the extent modified below:

- A. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “B” and incorporated herein by reference (the “Concept Plan”).
- B. PERMITTED USES:** In addition to the permitted within the Corridor Commercial “CC” district pursuant to ALDC Section 4.20.2, the Property may be developed and used for Warehouse/Distribution Center purposes.
- C. PROHIBITED USES:** Notwithstanding ALDC Section 4.20.2, the Property shall not be developed and used for either a concrete batch plant (non-temporary) or concrete batch plant (temporary).

- D. MINIMUM OFFICE USE:** Not less than 20% of the gross floor area in each of Building “A” and Building “B” as shown on the Concept Plan shall be developed and used as office space.
- E. HEIGHT, AREA, AND SETBACK REGULATIONS:** Buildings constructed on the Property shall comply with the height, area, and setback regulations of the Corridor Commercial (CC) District except as follows:
- (1) **Maximum Height:** The height of buildings constructed on the Property shall not exceed:
 - (a) 50 feet, if all portions of the building are located 200 feet or more from property located within any residential zoning district or otherwise developed for any residential purpose;
 - (b) 45 feet, if any portion of the building is located less than 200 feet from property located within a multifamily or townhome residential zoning district or otherwise developed for a multifamily or townhome residential purpose; and
 - (c) 35 feet, if any portion of the building is located less than 200 feet from property located within a single-family detached residential zoning district or otherwise developed for a single-family detached residential purpose.
 - (2) **Front Setback:** Lots adjacent to Highway 121 shall have a front yard setback of 50 feet.
 - (3) **SH 121 Landscape Buffer :** A landscape buffer shall be developed adjacent to the State Highway 121 right of way, as shown on the “Concept Plan”, of which not less than 15 feet of the width of such landscape buffer shall be encumbered by utility, drainage, or other easements, but which encumbrance restriction shall not include public trail or sidewalk easements.
- F. BUILDING ELEVATIONS:** Façades for the buildings constructed on the Property shall be designed and constructed subject to the following architectural concepts:
- (1) All building facades should be designed with an architectural rhythm, which may be expressed by changing materials, or color, or by using design elements such as fenestration, columns or pilasters, or by varying the articulation of portions of the façade;
 - (2) Architectural features shall be applied to corners and at intermediate locations on all primary building facades not less than every 150 linear feet. Architectural elements shall include changes in building materials and other ornamental features. The building corners shall be set forward from the remaining façade not less than six (6) feet and an additional height up to 20% of the height of the main façade must be applied. Non-opaque Glazing shall cover at least 25% of façade area within 75 linear feet of each architectural feature;
 - (3) The images portrayed in the Building Elevations set forth in Exhibit “C”, attached hereto and incorporated herein by reference (“Building Elevations”) are intended to convey a general range of architectural features that would be approved as described in the regulatory text. Approval of final elevations by the Director of Community Development or designee shall be based on application of the text; and
 - (4) No more than sixteen contiguous (16) loading dock doors shall be permitted on Building “A” as portrayed in the Building Elevations set forth in Exhibit “C”.
- G. SCREENING STANDARDS:** All landscape buffers, tree placement, parking tree requirements, and screening shall comply with applicable provisions of the ALDC except as follows:

- (1) Screening is required to be installed along Drive “A” and Drive “B” in the areas shown on the Concept Plan for loading and tractor trailer parking areas for Building “A” and Building “B” and must consist of the following:
 - (a) Service court / loading dock doors cannot face and public street or alley;
 - (b) All screen walls must match the material of the principal building;
 - (c) Loading docks visible from public view must be screened subject to the following:
 - (i) All screening walls/wing walls shall be the length of the proposed trailer at the service court doors;
 - (ii) Height of all screening walls/wing walls must be not less than ten (10) feet from building finish floor but shall not exceed sixteen (16) feet in height; and
 - (iii) The construction materials of the wall shall match material used on the principal building located on the same lot.
 - (d) One (1) evergreen shrub with a height at the time of planting of not less than 36-inches measured from the top of the root ball shall be planted for every four (4) feet along the east side of the wall facing Drive “A” and the west side of Drive “B”.
 - (e) One (1) shade tree with the trunk diameter at the time of planting of not less than four (4) caliper inches measured at six (6) inches above the root ball must be planted on a distance of not more than 30-feet on center adjacent to Drive “A” and Drive “B”.
 - (f) One (1) ornamental tree with the trunk diameter at the time of planting of not less than four (4) caliper inches measured at six (6) inches above the root ball must be planted on a distance of not more than 30-feet on center adjacent to Drive “A” and Drive “B”.
- (2) Mechanical and Service Screening shall be required as follows:
 - (a) All buildings shall be designed such that no mechanical equipment (HVAC, etc.) is visible from the public street or alley, open space, or adjacent properties; whether the equipment is located on the ground, exterior wall, or roof;
 - (b) Rooftop mechanical equipment must be screened by a parapet raised at least one foot above the top of the mechanical equipment; and
 - (c) All ground mounted mechanical equipment will be screened with opaque fencing, masonry wall, or landscaping in the form of one large shrub planted every 4 linear feet around the boundary of equipment.

H. PARKING STANDARDS:

- (1) **On-site Cross Access:** Prior to the approval of a site plan for the Property in accordance with the ALDC, the owner(s) of the Property shall execute and record in the Real Property Records a perpetual cross-access easement for vehicle and pedestrian travel and cross-easements for parking that burdens the entire Property for the benefit of the current and future owner(s), tenants, customers, and guests of any building constructed on the Property
- (2) **S.H. 121 Frontage:** Parking is permitted within the front yard setback adjacent to S.H. 121 to the extent shown on the Concept Plan.

I. CROSS ACCESS:

- (1) The northern cross access between the Property and the property to the east of the Property shall be constructed as a controlled Fire Access Lane as shown on the Concept Plan.
- (2) The southern cross-access between the Property and the property to the east of the Property as shown on the Concept Plan may only be constructed if a cross access easement is recorded. If cross access is constructed, a nine (9) foot high headache bar shall be installed on the connecting drive between the properties.

J. TREE MITIGATION: Development of the Property shall comply with Section 7.06 of the ALDC, except as follows:

- (1) Not including replacement trees, negative tree credits assessed for the removal of Hackberry trees and Sugarberry trees will be reduced by 25%;
- (2) Negative tree credits will not be assessed for a tree that is removed following the City arborist's determination the tree is at the end of its life, diseased, dead or dying per a tree condition survey;
- (3) Negative tree credits will not be assessed for the removal of Siberian Elm (*Ulmus pumila*) or hybridized elms of Siberian Elm following the City arborist's determination, or Chinaberry trees (*Melia azedarach*); and
- (4) Tree credits will be provided for street trees in accordance with ALDC Section 7.06.3.3.

K. FLEXIBLE DESIGN STANDARDS:

- (1) Exceptions to the development standards relating to building design or construction set forth in this Ordinance may be granted by the Director of Community Development for the purpose of improving performance in energy and water use and consumption, carbon dioxide emissions reduction, and improved indoor environmental quality. The standards used for best practices in sustainable design and the measures used to describe a building's environmental performance shall follow those principles, practices, and standards set forth by any of the following organizations:
 - (a) U.S. Green Building Council (USGBC) – Leadership in Energy and Environmental Design (LEED); or
 - (b) EPA and U.S. Department of Energy – Energy Star for Homes and Businesses; or
 - (c) The Sustainable Sites Initiatives (SITES); or
 - (d) Congress for the New Urbanism (CNU); or
 - (e) BRE Environmental Assessment Method (BREEAM).
- (2) A request for an exception to the building design standards of this Ordinance shall be submitted and approved before implementation by the Director of Community Development, Director of Engineering, and Chief Building Official, who shall have the authority, but not the obligation, to approve the alternative design(s) without being processed as a zoning amendment in accordance with the ALDC provided such design alternatives are generally consistent with the intent of this Ordinance and such exception does not:

- (a) result in the approval of a land use not otherwise authorized by this Ordinance or the ALDC;
- (b) increase the allowable intensity or density of any land use; and
- (c) effectively result in an amendment to this Ordinance or the ALDC.

L. SITE PLAN AND CONCEPT PLAN ADMINISTRATION:

(1) Site Plan Review Process.

- (a) ***Site Plan Details.*** Site plan details to be provided on a site plan shall comply with Section 6.05.3 of the ALDC.
- (b) ***Site Plan Review Standards.*** The Director of Community Development is authorized to approve a site plan if such site plan conforms to the standards set forth in this Ordinance and the ALDC.
- (c) ***Amendments to Approved Site Plans.*** The Director of Community Development is authorized to approve changes to approved site plans that comply with the provisions in this Ordinance.

(2) Amendments to the Concept Plan.

- (a) ***Minor Modifications.*** Except as otherwise provided in this Ordinance, the Director of Community Development shall have the authority to administratively approve minor changes to the Concept Plan, Site Plan, or Elevations (i.e., “Minor Modifications”). “Minor modifications” include changes that:
 - (i) Do not materially change the circulation on the Property;
 - (ii) Do not move a street more than 100 feet from the location shown on the Concept Plan and the move does not result in a change in the general circulation plan set forth on the Concept Plan; or
 - (iii) Reconfigure size and location of buildings shown on the Concept Plan provided compliance with the screening requirements of loading areas set forth in Section 2.F are maintained.
- (b) ***Major Modifications.*** Changes to the Concept Plan or Site Plan that do not qualify as Minor Modifications shall be processed as an amendment to a zoning ordinance pursuant to the ALDC.
- (c) ***Modifications Mandated by Law.*** Any modification to a street location shown on the Concept Plan that is necessitated by a Federal, State, or Local action may be administratively approved by the Director of Engineering, including, but not limited to, the intersection of Drive “A” and/or Drive “B” with the State Highway 121 service road.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 7. This ordinance shall take effect upon (i) passage of this Ordinance and publication in accordance with the provisions of the Charter of the City of Allen and (ii) delivery to the City Secretary of a copy of a deed that has been recorded in the Official Public records of Collin County, Texas, conveying the Property to Heady Investments or an affiliated business entity owned and/or controlled by Heady Investments and it is accordingly so ordained; provided, however, if this Ordinance does not become effective on or before December 31, 2022, the acts of the City Council in approving Ordinance shall be deemed null and void and this Ordinance shall not take effect.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF DECEMBER 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:11/10/2002:132099)

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT "A"
DESCRIPTION OF THE PROPERTY AND ZONING EXHIBIT

Being 12.785 acres of land situated in the H. Seaborn and R. Clements Survey, Abstract No. 879, Collin County, Texas, and being a portion of a tract of land conveyed to the Wines Irrevocable Trust (50% interest) by deed recorded in Volume 2774, Page 647, and The MGA Family Limited Partnership (50% interest) by deed recorded in Volume 5997, Page 1572, Deed Records of Collin County, Texas, said 12.785 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap stamped "TNI" set at the southwest corner of the remainder of Wines and MGA tract, same being the northeast corner of the remainder of tract of land conveyed to the Rantzow Family Trust (50% interest) by deed recorded in Volume 4439, Page 3749 and the Galarneau Family Trust (50% interest) by deed recorded in Volume 5175, Page 3141, of said Deed Records, said point also being on the southeasterly right-of-way line of the Sam Rayburn Tollway, Highway 121 (Variable width right-of-way), from which a found concrete monument with brass cap bears S 70° 06' 18" W, 189.65 feet.

THENCE along said right-of-way line the following courses and distances:

N 70° 06' 18" E, a distance of 174.88 feet to a found concrete monument brass cap;

N 58° 13' 44" E, a distance of 188.07 feet to a found concrete monument brass cap;

N 64° 35' 51" E, a distance of 303.44 feet to the northeast corner of the remainder of Wines and MGA tract, from which a found ½ inch capped iron rod bears N 64° 35' 51" E, 0.88 feet.

THENCE S 00° 31' 53" E, a distance of 1102.99 feet to the center of the creek;

THENCE along the center of said creek the following courses and distances:

N 77° 36' 17" W, a distance of 138.61 feet;

S 82° 14' 05" W, a distance of 66.61 feet;

N 81° 41' 40" W, a distance of 138.45 feet;

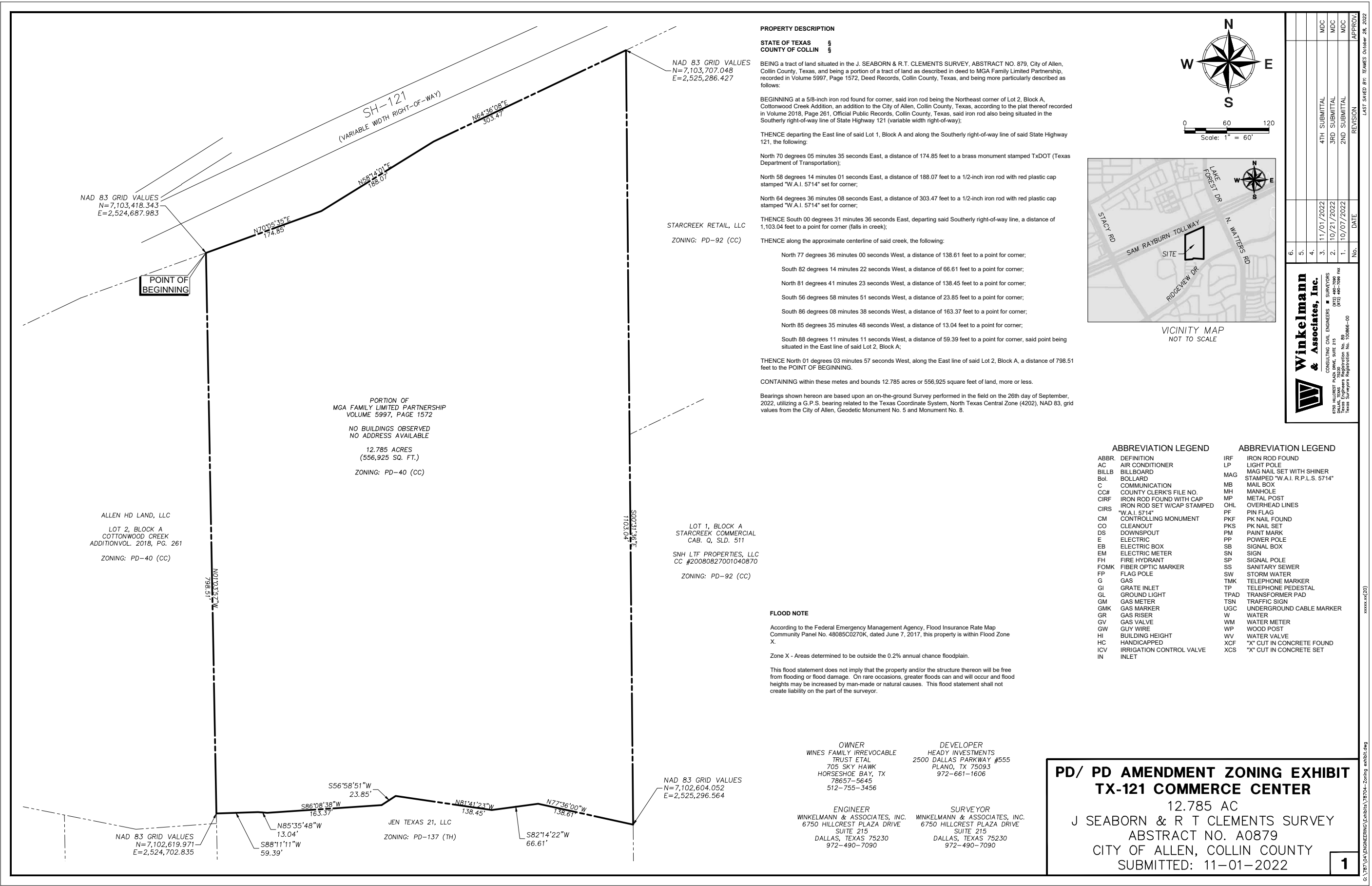
S 56° 58' 34" W, a distance of 23.85 feet;

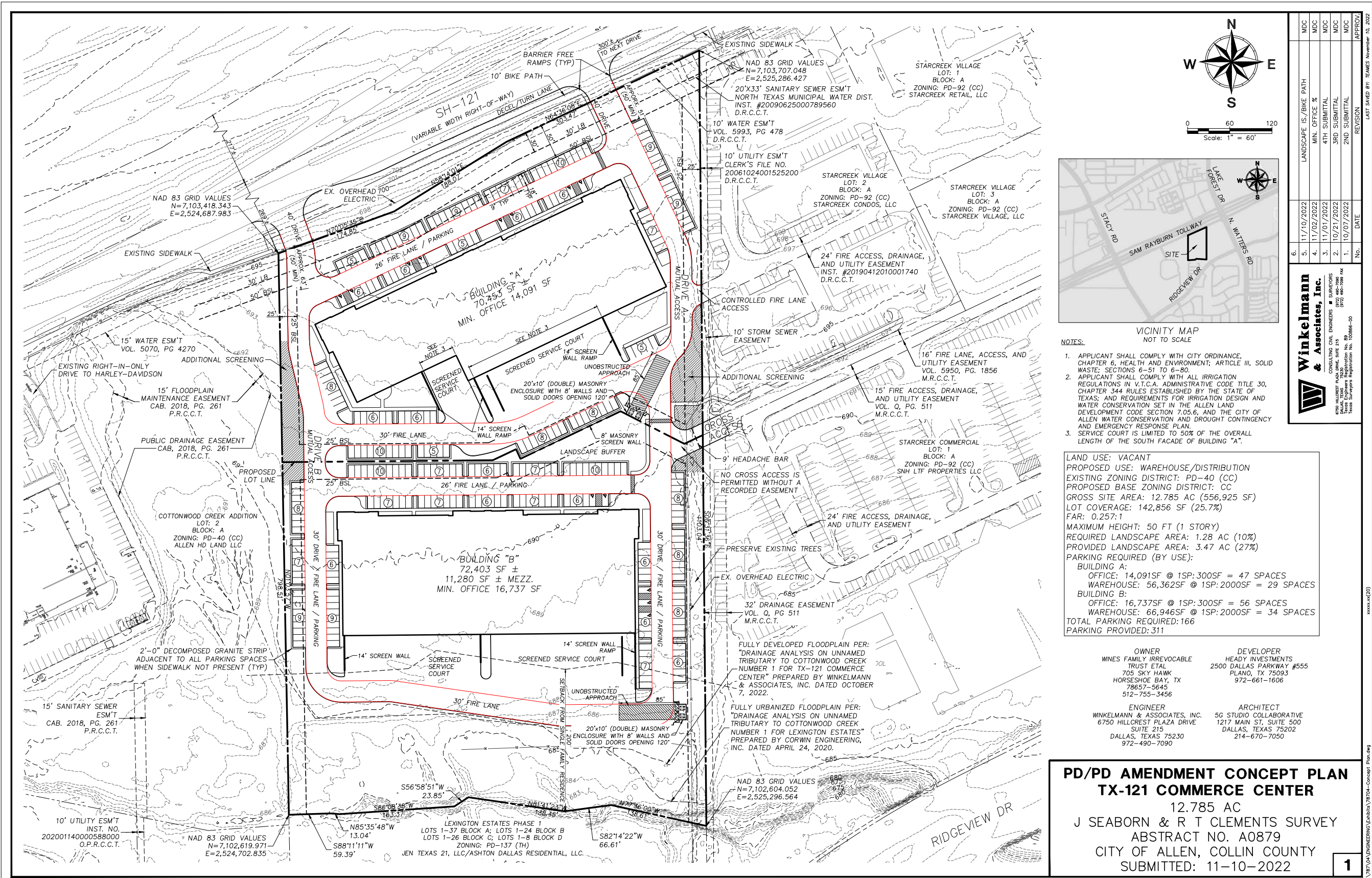
S 86° 08' 21" W, a distance of 163.37 feet;

N 85° 36' 05" W, a distance of 13.04 feet;

S 88° 10' 54" W, a distance of 59.39 feet to the common line of said Wines and MGA tract and said Rantzow and Galarneau tract;

THENCE N 01° 04' 14" W, with said line a distance of 798.51 feet to the POINT OF BEGINNING and containing 12.785 acres of land.



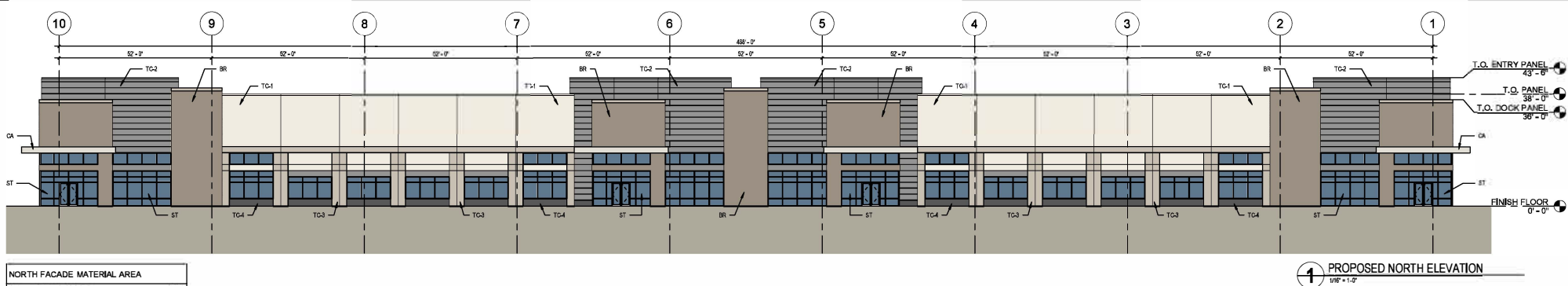




ARCHITECT
5G Studio Collaborative, LLC
1217 Main St., Suite 500
Dallas, TX 75202
Kyle McCullum

STRUCTURAL ENGINEER
McHale Engineering, Inc.
2020 Avenida G, Suite 800
Plano, TX 75074
Gary Michalek

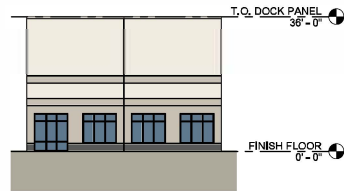
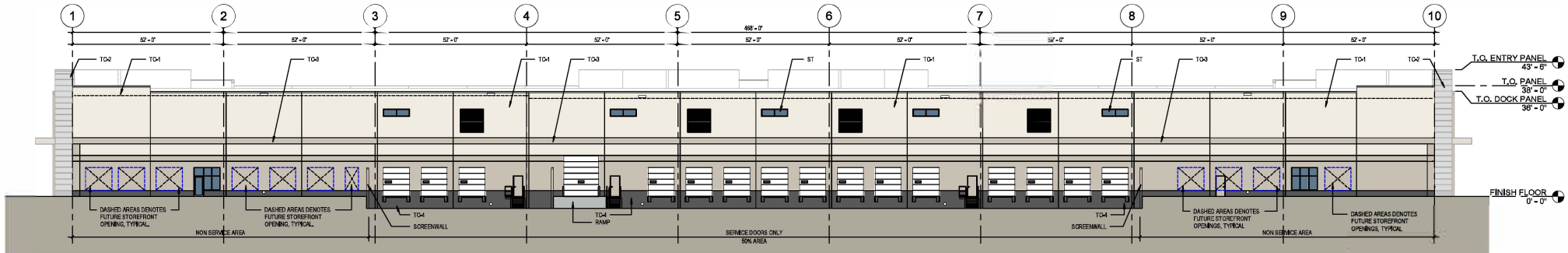
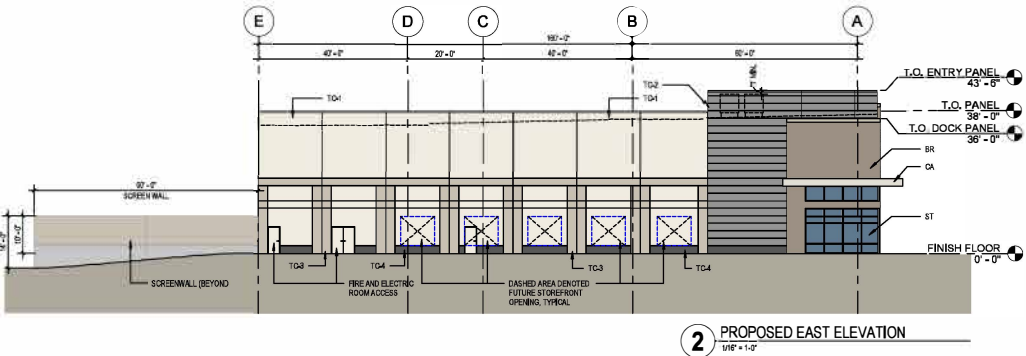
CIVIL ENGINEER
Winkler & Associates
8760 H-Bornet Plaza Dr., Suite 215
Dallas, TX 75229
Mike Clark, P.E.



| NORTH FACADE MATERIAL AREA | | | |
|------------------------------|--------------------------|----------|--------|
| TC-1 | TEXTURED CONCRETE | 5,188 SF | 26.47% |
| TC-2 | TEXTURED CONCRETE | 3,702 SF | 18.96% |
| TC-3 | TEXTURED CONCRETE | 1,710 SF | 8.78% |
| TC-4 | TEXTURED CONCRETE | 479 SF | 2.45% |
| BR | BRICK VENEER | 3,958 SF | 20.28% |
| ST | STORE FRONT | 4,258 SF | 21.91% |
| CA | PREFINISHED METAL CANOPY | 254 SF | 1.31% |
| TOTAL FACADE AREA: 19,520 SF | | | |

| SOUTH FACADE MATERIAL AREA | | | |
|------------------------------|--------------------------|----------|--------|
| TC-1 | TEXTURED CONCRETE | 8,355 SF | 48.09% |
| TC-2 | TEXTURED CONCRETE | 187 SF | 2.64% |
| TC-3 | TEXTURED CONCRETE | 6,552 SF | 34.10% |
| TC-4 | TEXTURED CONCRETE | 2,888 SF | 13.99% |
| BR | BRICK VENEER | 0 SF | 0.00% |
| ST | STORE FRONT | 158 SF | 0.82% |
| CA | PREFINISHED METAL CANOPY | 0 SF | 0.00% |
| TOTAL FACADE AREA: 19,231 SF | | | |

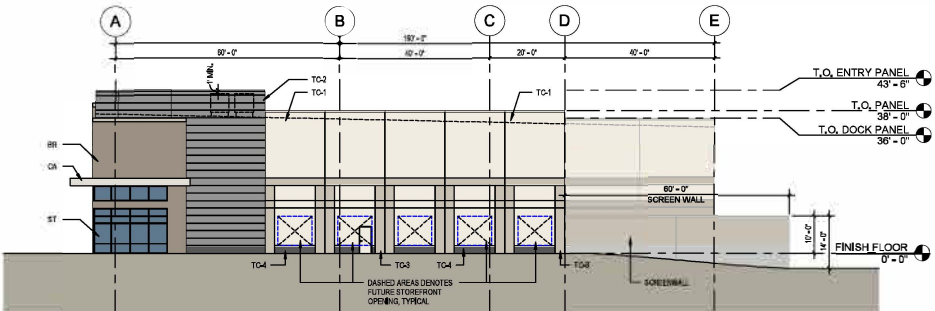
| EAST FACADE MATERIAL AREA | | | |
|-----------------------------|--------------------------|----------|--------|
| TC-1 | TEXTURED CONCRETE | 3,508 SF | 53.77% |
| TC-2 | TEXTURED CONCRETE | 1,008 SF | 15.40% |
| TC-3 | TEXTURED CONCRETE | 906 SF | 13.89% |
| TC-4 | TEXTURED CONCRETE | 216 SF | 3.37% |
| BR | BRICK VENEER | 504 SF | 7.79% |
| ST | STORE FRONT | 917 SF | 14.09% |
| CA | PREFINISHED METAL CANOPY | 64 SF | 0.99% |
| TOTAL FACADE AREA: 6,521 SF | | | |



5 STOREFRONT PANEL ELEVATION (EXAMPLE)
1/8" = 1'-0"

PROPOSED EXAMPLE ONLY, ACTUAL
PATTERN TO BE DETERMINED BY
FUTURE TENANT

| WEST FACADE MATERIAL AREA | | | |
|-----------------------------|--------------------------|----------|--------|
| TC-1 | TEXTURED CONCRETE | 2,310 SF | 40.51% |
| TC-2 | TEXTURED CONCRETE | 1,694 SF | 18.07% |
| TC-3 | TEXTURED CONCRETE | 1,115 SF | 12.78% |
| TC-4 | TEXTURED CONCRETE | 276 SF | 4.52% |
| BR | BRICK VENEER | 508 SF | 8.99% |
| ST | STORE FRONT | 317 SF | 5.81% |
| CA | PREFINISHED METAL CANOPY | 64 SF | 1.14% |
| TOTAL FACADE AREA: 5,845 SF | | | |



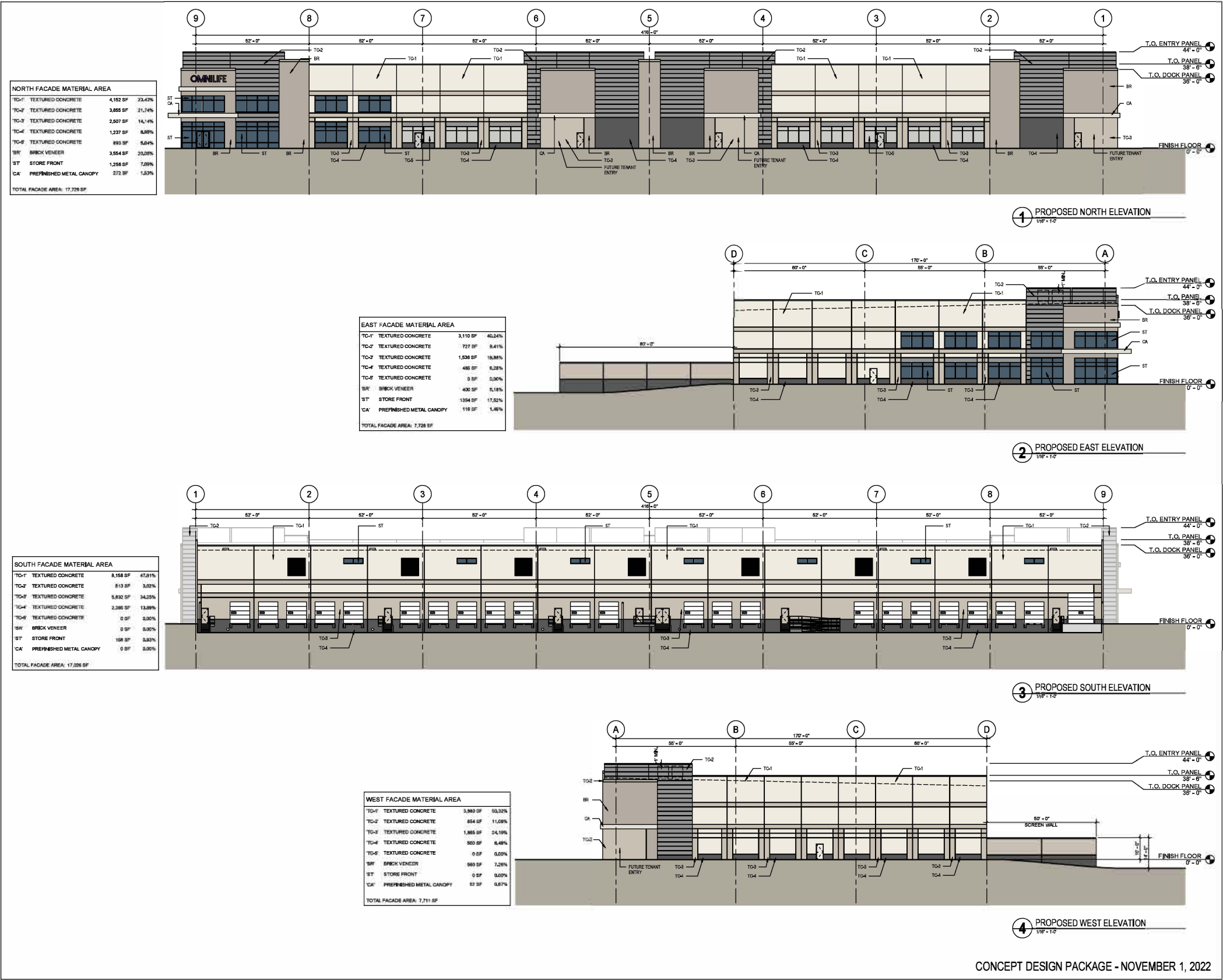
4 PROPOSED WEST ELEVATION
1/8" = 1'-0"

"EXHIBIT C"
CONCEPT DESIGN PACKAGE - NOVEMBER 1, 2022

| REV | DATE | ISSUE TITLE |
|-----|------------|--------------------------------|
| 01 | 08/16/2022 | CONCEPT DESIGN PACKAGE |
| 02 | 10/07/2022 | REVISED CONCEPT DESIGN PACKAGE |
| 03 | 10/21/2022 | REVISED CONCEPT DESIGN PACKAGE |
| 04 | 10/28/2022 | REVISED CONCEPT DESIGN PACKAGE |
| 05 | 11/01/2022 | REVISED CONCEPT DESIGN PACKAGE |

INCOMPLETE DOCUMENTS ARE FOR INTERIM
REVIEW ONLY, NOT FOR REGULATORY APPROVAL,
PERMIT OR CONSTRUCTION

| | |
|---------------------------------------|-------------------------|
| TX - 121 COMMERCE CENTER ALLEN, TX | |
| BUILDING "A" PROPOSED ELEVATIONS | |
| Project Number | A200.00 SHEET NUMBER |



5G STUDIO COLLABORATIVE

ARCHITECT
5G Studio Collaborative, LLC
1717 Main St., Suite 200
Dallas, TX 75202
Nyle McCullough

STRUCTURAL ENGINEER
Mohrle Engineering, Inc.
2005 Avenue G Suite 800
Plano, TX 75074
Gary Mohrle

CIVIL ENGINEER
Weissman & Associates
8750 Hiram Place Dr., Suite 215
Dallas, TX 75225
Mike Clark, P.E.

| REV. | DATE | ISSUE TITLE |
|------------|------|--------------------------------|
| 09/16/2022 | | CONCEPT DESIGN PACKAGE |
| 10/07/2022 | | REVISED CONCEPT DESIGN PACKAGE |
| 10/21/2022 | | REVISED CONCEPT DESIGN PACKAGE |
| 10/28/2022 | | REVISED CONCEPT DESIGN PACKAGE |
| 11/01/2022 | | REVISED CONCEPT DESIGN PACKAGE |

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TX - 121 COMMERCE CENTER
ALLEN, TX
BUILDING "B"
PROPOSED ELEVATIONS
DJM2217
A200.02
SHEET NUMBER

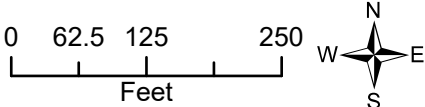


TX-121 Commerce Center



Legend

- Collin CAD Parcels
- 200' Buffer
- Subject Property



Note: This map is for illustrative purposes only please contact Community Development for more details. 214-509-4160

November 29, 2022 Planning and Zoning Commission Meeting Minutes

Conduct a Public Hearing and consider a request to establish a Planned Development with a base zoning district of Corridor Commercial, and to adopt Development Regulations, Concept Plan, Zoning Exhibit, and Building Elevations, to allow "Warehouse/Distribution" uses by right relating to the use and development of 12.785± acres located in the H. Seaborn and R. Clements Survey, Abstract No. 879, generally located south of State Highway 121 and approximately 600 feet west of Watters Road. (ZN-091622-0016) [TX-121 Commerce Center]

Ms. Yockey, Senior Planner, presented the item to the Commission.

Ms. Yockey noted that staff is in support of the agenda item.

Logan Menocal, applicant, 3425 Edwards Drive, Plano, TX, spoke on the item.

Chair Metevier opened the public hearing.

The following letters were received in opposition of the item:

- Dr. Yamini Maddala, 981 State Highway 121, Suite 1140, Allen, TX

Chair Metevier closed the public hearing.

The Commission discussed the following:

- Controlled fire access;
- Traffic; and
- Potential tenants.

Motion: Upon a motion by Commissioner Shaikh, and a second by 1st Vice-Chair Smiddy, the Commission voted 6 IN FAVOR and 1 OPPOSED to recommend approval of an ordinance to establish a Planned Development with a base zoning of Corridor Commercial and to adopt Development Regulations, a Concept Plan, Zoning Exhibit, and Building Elevations, as presented. The motion carried.

ATTENDANCE:

Commissioners Present:

Dan Metevier, Chair

Michael Smiddy, 1st Vice-Chair

Kenneth Cook, 2nd Vice-Chair

Todd Price

Elias Shaikh

Gary Stocker

Jason Wright

| |
|--|
| CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION |
|--|

| | |
|---------------------------------|---|
| AGENDA DATE: | December 13, 2022 |
| AGENDA CAPTION: | Pursuant to Texas Government Code, Section 551.087; Deliberation of Economic Development Negotiations. <ul style="list-style-type: none">• Economic Development projects along the SH 121 Corridor. |
| STAFF RESOURCE: | Dan Bowman, Executive Director of Economic Development Corporation |
| STRATEGIC PLANNING GOAL: | Vibrant Community with Lively Destinations and Successful Commercial Centers. |

BACKGROUND

Dan Bowman will present in Executive Session an update on Economic Development Projects on SH 121.