



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
TUESDAY, APRIL 12, 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.

[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.]

3.1 Citizen's Comments.

3.2 Presentation of Proclamations by the Office of the Mayor.

- Presentation of a Proclamation to the Allen High School Wrestling Team Proclaiming 2022 as "Allen Eagles Wrestling Team Year."
- Presentation of a Proclamation to the Islamic Association of Allen Proclaiming April as the "Holy Month of Ramadan."
- Presentation of a Proclamation to the City of Allen Public Safety Communication Division, Proclaiming April 10-16, 2022, as "Public Safety Telecommunicators Week."
- Presentation of a Proclamation to the City of Allen Animal Services Division Proclaiming April 10-16, 2022, as "Animal Control Officer Appreciation Week."
- Presentation of a Proclamation to the City of Allen Keep Allen Beautiful Board Proclaiming April 16, 2022, as "Great American Cleanup Day."

3.3 Presentation of the Keep Allen Beautiful Board's Annual Report by Vice-Chair Steve Chisholm.

3.4 Presentation of the Animal Shelter Advisory Committee's Annual Report by Committee Co-Chair Jessica Lockhart.

4. 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.]

4.1 Approve Minutes of the March 22, 2022, Regular City Council Meeting.

- 4.2 Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement with the State of Texas Acting by and through the Texas Department of Transportation for the Ridgerview & U.S. Hwy. 75 Interchange Project.
- 4.3 Authorize the City Manager to Execute a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for Construction Administration of Fire Station No. 6 in the Amount of \$241,374.
- 4.4 Award Bid and Authorize the City Manager to Execute an Agreement with Weldon Contractors, Inc., for Labor, Equipment, HVAC, and Installation in the Amount of \$1,703,611 and with The Garland Company for the Roof Materials in the Amount of \$233,823 for the Don Rodenbaugh Natatorium HVAC and Roof Replacement Project Phase 2 for a Total Project Amount of \$2,131,177.
- 4.5 Authorize the City Manager to Consent to the Assignment of a Dedication Agreement Dated May 12, 2011, Between the City and Allen Economic Development Corporation Regarding the Dedication of Right-of-Way for Chelsea Road.
- 4.6 Authorize the City Manager to Consent to the Assignment and Collateral Assignment of Amended and Restated Development Agreement Dated December 21, 2007, as Amended, Among the City, City of Allen Tax Increment Zone No. 1, and Watters Creek Owner, LLC, Regarding the Watters Creek Shopping Center.
- 4.7 Authorize the City Manager to Execute an Agreement with Baird, Hampton, & Brown, Inc., for an Assessment of Mechanical and Electrical Equipment at Credit Union of Texas Event Center in the Amount of \$144,500.
- 4.8 Motion to Reappoint Dr. Joe Farmer to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2022 through May 31, 2024.

5. Regular Agenda.

- 5.1 Consider All Matters Incident and Related to the Issuance and Sale of City of Allen, Texas, General Obligation Bonds, Series 2022, Including the Adoption of an Ordinance Authorizing the Issuance of Such Bonds, Establishing Parameters for the Sale and Issuance of Such Bonds and Delegating Certain Matters to Authorized Officials of the City.
- 5.2 Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of District F of Planned Development No. 108, with a Base Zoning of Office, Located at the Southwest Corner of the Intersection of Exchange Parkway and Raintree Circle. [Jackrabbit]
- 5.3 Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of Tract 1 of Planned Development No. 58, with a Base Zoning of Shopping Center, Located at 1300 N. Central Expressway.

6. Other Business.

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

6.1 Calendar.

- April 16, 2022 - Great American Cleanup, 8 a.m. - 1 p.m. at Allen City Hall
- April 25 - May 3, 2022 - City of Allen General Election Early Voting Period
- May 7, 2022 - Election Day, 7 a.m. - 7 p.m.

6.2 Items of Interest.

7. **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.)

7.1 Reconvene and Consider Action on Items Resulting from Executive Session.

8. **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, April 8, 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.

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
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AGENDA DATE: April 12, 2022

AGENDA CAPTION: Approve Minutes of the March 22, 2022, Regular City Council Meeting.

STAFF RESOURCE: Shelley B. George, City Secretary

STRATEGIC PLANNING GOAL: Financially Sound and Transparent City Government.

MOTION

I make a motion to approve Minutes of the March 22, 2022, Regular City Council Meeting.

ATTACHMENT(S)

[Minutes](#)

ALLEN CITY COUNCIL

REGULAR MEETING

MARCH 22, 2022

Present:

Kenneth M. Fulk, Mayor

Councilmembers:

Baine Brooks, Mayor Pro Tem

Daren Meis

Carl Clemencich

Dave Cornette

Chris Schulmeister

Dave Shafer

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 (absent)

Kaleb Smith, Attorney

Workshop Session

The Workshop Session was not held.

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, March 22, 2022, in the City Council Chambers of Allen City Hall, 305 Century Parkway, Allen, Texas.

2. Pledge of Allegiance

3. Public Recognition

3.1 Citizen's Comments.

Sonya Turner, 1225 Rainforest Lane, Allen, Texas, and Ali Yamin, 1227 Rainforest Lane, Allen, Texas, requested the City address the code enforcement issue for a property on Rainforest Lane.

3.2 Presentation of Proclamation by the Office of the Mayor.

- Presentation of a Proclamation to the City of Allen Purchasing Division Proclaiming March 2022 as “*Purchasing Month*.”
- Presentation of a Proclamation to the Allen Public Library Proclaiming April 3-9, 2022, as “*Library Week*.”

3.3 Recognition of the Allen Public Library for Receipt of the Texas Municipal Library Directors Association 2021 Achievement of Excellence in Libraries Award.

3.4 Presentation of the Library Board’s Annual Report by Board Chair Scott Phillips.

4. Consent Agenda

Councilmember Cornette requested that Agenda Item 4.4 be removed from the Consent Agenda.

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

4.1 Approve Minutes of the March 8, 2022, Regular City Council Meeting.

4.2 Authorize the City Manager to Purchase the Commodity of Electrical Services for Facility Maintenance from Boyd Operating Company, LLC, and RRE, Inc., for an Amount of \$130,000 Annually for a Term of Three Years.

4.3 Authorize the City Manager to Execute the Purchase of a Toro Reelmower 7000-D with Professional Turf Products, LP, for the Parks and Recreation Department in the Amount of \$110,699.

4.5 Award Bid and Authorize the City Manager to Execute a Contract with ACIS, Inc., for Installation of Air Handlers at Allen Police Headquarters in the Amount of \$260,855.

4.6 Set August 19-20, 2022, as the Dates for the City Council Budget Workshop with City Council and Executive Staff.

The motion carried.

4.4 Award Bid and Authorize the City Manager to Execute a Contract with Knight Erosion, Inc., for the Design and Construction of the Creek Bank Stabilization Project along Cottonwood Creek and Watters Branch Creek in the Amount of \$520,245.

MOTION: Upon a motion made by Mayor Pro Tem Brooks and a second by Councilmember Shafer, the Council voted seven (7) for and none (0) opposed to award the bid and authorize the City Manager to execute a contract with Knight Erosion, Inc., for the Design and Construction of the Creek Bank Stabilization Project along Cottonwood Creek and Watters Branch Creek in the Amount of \$520,245. The motion carried.

5. Regular Agenda

5.1 Motion to Accept the Fiscal Year 2020-2021 Annual Comprehensive Financial Report.

MOTION: Upon a motion made by Councilmember Cornette and a second by Councilmember Schulmeister, the Council voted seven (7) for and none (0) opposed to accept the Fiscal Year 2020-2021 Annual Comprehensive Financial Report. The motion carried.

5.2 Conduct a Public Hearing and Adopt an Ordinance Establishing Standards of Care Necessary for a Day Care Licensing Exemption for Youth Camp Programs.

Mayor Fulk opened the public hearing for this agenda item 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.

ORDINANCE NO. 3900-3-22: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING STANDARDS OF CARE NECESSARY FOR A DAY CARE LICENSING EXEMPTION FOR YOUTH CAMP PROGRAMS OPERATED BY THE CITY OF ALLEN PARKS AND RECREATION DEPARTMENT; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Schulmeister and a second by Councilmember Meis, the Council voted seven (7) for and none (0) opposed to approve Ordinance No. 3900-3-22, as previously captioned, to establish Standards of Care necessary for a day care licensing exemption for youth camp programs operated by the City of Allen Parks and Recreation Department. The motion carried.

5.3 Appoint to Fill Vacancies on the Board of Adjustment, Building & Standards Commission and Sign Control Board, and Planning and Zoning Commission.

MOTION: Upon a motion by Councilmember Schulmeister and a second by Councilmember Meis, the Council voted seven (7) for and none (0) opposed to appoint the following individuals to fill vacancies on the Board of Adjustment, Building & Standards Commission and Sign Control Board, and Planning and Zoning Commission as recommended by the Council Nominating Committee:

<u>Planning and Zoning Commission</u>		<u>Expiration Date</u>
Place No. 1	Gary Stocker	September 30, 2023
<u>Board of Adjustment/Building & Standards Commission/ Sign Control Board</u>		<u>Expiration Date</u>
Place No. 2	Joe Lundgren	September 30, 2022
Place No. 3	Tom Voss	September 30, 2023

The motion carried.

6. Other Business

6.1 Calendar

6.2 Items of Interest

- Mayor Pro Tem Brooks commended the Convention and Visitor's Bureau for bringing the Mary Kay Cosmetics Convention to Allen.

- Mayor Pro Tem Brooks expressed appreciation along with the City Council to the six Allen firefighters deployed to Eastland to assist with wildfires as part of our statewide mutual aid system.
- Mayor Pro Tem Brooks announced that Allen Police Department is taking applications for the Junior Police Academy this summer and pointed viewers to learn more at AllenPolice.org.
- Mayor Pro Tem Brooks also mentioned that enrollment is now open for over 50 summer camps through our Parks and Recreation Department.
- Mayor Pro Tem Brooks asked the public to complete the survey for the proposed library expansion. The survey is open until the end of the month at AllenLibrary.org.
- Councilmember Cornette announced the Fire Department is hiring through April 6.
- Councilmember Cornette also mentioned the great turnout and ideas presented at the Downtown Steering Committee's Design Workshops.
- Mayor Fulk announced his charity of the month as JCK Resources.
- Mayor Fulk shared that he had attended the Holifest celebration at the Radha Krishna Temple held in Allen and what a great community event it was for Allen.

7. **Executive Session**

The Executive Session was not held.

7.1 **Reconvene and Consider Action on Items Resulting from Executive Session.**

8. **Adjournment**

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 adjourn the Regular Meeting of the Allen City Council at 8:12 p.m. on Tuesday, March 22, 2022. The motion carried.

These minutes were approved on the 12th day of April 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:	April 12, 2022
AGENDA CAPTION:	Adopt a Resolution Approving the Terms and Conditions of an Advance Funding Agreement with the State of Texas Acting by and through the Texas Department of Transportation for the Ridgeview & U.S. Hwy. 75 Interchange Project.
STAFF RESOURCE:	Chris Flanigan, Director of Engineering
PREVIOUS COUNCIL ACTION:	<p>July 28, 2020, Council adopted Resolution No. 3764-7-20, approving an agreement with the State of Texas for the funding of R-O-W acquisition to reconstruct the Ridgeview Drive and U.S. Hwy. 75 Interchange.</p> <p>February 8, 2022, Council authorized the City Manager to execute a contract for the U.S. Hwy. 75 and Ridgeview Utility Adjustment Project.</p>
STRATEGIC PLANNING GOAL:	Financially Sound and Transparent City Government.

BACKGROUND

The U.S. Hwy. 75 corridor in Allen from Rowlett Creek to Stacy Road has a customized, decorative aesthetic imprinted into the retaining walls and noise walls. A landscape pattern of undulating waves, grasses, clouds, and the City of Allen logo was installed by Texas Department of Transportation (TxDOT) in 2017 when the fourth main lane was constructed.

City staff inquired about having a matching pattern applied to the proposed new Ridgeview Drive overpass so that the look is continuous throughout. TxDOT has indicated that to do so would be a premium cost of \$300,000 to the project, for which the community would be responsible. TxDOT requires the funds in advance to bid on the project, and the execution of an Advance Funding Agreement is required at this time.

BUDGETARY IMPACT

Based on our current cost estimate for the construction of Ridgeview Drive, there are sufficient general obligation bonds within the Ridgeview Project to absorb this cost.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the Terms and Conditions of an Advance Funding Agreement with the State of Texas acting by and through the Texas Department of Transportation for the Ridgeview Drive project.

MOTION

I make a motion to adopt Resolution No. _____ approving the Terms and Conditions of an Advance Funding Agreement with the State of Texas acting by and through the Texas Department of Transportation for the Ridgeview Drive Project.

ATTACHMENT(S)

Resolution
Advance Funding Agreement
Council Workshop Presentation - Ridgeview Overpass

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 VOLUNTARY LOCAL GOVERNMENT CONTRIBUTIONS TO TRANSPORTATION IMPROVEMENT PROJECTS WITH NO REQUIRED MATCH (ON-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 Voluntary Local Government Contributions to Transportation Improvement Projects with No Required Match (On-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 construction of the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange 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 construction of the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen, Collin County, Texas (CSJ #0047-06-161/ROW CSJ #0047-06-169) (US 75 at Ridgeview Interchange Improvement Project).

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

SECTION 1. An Advance Funding Agreement for the US 75 at Ridgeview Interchange Improvement Project, which provides funding for the construction of the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen, Collin County, Texas, is hereby approved, and the City Manager is hereby 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 the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen, Collin County, Texas (CSJ #0047-06-161/ROW CSJ #0047-06-169) (US 75 at Ridgeview Interchange Improvement 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 12TH DAY OF APRIL 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY
(PGS:4-1-22:TM 128813)

CSJ #	0047-06-161
ROW CSJ #	0047-06-169
District #	18 - Dallas
Code Chart 64 #	00650
Project Name	US 75 at Ridgeview Interchange Improvement

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT PROJECTS
WITH NO REQUIRED MATCH**

(ON-SYSTEM)

THIS 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, Transportation Code, Chapters 201 and 221, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115550 authorizing the State to undertake and complete a highway improvement generally described as the reconstruction of the Ridgeview Interchange; and

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as the construction of the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen (Project); and

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the state;

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:

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AGREEMENT

1. 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 full force and effect until the Project has been completed and accepted by all parties or unless terminated as provided below.

2. Project Funding and Work Responsibilities

- A. The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities (Attachment A) which is attached to and made a part of this contract. In addition to identifying those items of work paid for by payments to the State, Attachment A also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.
- B. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its financial share for the State's estimated construction oversight and construction costs.
- C. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- D. 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.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

5. 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.

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6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

9. Increased Costs

If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased cost to the department for a highway improvement project, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

10. 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

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maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

11. 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 Attachment A or existing maintenance agreements with the Local Government.

Upon completion of the Project by the State, the Local Government will assume responsibility for the cost associated with the maintenance of the Project to include the repair, replacement and/or other required or needed maintenance work for the aesthetic upgrades associated with the Project.

12. Termination

- A. This agreement may be terminated in the following manner:
 - 1. By mutual written agreement and consent of both parties;
 - 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 - 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B. If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.
- C. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

13. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
City of Allen ATTN: City Manager 305 Century Parkway Allen, Texas 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 so delivered or so deposited in the mail, unless otherwise provided in 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 such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

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14. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

15. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

16. Amendments

By mutual written consent of the parties, this agreement may be amended in writing prior to its expiration.

17. State Auditor

Pursuant to Texas Government Code § 2262.154, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.

18. Signatory Warranty

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

THIS AGREEMENT IS EXECUTED by the State and the Local Government.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT – City of Allen

By: _____

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

By: _____

Eric Ellwanger
City Manager
City of Allen

Date: _____

Date: _____

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ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will provide a fixed contribution towards the construction of the retaining walls and aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen. The Local Government fixed amount of \$300,000 will not increase or decrease based on the total Projects construction low bid amount. The State will be responsible for the Project cost overruns.

The Project cost is to be as follows:

Description	Total Estimate Cost	Federal Participation		State Participation		Local Participation	
Construction (by State)	\$267,630	0%	\$0	0%		100%	\$267,630
Direct State Costs @ 10.79%	\$32,370	0%	\$0	0%		100%	\$32,370
Indirect State Costs at @ 4.77%	\$12,766	0%	\$0	100%	\$12,766	100%	\$0
Subtotal	\$45,136		\$0		\$12,766		\$32,370
TOTAL	\$312,766		\$0		\$12,766		\$300,000

Total Local Government Participation = \$300,000

Total Payment by the Local Government to the State on full execution of this Agreement = \$300,000

Ridgeview Drive Overpass

Workshop Discussion
03/08/2022

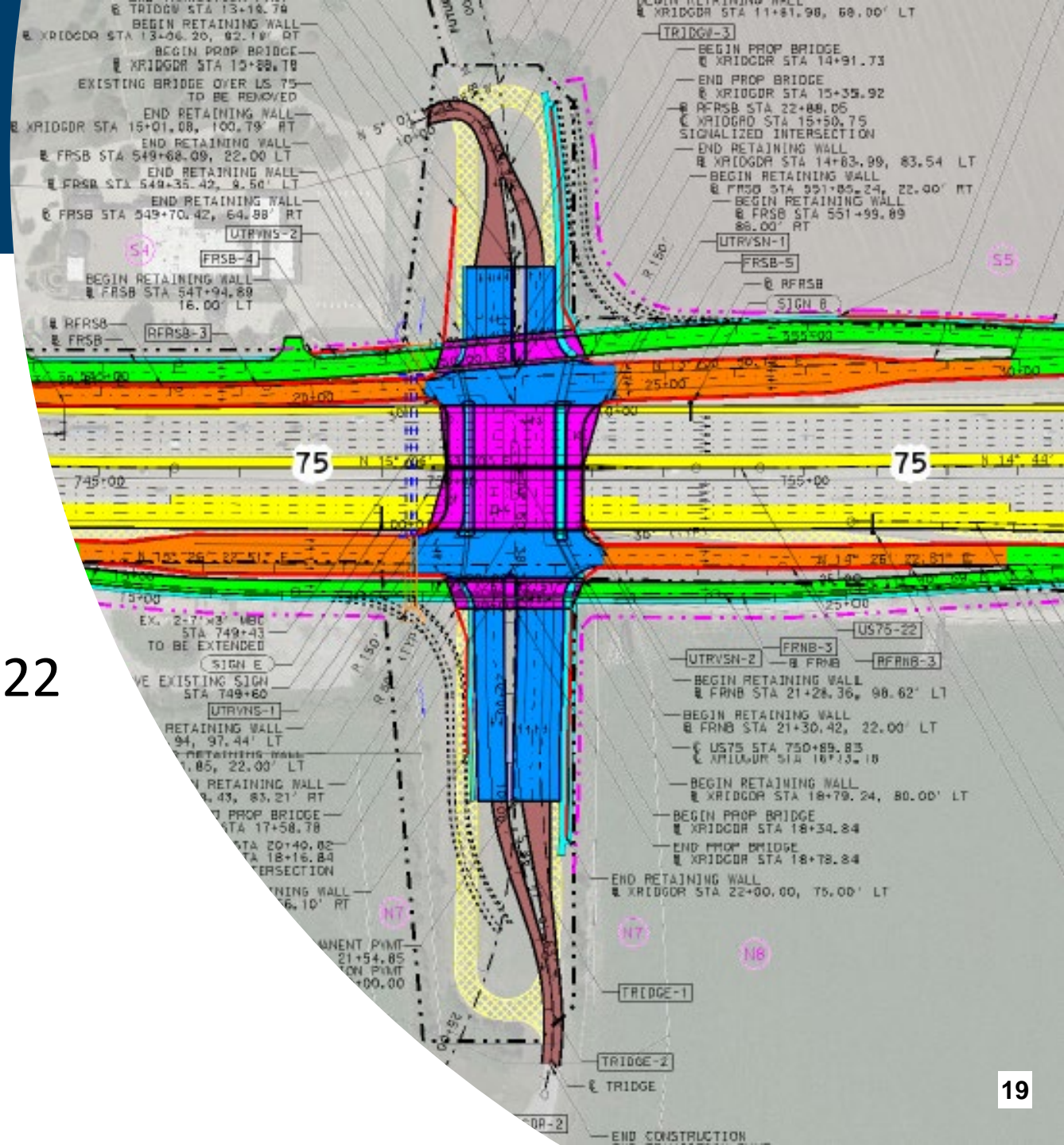


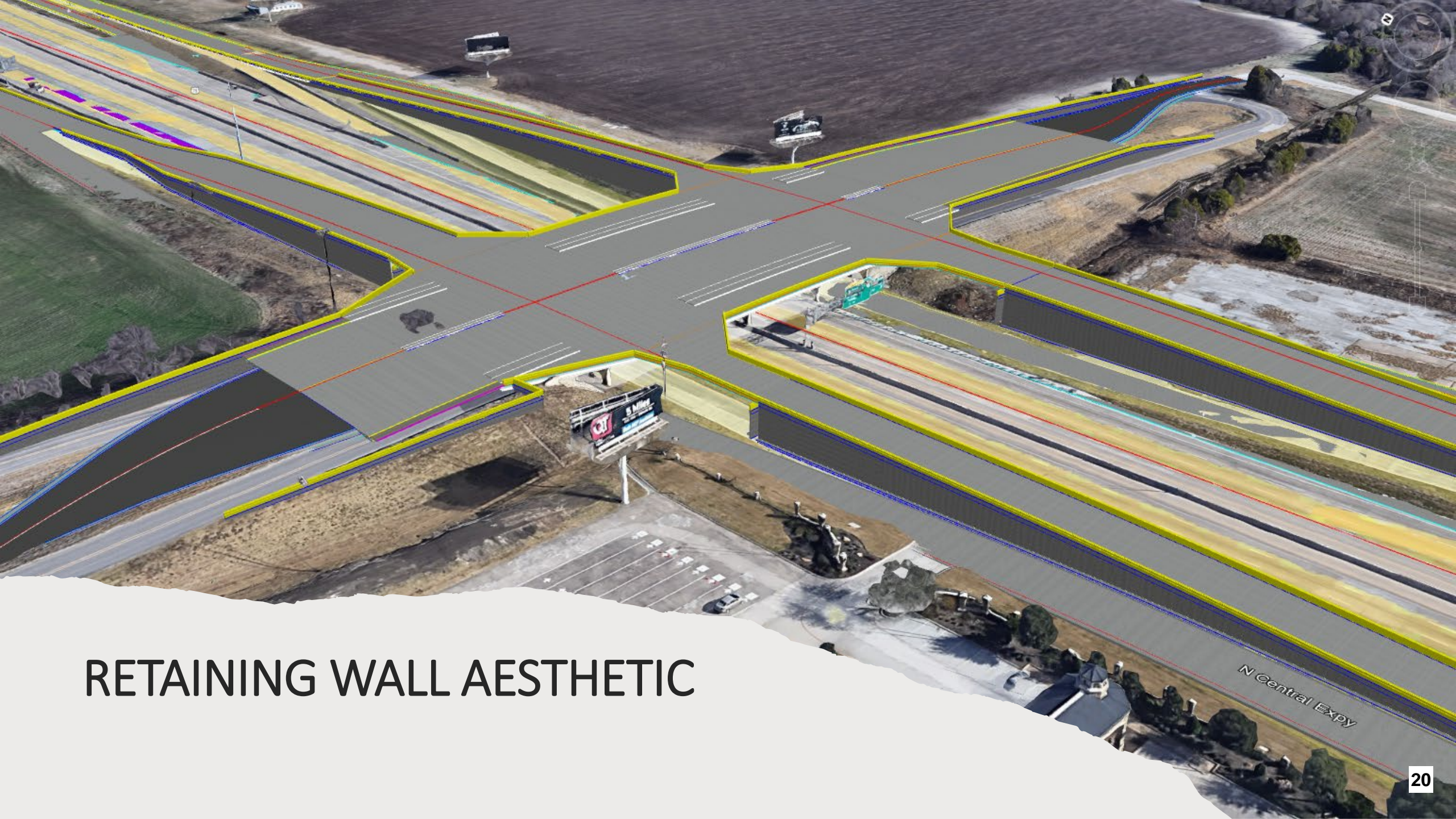
Chris Flanigan, Director of Engineering

RIDGEVIEW OVERPASS

- Status:

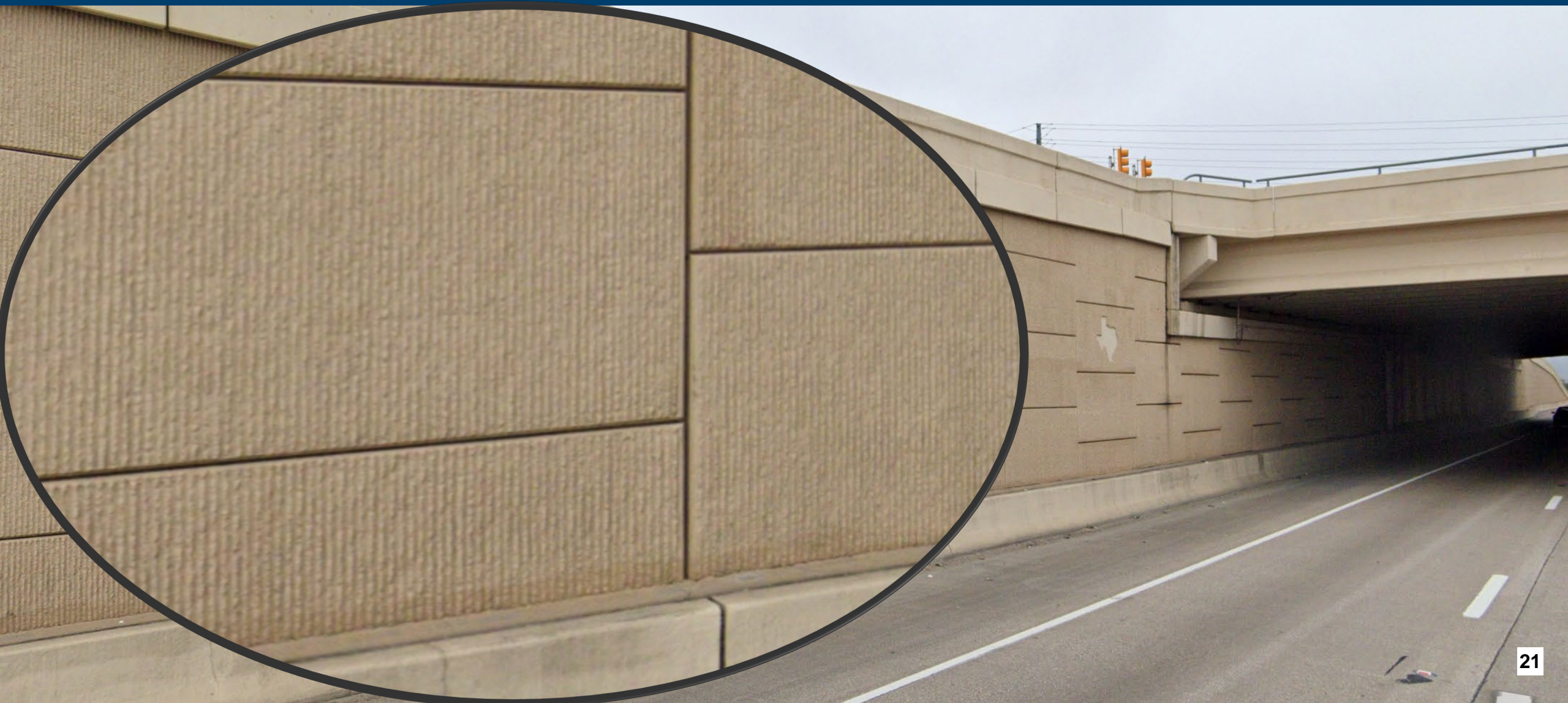
- ✓ ROW acquisition complete
- ✓ Utility relocations underway
- ✓ Anticipated bidding in June 2022 (TxDOT)
- ✓ Need for a decision now on aesthetics





RETAINING WALL AESTHETIC

OPTION #1 – “FRACTURED FIN”

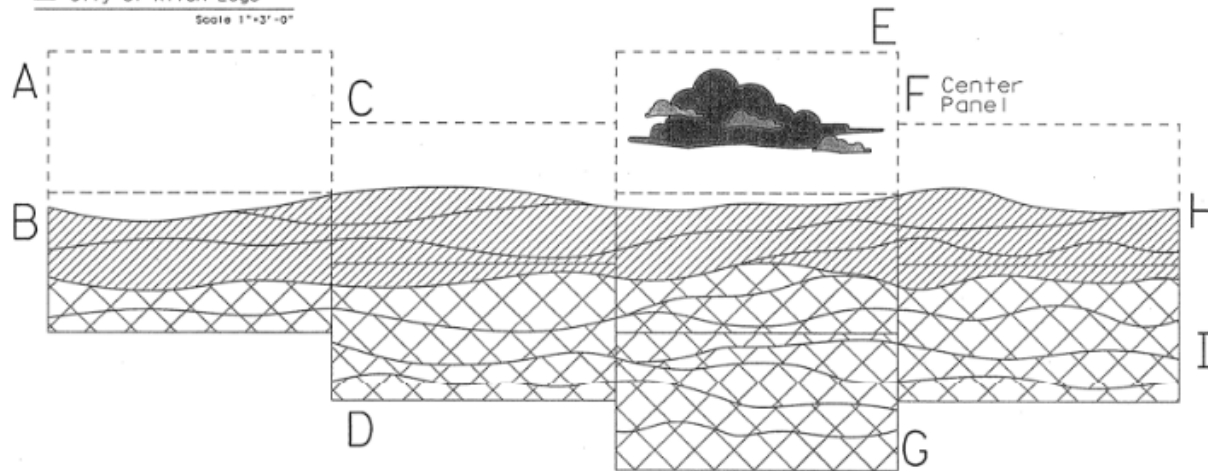


OPTION #2 – “ALLEN DESIGN”



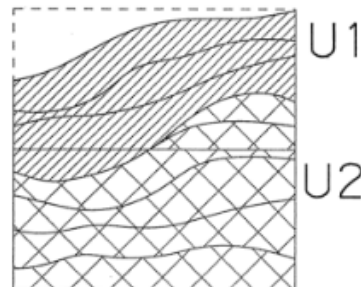
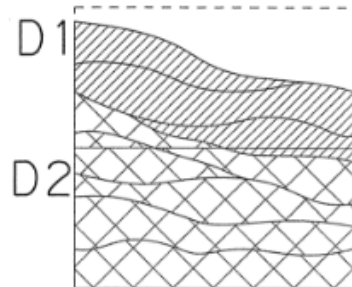
City of Allen Logo
Scale 1"=3'-0"

Place City of Allen logo near the abutment on MSE wall (in place of shape of Texas symbol). Place in a Panel "A" to avoid interference with cloud patterns. Provide color 30475 in inset portion of logo.




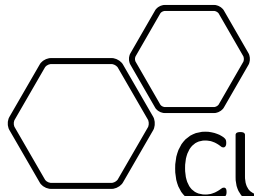
-  Layer 3 - Inset Cloud/Logo
-  Layer 1 - Protuding Cloud
-  Sky Area - Split Slate Pattern
-  Distance Hills - Pea Gravel Pattern
-  Near Hills - Rough Sandblast Pattern

These panel layouts may be needed in areas where grade changes require a shift in the ground/hill pattern.



Patrick J. Haigh
Signature of Registrant & Date 17 Sept 2013

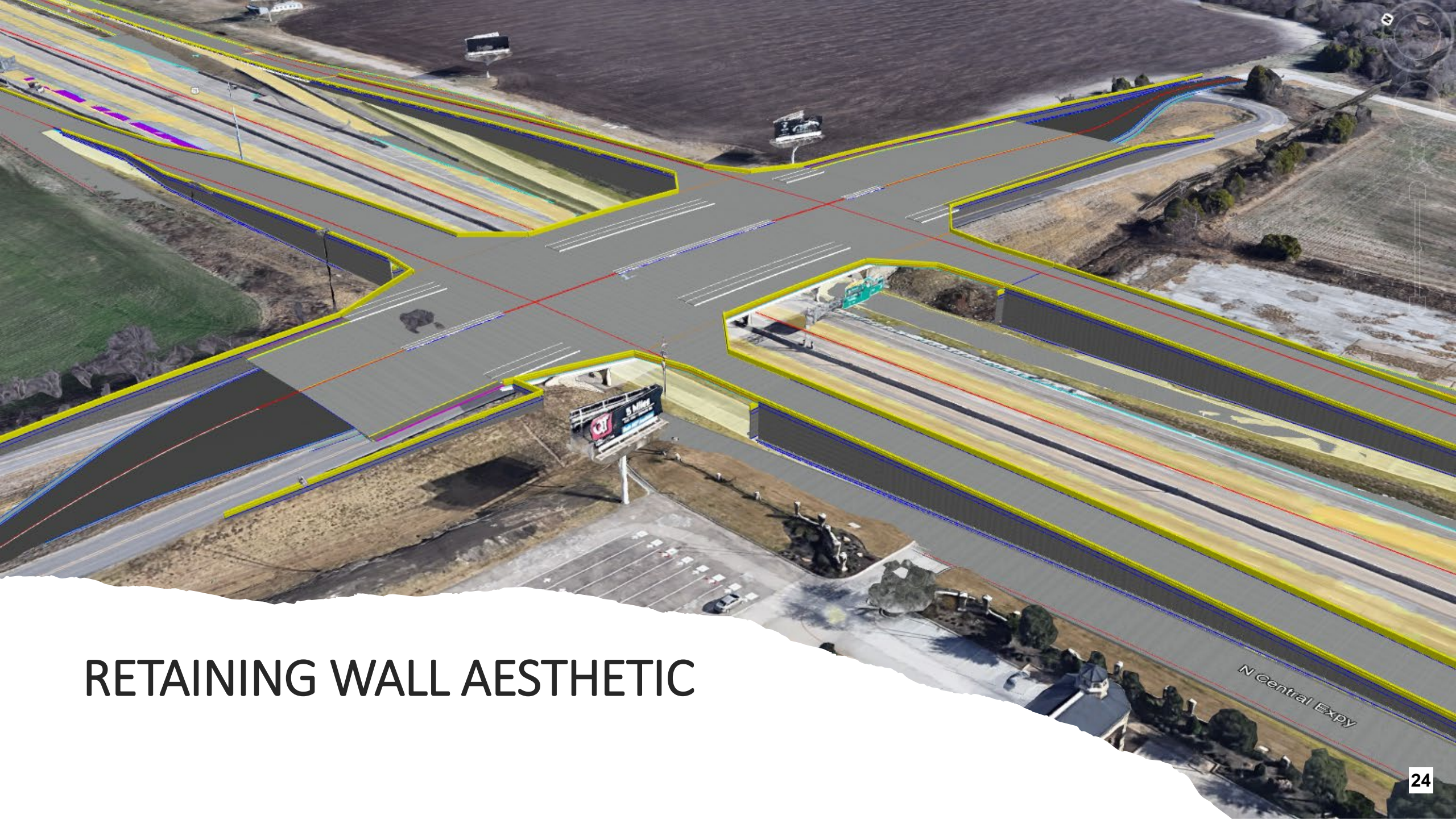
 Texas Department of Transportation © 2013			
AESTHETIC DETAILS for MSE WALLS			
SCALE: 1"=5'-0"			
DESIGN XXX	FED. RD. DIV. NO. 6	FEDERAL AID PROJECT NO. (See Title Sheet)	HIGHWAY NO. US 75
GRAPHICS XXX	STATE TEXAS	DISTRICT DALLAS	COUNTY COLLIN
CHECK XXX	CONTROL 0047	SECTION 06	JOB 139
CHECK XXX			SHEET NO. 588



CURRENT USE

- Visible from US75 Frontage Road:
 - Retaining Walls at:
 - Bethany Dr
 - McDermott Dr
 - Stacy Rd
 - Noise Walls
- Visible from US75 Main Lanes:
 - Noise Walls





RETAINING WALL AESTHETIC

TIMING

March
2022

- Decide on expense (\$300,000)

April
2022

- Council approves Advanced Funding Agreement with TxDOT

May
2022

- Payment is made to TxDOT prior to letting

CSJ #	0047-06-161	ROW CSJ #	0047-06-169
District #	18- Dallas	AFA ID	Z00002490
Code Chart 64 #	00650		
Project Name	US 75 at Ridgeview Interchange Improvement		

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT PROJECTS
WITH NO REQUIRED MATCH
(ON-SYSTEM)**

THIS 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, Transportation Code, Chapters 201 and 221, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115550 authorizing the State to undertake and complete a highway improvement generally described as the reconstruction of the Ridgeview Interchange; and

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as the construction of the retaining walls aesthetics on the US 75 at Ridgeview Drive Interchange in the City of Allen (Project); and

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the state;

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:

Ridgeview Drive Overpass

Workshop Discussion
03/08/2022



Chris Flanigan, Director of Engineering

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Authorize the City Manager to Execute a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for Construction Administration of Fire Station No. 6 in the Amount of \$241,374.
STAFF RESOURCE:	Chris Flanigan, Director of Engineering Jonathan Boyd, Fire Chief
PREVIOUS COUNCIL ACTION:	January 28, 2020, Council authorized a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for Phase I Design of Fire Station No. 6. October 27, 2020, Council authorized a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for Phase II Design of Fire Station No. 6.
STRATEGIC PLANNING GOAL:	Financially Sound and Transparent City Government.

BACKGROUND

Fire Station No. 6 will be needed to better serve the community and improve response times at the build-out population. In anticipation of this need, land was acquired in 2008. Voters approved \$9.945 million dollars, in the 2016 bond election, for the architectural design, site development, and construction of a sixth (and final) fire station.

Between October 2019 and December 2019, the City invited three qualified architectural firms to interview for the design and contract. A panel of five representatives from different city departments was present during each interview, who anonymously scored each firm in the categories of creativity, design, experience, references, and proposed project team. VAI Architects, Inc. was the recommended firm selected for the design of the project.

With the construction phase upon us, it is time to execute a contract with VAI for construction phase services. When negotiating the fee for Phase 2 design services, we were uncertain when construction would commence. Consequently, construction phase services were omitted from their scope and contract. With the project's bidding complete and the construction schedule assured, this is an appropriate time to engage VAI in the next stage of professional services.

BUDGETARY IMPACT

The project is being funded by Fiscal Year 19 General Obligation Bonds and is within the project budget.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for construction administration of Fire Station No. 6 in the amount of \$241,374.

MOTION

I make a motion to authorize the City Manager to execute a Professional Services Agreement with VAI Architects, Inc., for Architectural/Engineering Services for Construction Administration of Fire Station No. 6 in the amount of \$241,374.

ATTACHMENT(S)

Professional Services Contract
Location Map

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and VAI Architects Incorporated, a Texas Corporation ("Professional") (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 Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit "A" (the "Scope of Services") to assist the City in professional design services for the Contract Administration Phase of the construction of City of Allen Fire Station No. 6 (the "Project") on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of 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

1.1 This Agreement shall commence on the last date of execution hereof ("Effective Date") and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) 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 II
Scope of Service

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. The Professional shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, 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 engineer or architect, as the case may be. If the Professional is not a

licensed engineer or registered architect, the Professional shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 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.

2.4 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the standard of care applicable by law to the services performed hereunder.

2.5 Upon execution of this Agreement the City has the right to use the Professional's instruments of service, including but not limited to reports, maps, cost estimates, recommendations or other deliverables for the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's employees, agents, contractors and subcontractors may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due Professional hereunder, all deliverables, materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall, upon completion of the services, or earlier termination, provide the City with the deliverables, drawings, reports, maps, and materials prepared by Professional as set forth in the Scope of Services.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees,

agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. 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. The final payment of the compensation shall be made after satisfactory completion of the services following the City acceptance of the study, report, recommendation or other work set forth in the Scope of Services, and the submittal of "AS BUILT" drawings, or record drawings, as applicable.

4.2 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.

4.3 The hourly rates set forth in the Scope of Services, if any shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the 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.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished

and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

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 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public

property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, 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 or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City:

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
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 - fax

If intended for Professional:

VAI Architects Incorporated
Attn: Barton Drake, A.I.A., NCARB
Principal/Architect
15301 Spectrum Drive, Suite 450
Addison, TX 75001
972-934-8888 - telephone

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a commercial general liability policy of insurance for bodily injury, death and property damage including the property of the City, its council, 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 limit per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations; (ii) automobile liability insurance covering all vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, independent contractors and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and

property damage; (iii) statutory Worker's Compensation 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 \$1,000,000.00; and (iv) Professional Liability with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement. Such professional liability insurance shall be annually renewed and remain in effect for not less than twenty-four (24) months after substantial completion of the services.

- (b) All 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 and Professional Liability; (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, except for Professional Liability 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 Consultant 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. All policies must be written on a primary basis, non-contributory with any insurance coverage and/or self-insurance maintained by the City
- (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 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. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Professional by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this contract 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 contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City of Allen.
- (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 Allen 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 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, 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 AGENT, ITS CONSULTANT 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).

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS.

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.

6.13 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.

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

6.15 Prohibition of Boycott Israel. Professional 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 Professional is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the 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.

6.16 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.

6.17 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

EXECUTED this 1 day of APRIL, 2022.

VAI ARCHITECTS INCORPORATED

By:  _____

Name: BARTON DRACE

Title: PRINCIPAL

EXHIBIT "A"
SCOPE OF SERVICES
(TO BE ATTACHED)



January 7, 2022

sent via email: amcdaniel@cityofallen.org

Mr. Ashley McDaniel, Facilities Project Manager
Allen City Hall, 1st Floor
Engineering Department
305 Century Parkway
Allen, Texas 75013

RE: PRICING PROPOSAL FOR PROFESSIONAL DESIGN SERVICES
Allen Fire Station #6, Allen, Texas

Dear Mr. McDaniel:

The office of VAI Architects Incorporated (VAI) is pleased to present to the City of Allen (Client) the following proposal for professional design services for Construction Administration phase services of a new City of Allen Fire Station No. 6..

I. PROJECT DEFINITION AND BUDGET

Based on the approved final construction drawings, the new fire station facility consists of approximately 23,299 gross square feet of building area. 14-fire fighters (both male and female) per 24 hour shift, with ratios expected 12 men to 2 women and 5 drive-through bays of 16" width – 16" height – 80' long.

The original Fire Station project had a total project budget of \$8,920,000 inclusive of the construction budget of the facilities and all professional services for all design phases. During the design process the scope of the building and budget was increased with the final cost estimate having a construction cost limit (CCL) of \$11,255,903.

II. SCOPE OF SERVICES

The office of VAI proposes to provide the following professional architectural design services.

A. Professional Design Services

The following Services will be provided:

Architecture, Civil Engineering, Structural Engineering, Mechanical, Electrical, Plumbing (MEP) with IT coordination, Fire and Life Safety analysis, Landscape and Irrigation,

These services will be executed according to the following project phases.

Construction and Contract Administration Phase

Based on the approval of the Allen City Council to award the construction contract and delivery of the Notice-to-Proceed, VAI Architects will proceed with the Construction and Contract Administration phase of the project. During the construction phase of the project, VAI will provide services outlined within the AIA General Conditions of the Construction Contract (A201, Current Edition) inclusive of the following services:

1. Review and approval of the contractors' submittals. Maintaining one set of project job files including submittals and samples.
2. Site visits appropriate to the stage of construction to observe that the work proceeds in accordance with the design intent of the construction documents and for visual observation of the work in progress to review the general quality of the architectural work and notify the Owner and Contractor of any unacceptable work.
3. Issuance of clarification drawings and other supplemental materials and interpretations to support the contractor during the construction phase.
4. Preparation of Change Orders and/or Construction Design Directives (Supplemental Drawings to original design not a change in scope) as required for modification to Contract Sum or Time.
5. Review and certify contractor payment applications.
6. Provide a walkthrough upon notice of substantial completion to prepare a punch list, with a follow-up walkthrough to confirm items on punch list have been addressed.
7. Review of project record closeout documents prepared by the Contractor for completeness.
8. Schedule a one-year walk through ten (10) months following substantial completion and provide technical support through the maintenance bond period.

B. Additional Services

Fees associated with the services additional to the Professional Services described above will be provided to the Client only after written authorization from the Client prior to executing any work.

C. Design Team

With prior written approval from Owner, VAI will have the right to replace current consultants or utilize other design consultants as will best serve the project during the design phase.

Architectural / Interiors / FF&E Coordination / Overall Project Management

VAI Architects

Structural Engineer / MEP / Landscape

Halff Associates, Inc.

Civil / Survey

Pacheco Koch Engineers

III. PROJECT SCHEDULE

Our initial estimate of the schedule is fourteen (14) months for the Construction Administration phase. Our initial estimated schedule is as follows:

<u>Phase</u>	<u>Duration</u>
I. Construction Administration	14 months

IV. BASIS OF COMPENSATION

A. Professional Services

The proposed professional fee for the design services for the scope of Professional Design Services described above is calculated on a lump sum basis as follows:

Professional Design Services
\$236,374.00 Plus Reimbursable Expenses and Additional Services

(Two hundred and thirty-six thousand, three hundred and seventy-four and 00/100 dollars)

B. Fee Breakdown Per Phase

The current lump sum fee breakdown per phase shall be as follows:

100% Construction Administration (billed monthly) \$236,374.00

C. Project Expenses

We have provided a Not-to-Exceed allowance **\$5,000** for Project expenses. Project expenses are excluded from the fee and will be billed at 1.1 times actual cost. These expenses include reproduction of documents for design reviews and submittals; mailings, couriers or special overnight deliveries; special presentation media; long distance telephone; fees paid for securing approvals from Authorities having jurisdiction over the project including, TAS registration and inspection fees, permit fees and project related travel outside the Metroplex area

Payment by the Client shall be made to VAI within thirty (30) days of monthly invoicing, based on percentages of completion of each stage of services.

We look forward to working with you and all your team members on this very important project. Please do not hesitate to contact me should you have any questions or if additional information is required.

Mr. Ashley McDaniel, Project Manager
Fire Station #6
Page 4 of 4

Sincerely,

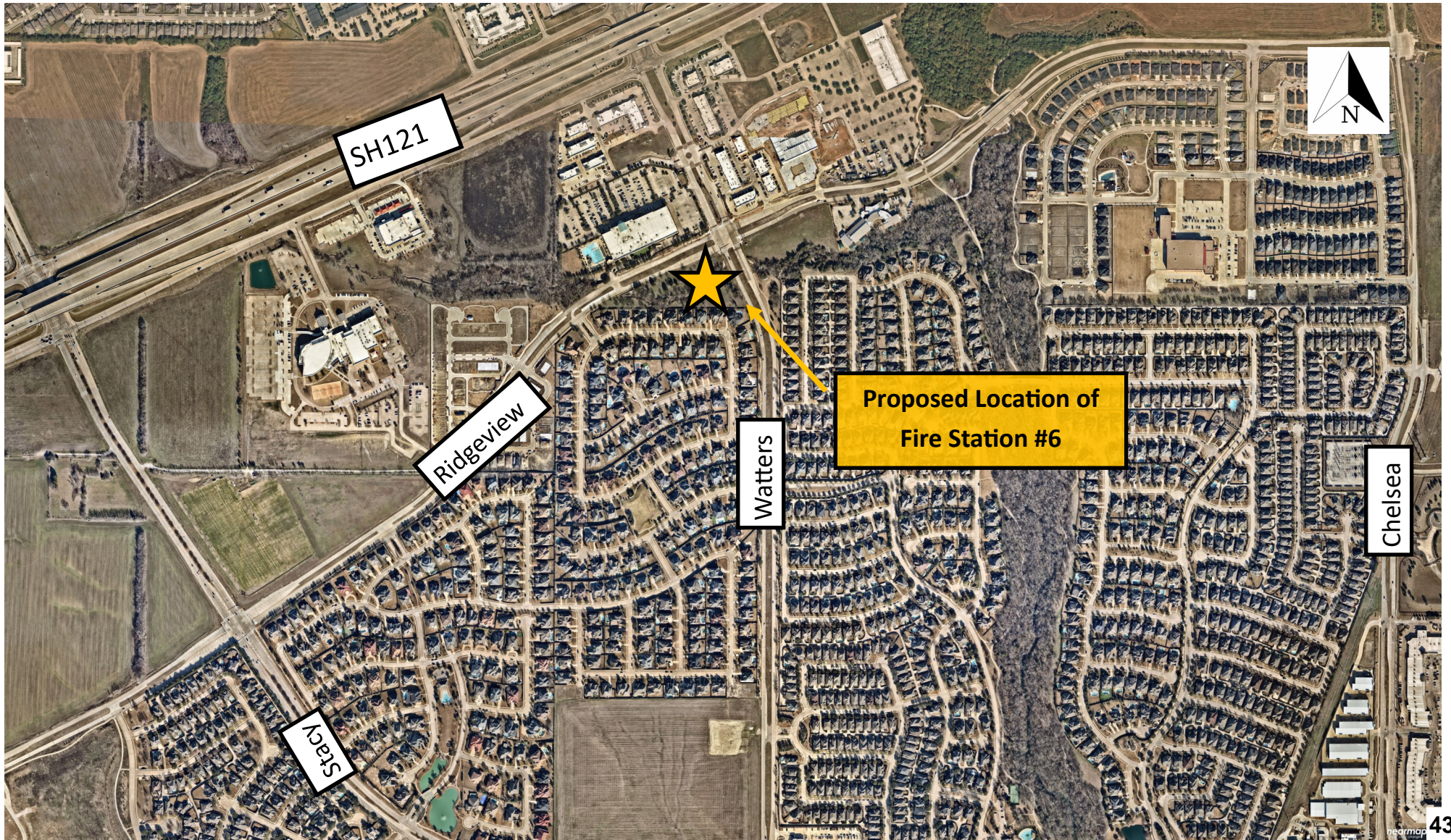
A handwritten signature in black ink, appearing to read 'Barton Drake', with a large, stylized initial 'B' and a long, sweeping horizontal stroke at the end.

Barton Drake, A.I.A., NCARB
Principal/Architect

Copy: Russell Himes, Mark Mortimer

Fire Station #6 Location Map

CIP # PS1901



CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Award Bid and Authorize the City Manager to Execute an Agreement with Weldon Contractors, Inc., for Labor, Equipment, HVAC, and Installation in the Amount of \$1,703,611 and with The Garland Company for the Roof Materials in the Amount of \$233,823 for the Don Rodenbaugh Natatorium HVAC and Roof Replacement Project Phase 2 for a Total Project Amount of \$2,131,177.
STAFF RESOURCE:	Chris Flanigan, Engineering Director Kate Meacham, Parks & Recreation Director
PREVIOUS COUNCIL ACTION:	July 9, 2019, Council adopted Ordinance No. 3684-7-19 for the issuance and sale of City of Allen, Texas, Tax Notes, Series 2019. June 9, 2020, Council adopted Ordinance No. 3751-6-20 for the issuance and sale of City of Allen, Texas, Tax Notes, Series 2020. June 8, 2021, Council approved contracts for the Don Rodenbaugh Natatorium Roof Replacement Project Phase 1.
STRATEGIC PLANNING GOAL:	Financially Sound and Transparent City Government.

BACKGROUND

The Don Rodenbaugh Natatorium was designed in 2001, with construction finished in 2002. The facility provides a leisure pool and swim lanes to Allen residents, pool members, and the Allen ISD swim team. It is operated and maintained by the Parks and Recreation Department, which is also responsible for repairs and oversight of the facility.

The Natatorium still has the original roof from its construction 19 years ago. In 2019, during the annual budget process, staff requested replacing the Dectron Heating Ventilation & Air Conditioning (HVAC) system that maintains environmental controls. Investigation revealed that the system was requiring an increasing cost of maintenance. Tax notes were sold to fund an engineering investigation into the system to determine the viability of the system and design a replacement.

In October 2020, an engineering firm, BHB Inc., was contracted to do this study. During this time, it was determined that portions of the system were inactive and that the units had excessive downtime, were unable to maintain humidity and temperature within the Natatorium pool area, and were costing the city between \$40,000 to \$50,000 in repairs annually. The high humidity within the Natatorium's pool area resulted in damage to the security systems and electronics in the area.

The failing Dectron units are also intended to provide supplemental heating to the pool water using the heat exchangers as part of its operation. This is intended to save money when functioning properly since it reduces the energy requirement and loads on the existing boiler unit. This water heating element has been broken for several years now. Replacement of the unit will renew this capacity.

The area of the roof where the Dectron units are located show a lot of patches and large amounts of ponding water. The original design of the vents and other mechanical, electrical, and plumbing components positioned these elements on the roof such that maintenance access and repairs were difficult. Additionally, rain, condensation, and water discharge were not ideal, given how it has been plumbed. A detailed roof investigation helped determine the best path forward to improve the roofing system and bring it into compliance with the current code while simultaneously undertaking the HVAC system replacement.

During the same year, leaks and moisture intrusion were discovered during the investigation of the roof. A report was prepared showing that the roof had been laid in a manner that did not comply with current roofing standards, with entire sections of the facility without proper environmental protection. This also explained why the Dectron units were overloading since they were trying to condition space with large amounts of external air penetration.

Due to the sheer extent of the required repairs, the project has been split into two phases. This was done for multiple reasons. The first phase of roof replacement and repair was a simpler portion of the project and could be rapidly engaged once funding was available.

Phase 1 of the project replaced the roof over the pool, lobby, gym, and changing rooms. This accounts for about 80% of the facility's roofing. The reason to do this area first was two-fold. There are few mechanical units and penetrations in these areas, and the repairs could be done faster and at a time to not disturb the pool access for Allen ISD's swim team and the general public. The second reason is that it represents the most significant air leaks into the pool facility and is responsible for the overworked HVAC system; replacing it before the Dectron units are replaced will keep the new system from being overworked and provide time to seal the pool while keeping the rest of the facility operational.

Phase 2 of the project replaces the roof, mechanical, electrical, and plumbing components that require change over the bleachers, sitting area and pump room. This will require the shutdown of the pool facility as it will involve disconnecting the plumbing, electrical, and mechanical systems necessary for pool operations. During the execution of Phase 2, staff intends to use the downtime to replace the slide in the leisure pool and perform other repairs and maintenance.

Designs were developed and additional funds were requested, which were authorized in the Series 2020 tax notes by the council. The Garland Company and BHB Engineering were engaged in addressing the smaller area and preparing construction documents.

A Request for Proposal (RFP) process was used in acquiring pricing for Phase 1 of the project, a total of one (1) responsive bid was received:

Solicitation 2021-12-33

Contractor	Calendar Days	Bid Amount
Weldon Contractors, Inc.	300	\$1,703,611.00

In December 2020, the City of Allen held a Request for Qualifications (RFQ) for roofing and

weatherproofing manufacturers. This process focused on providing the city with the best materials, service, and warranties possible for our facilities. The Garland Company was one company selected during this process and provides detailed specifications for roofing and waterproofing projects. The materials are ordered from Garland and their subsidiary companies and come with a full warranty according to conditions mandated in the RFQ.

To save 10-15% on contractor markup, staff proposes to purchase material directly from The Garland Company for \$233,823. Weldon Contractors was responsible for providing a materials take-off list to specify quantities of materials needed. In accordance with our contract, unused materials shall be returned to the supplier and the city will be refunded; likewise, if additional materials are required, overages shall be purchased at the Contractor's expense. These materials will be shipped to and stored on city site in a protected area erected by Weldon. The city will pay for the shipping costs, which will be determined at the time of transport.

Contractor	Component	Proposal
Garland Company	Roof System	\$225,559.00
	Freight	\$8,264.00
Total Price		\$233,823.00

BUDGETARY IMPACT

This project will be funded in part with Tax Notes, approved by the Allen City Council on June 9, 2020.

Initially, the project was conceived as two separate projects of HVAC and roof replacement. The HVAC replacement was requested in 2019. Initial funding for the engineering and investigation was made possible with 2019 Tax Notes. During the engineering investigation, the roof was identified as an item that needed replacement and possible funding was identified using 2020 Tax Notes and general fund revenues within the Facilities Maintenance Fund in the annual budget. Any additional funding will be taken from savings in the 2019 Tax Note projects.

Funding Sources

Description	Amount
Tax Notes	\$1,631,177
General Fund (Facilities Maintenance)	\$500,000
Total Funding	\$2,131,177

PF2101-DRN HVAC & Roof Replacement, Phase 2

Project Expenses

Description	Expense
Construction	\$1,703,611
Materials	\$233,823
10% Contingency	\$193,743
Total Project	\$2,131,177

STAFF RECOMMENDATION

Staff recommends that the City Council award bid and authorize the City Manager to execute an agreement with Weldon Contractors, Inc., for labor, equipment, and installation in the amount of \$1,703,611 and with The Garland Company for the materials in the amount of \$233,823 for the Don Rodenbaugh Natatorium HVAC & Roof Replacement Project Phase 2 with a total project amount of \$2,131,177.

MOTION

I make a motion to authorize the City Manager to award bid and authorize the City Manager to Execute an agreement with Weldon Contractors, Inc., for labor, equipment, and installation in the amount of \$1,703,611 and with The Garland Company for the materials in the amount of \$233,823 for the Don Rodenbaugh Natatorium HVAC & Roof Replacement Project Phase 2 with a total project amount of \$2,131,177.

ATTACHMENT(S)

Standard Form of Agreement - Weldon
Weldon Proposal
Garland Material Proposal

**EXHIBIT 9
STANDARD FORM OF AGREEMENT**

STATE OF TEXAS }
COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this _____ day of _____, of 20____, by and between The City of Allen, Texas, a municipal corporation, of the County of Collin and State of Texas, acting through its City Manager _____ thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Weldon Contractors, LLC of the City of Arlington, County of Tarrant and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

DON RODENBAUGH NATATORIUM ROOF AND HVAC SYSTEM REPLACEMENT, IFB #2022-10-6

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within Three hundred (300) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

CITY OF ALLEN, TEXAS

Party of the First Part (OWNER)

By _____
Eric Ellwanger, City Manager

Attest _____
Shelley B. George, City Secretary

Weldon Contractors, LLC

Party of the Second Part (CONTRACTOR)

By 

Attest 

**SECTION IV
BID SCHEDULE**

BID SCHEDULE SHALL BE AS OUTLINED ON THE FOLLOWING PAGE(S). THE BIDDER/PURCHASER IS DIRECTED TO EXECUTE THE SIGNATURE PAGE IMMEDIATELY FOLLOWING THE SCHEDULE FORM.

1	GENERAL CONDITIONS; INSURANCE; BONDS	\$ 60,295
2	DEMOLITION: Removal of existing components	\$ 26,125
3	LABOR: Personnel costs	\$ 48,843
4	ROOFING: Roofing costs from an approved contractor	\$ 166,588
5	MATERIALS: Piping, concrete, steel, etc	\$ 19,091
6	ELECTRICAL: Electrical Work	\$ 33,373
7	MECHANICAL: Cost for all mechanical system work	\$ 186,314
8	PLUMBING: All plumbing costs	\$ 15,400
9	LANDSCAPING: Cost to repair any disturbed landscape	\$ 3,000
10	HVAC Units: Cost for two (2) Pool HVAC units	\$ 960,000
11	Crane: Crane rental to remove and place HVAC Units	\$ 16,500
12	MISC: All other project costs not listed above	\$
13	CONTRACTOR SUB-TOTAL	\$ 1,535,529
14	CONTRACTOR OVERHEAD AND PROFIT	\$ 168,082
15	CONTRACTOR TOTAL	\$ 1,703,611

Total price in script:

One Million, Seven hundred and three thousand,
six hundred and eleven _____ dollars and _____ zero _____ cents

Lead time for equipment & Material Delivery (Not including Garland Materials)

182 CALENDAR DAYS

TOTAL TIME BID FOR PROJECT FROM RECEIPT OF PO (include permitting, equipment lead time, demolition, installation, startup, and all work associated with the project):

300 CALENDAR DAYS

Supplemental Bid Form

Direct Purchase Material List

Contractor is to list the quantity of each material needed to complete the job. Do NOT include any pricing for materials below in your proposal price.

Once this form is submitted to the owner, any additional materials needed shall be purchased at the contractor's expense.

Material	Product Info.	Quantity
HPR Torch Base	110 mil 100 sq.ft. roll	17
Insul Lock HR Foam	150 sq.ft./cart (4 cart per case) Order by the case	40 33
Garland OptiMax FR Mineral	150 mil 75 sq.ft. roll	119
Garland FlexBase E 80	80 mil 100 sq.ft. roll	93
Garland HPR TriBase	60 mil 200 sq.ft. roll	27
Garland GreenLock Plus Membrane Adhesive	5 gal. pail	55
Garland GreenLock Plus Flashing Adhesive	3.5 gal. pail	54
Garland Tuff Flash LO	3 gal. pail	4
Garland All Sil Black	10 oz. Tube	60
Garland GreenLock Structural Adhesive	10 oz. Tube	20
Garland Tuff Stuff MS Sealant	10 oz. Tube	65
Garland Tuff Coat Smooth (Gray Base Coat)	5 gal. pail	15
Garland Tuff Coat Smooth (Sandstone Top Coat)	5 gal. pail	15
Garland Garla-Block Primer	5 gal. pail	6
Garland 22 Gauge Flat Stock	4' x 10' sheet	66
Garland 24 Gauge Flat Stock	4'x10' sheet	—
IMETCO Intelli Wrap SA Ice & Water Shield	59" x 1380"	3
Viking STORM-X Prime Roof Board	4'x4'x 5/8" (List squares needed)	53

Viking CA Vapor Retarder (CAVR) Adhesive	5 gal. pail	17
Viking Polyiso Insulation Tapered System	Fully tapered system and crickets as shown in the drawings	1
Viking Polyiso Insulation	4'x4' x 2.0" ADDITIONAL LAYER FOR SECTIONS A-2 & UPPER A-1 ONLY. (List squares needed)	33
Viking TrafGuard Walk Pad	½" x 2'x3'	0
Viking TrafGuard Walk Pad	½" x 2'x6'	0
Viking TrafGuard Walk Pad	½" x 4'x3'	0
Viking TrafGuard Walk Pad	½" x 4'x6'	25
Viking Tapered Insulation Q Board (Optional)	4'x4' (List Quantity of Boards Needed)	1- Bundle
Viking Tapered Insulation Q2 Board (Optional)	4'x4' (List Quantity of Boards Needed)	1- "
Viking Tapered Insulation X Board (Optional)	4'x4' (List Quantity of Boards Needed)	1- "
Viking Tapered Insulation X2 Board (Optional)	4'x4' (List Quantity of Boards Needed)	1- "
Viking Tapered Insulation Y Board for (Optional)	4'x4' (List Quantity of Boards Needed)	1- "
Viking Tapered Insulation Y2 Board for (Optional)	4'x4' (List Quantity of Boards Needed)	1- "

Note:

- All other materials not listed in the Garland, IMETCO, or Viking material list will be generic and will be included in you labor and non Garland material pricing.
- Owner is responsible for all freight charges on the materials listed above.

BID ENDORSEMENT

The Contractor hereby agrees to commence work within Ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within 300 calendar days after the date of the written notice to commence work subject to such extensions of time as are provided by the General and Special Conditions. The work proposed to be done shall be accepted when fully completed and finished in accordance with the plans and specifications.

In the event of the award of a contract to the undersigned, the undersigned will furnish a Performance Bond and Payment Bond for the full amount of the contract

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

NOTE: Unit and lump sum prices must be shown in words and figures for each item listed in the proposal and in the event of discrepancy the words shall control.

Receipt is hereby acknowledged for the following addenda to the contract documents:

Addendum No. 1 dated _____ Received _____

Addendum No. 2 dated _____ Received _____

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements. Submittals will be considered as being responsive only if entire Bid Package plus any/all attachments is returned with all blanks completed.

Total Amount Bid \$ 1,703,611

Total Calendar Days Bid 300

By: Weldon Contractors
(please print contractor name)

Signature: 

Title: ISP Manager

3100 E Randol Mill Rd
Address

Tarrant, Arlington, TX, 76011
County, City, State, and Zip

(817) 291-7655, ccartwright@weldon-contractors.com

Telephone, e-mail address

Seal and Authorization

(If a corporation)



Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055



ROOFING & WATERPROOFING MATERIAL PROPOSAL

City of Allen
Don Rodenbaugh Natatorium – Roof Replacement Phase II
110 Rivercrest Blvd
Allen, TX 75002

Proposal Date: 03/021/2022

Purchase Request / Delivery Order Language: Garland/DBS, Inc.

PLEASE NOTE: This quotation will only cover the materials listed below and does not include the costs to install the roofing products that are being provided.

Material	Price per Unit	Quantity	Extended Price
Optimax FR Mineral	\$510.00	119	\$60,690.00
Flex Base E 80	\$306.00	93	\$28,458.00
HPR Tri Base	\$281.00	27	\$7,587.00
HPR Torch Base	\$266.00	17	\$4,522.00
Insul Lock HR Foam	\$405.00	33	\$13,365.00
GreenLock Mem Adhesive	\$411.00	55	\$22,605.00
GreenLock Flash Adhesive	\$346.00	54	\$18,684.00
Tuff Flash	\$509.00	4	\$2,036.00
All Sil Black	\$16.00	60	\$960.00
Greenlock Structurl Adhesive	\$18.00	20	\$360.00
Tuff Stuff Alum. Stone	\$18.00	65	\$1,170.00
Tuff Coat Gray Base	\$524.00	15	\$7,860.00
Tuff Coat Almond	\$550.00	15	\$8,250.00
Garla Prime VOC	\$140.00	6	\$840.00
Garland 22 g FS Heritage Red	\$155.00	66	\$10,230.00
Intelli Wrap SA	\$1,024.65	3	\$3,073.95
Densdeck Storm X Board	\$146.08	53	\$7,742.24
CA Vapor Retarder Adhesive	\$235.67	17	\$4,006.39
Tapered Insulation System	\$13,810.10	1	\$13,810.10
4'x4'x2.0" Polyiso	\$136.50	33	\$4,504.50
TrafGuard Walk Pad 4'x6'	\$25.00	25	\$625.00
Polyiso Tapered Q Board	\$711.36	1	\$711.36
Polyiso Tapered QQ Board	\$622.44	1	\$622.44
Polyiso Tapered X Board	\$711.36	1	\$711.36
Polyiso Tapered XX Board	\$711.36	1	\$711.36
Polyiso Tapered Y Board	\$711.36	1	\$711.36
Polyiso Tapered YY Board	\$711.36	1	\$711.36



Garland/DBS, Inc.
3800 East 91st Street
Cleveland, OH 44105
Phone: (800) 762-8225
Fax: (216) 883-2055



	TOTAL PRICE (Prior to Freight):				\$ 225,558.42
	*Estimated Freight:				\$ 8,264.56
TOTAL PRICE (Including Estimated Freight):					\$ 233,822.98

*The freight pricing is an estimated price. An actual freight price will be determined once the material shipment has been released. The final invoice will reflect the actual final freight costs.

Clarifications/Exclusions:

1. Sales and use taxes are excluded. Please issue a Tax Exempt Certificate.
2. Any material not exclusively described in the above proposal is excluded.

Please Note – The construction industry is experiencing unprecedented global pricing and availability pressures for many key building components. Specifically, the roofing industry is currently experiencing long lead times and significant price increases with roofing insulation and roofing fasteners. Therefore, this proposal can only be held for 30 days. DBS greatly values your business, and we are working diligently with our long-term suppliers to minimize price increases and project delays which could effect your project. Thank you for your understanding and cooperation.

Communication relating to this proposal may be directed to: Garland/DBS

3800 E 91st Street
Cleveland, OH 44105
Phone: 216-430-3662
Fax: 216-833-2055
dbsbids@garlandind.com
END OF PROPOSAL

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
--

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Authorize the City Manager to Consent to the Assignment of a Dedication Agreement Dated May 12, 2011, Between the City and Allen Economic Development Corporation Regarding the Dedication of Right-of-Way for Chelsea Road.
STAFF RESOURCE:	Dan Bowman, Executive Director, Allen Economic Development Corporation
PREVIOUS COUNCIL ACTION:	<p>May 2011, City Council approved a Dedication Agreement for the dedication of land for the expansion of Chelsea Road.</p> <p>April 2015, City Council approved the assignment of the Dedication Agreement to Allen Economic Development Corporation.</p>
STRATEGIC PLANNING GOAL:	Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

On May 12, 2011, the City entered into a Dedication Agreement (Agreement) with the owner of 31.2± acres located at the southeast corner of Chelsea Road and State Highway 121 (Property). The Agreement provides for the dedication of land for the expansion of Chelsea Road in exchange for future roadway impact fee credits. On June 11, 2015, Allen Economic Development Corporation (EDC) purchased the Property, and, concurrently, the owner of the Property conveyed the land to the City for Chelsea Road as required by the Agreement. In association with that sale, the City Council authorized the assignment of the Agreement to the EDC. On March 18, 2022, EDC sold the Property to an entity that, in a simultaneous closing, sold the Property to the entities that own the adjacent property, commonly known as the Monarch development. Assignment of the Agreement by EDC to the buyer of the Property was one of the terms of the sales agreement. The EDC is requesting that the City Council consent to the assignment of the Dedication Agreement to the entity that purchased the Property from EDC and the further assignment of the Agreement to the Monarch development entities who purchased the Property in the simultaneous closing. The Dedication Agreement limits the amount of roadway impact fee credits to the roadway impact fees collected from the development of the Property. Consequently, the Dedication Agreement and the requested assignments have no financial or budgetary impact on the City beyond that to which the City agreed when originally entering the Dedication Agreement.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to consent to the assignment of a Dedication Agreement dated May 12, 2011, between the City and AEDC regarding the dedication of Right-of-Way for Chelsea Road by AEDC to Laurel Real Estate Holdings I, Inc., and further

assignment to Crow-Carrara No. 2 and EPC-BRIC2, LLC.

MOTION

I make a motion to authorize the City Manager to consent to the Allen Economic Development Corporation's assignment of a Dedication Agreement dated May 12, 2011, between the City and AEDC to Laurel Real Estate Holdings I, Inc. and further assignment of said agreement to Crow-Carrara No. 2 and EPC-BRIC2, LLC.

ATTACHMENT(S)

Assignment of Dedication Agreement - AEDC to Laurel
Assignment of Dedication Agreement - Laurel to Crow

After recording return to:

Laurel Real Estate Holdings I, Inc.
c/o Haynes & Boone LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attn: Timothy E. Powers

ASSIGNMENT AND ASSUMPTION OF DEDICATION AGREEMENT

This Assignment and Assumption of Dedication Agreement (this “Assignment”) is made and entered by the **ALLEN ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (“Assignor”) and **LAUREL REAL ESTATE HOLDINGS I, INC.**, a Delaware corporation (“Assignee”) to be effective as of the Effective Date (as defined below).

RECITALS

WHEREAS, Assignor’s predecessor-in-interest, David M. Lebow, Trustee of the Simon Lebow Trust B (“Lebow”), entered into that certain Dedication Agreement dated and effective May 12, 2011, filed May 19, 2011, as Instrument No. 20110519000518220 in the Official Public Records, Collin County, Texas (“Dedication Agreement”) between Lebow and the City of Allen, Texas (“City”) with respect to the conveyance to City of a 1.396 acre tract of land in Allen, Texas described in Exhibit “A,” attached hereto and incorporated herein by reference (the “Right of Way Property”), as consideration for the grant of certain rights and privileges by City to Lebow relating to the future development of the Property (defined below);

WHEREAS, Lebow assigned its entire right, title, and interest under the Dedication Agreement to Assignor in that certain Assignment and Assumption of Dedication Agreement dated effective May 12, 2015, filed on June 11, 2015, as Instrument No. 20150611000696270 in the Official Public Records, Collin County, Texas (“Dedication Agreement Assignment”);

WHEREAS, Assignor represents to Assignee that Lebow (i) dedicated the Right of Way Property, and (ii) assigned its right to that certain Impact Fee Credit of \$182,429.28 described in the Dedication Agreement as part of the Dedication Agreement Assignment; and

WHEREAS, pursuant to that certain Real Estate Purchase Agreement between Assignor and Assignee dated March 17, 2022 (the “Purchase Agreement”), Assignor has agreed to sell and convey its entire right, title and interest in and to an approximately 31.255 acre tract of land described in Exhibit “B,” attached hereto and incorporated herein by reference (the “Property”) to Assignee and, in conjunction therewith, Assignor has agreed to assign its interest under the Dedication Agreement to Assignee, and Assignee has agreed to assume all of Assignor’s rights and obligations under the Dedication Agreement, all as more particularly set forth in this Assignment.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements set forth herein, Assignor and Assignee agree as follows:

1. **Recitals.**

The recitals above are incorporated herein for all purposes.

2. **Assignment.**

Assignor hereby sells, assigns, grants, transfers and sets over to Assignee, its successors and assigns, all of Assignor's right, title and interest, powers, privileges and other benefits in, to and under the Dedication Agreement, upon and subject to all of the terms, conditions and provisions contained in the Assignment.

3. **Acceptance of Assignment and Assumption of Obligations.**

Assignee hereby accepts the assignment of Assignor's right, title and interest, powers, obligations, privileges and other benefits under the Dedication Agreement and Assignee assumes and agrees faithfully to perform all of the obligations which are required to be performed by the "Owner" under the Dedication Agreement. To the extent allowed by law, Assignee hereby agrees to defend (with counsel reasonably satisfactory to Assignor), indemnify, and hold harmless Assignor, its partners, and their respective directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees) arising out of or related to the Dedication Agreement committed or alleged to have been committed on or after the date of this Assignment.

4. **Transfer of Property; Effective Date**

This Assignment shall be effective on the date of closing of the purchase and sale of the Property by and between Assignor and Assignee in accordance with the Purchase Agreement ("the Effective Date").

5. **Successors and Assigns.**

This Assignment, and each and every provision hereof, shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

6. **Multiple Counterparts.**

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on following page.]

Assignor's Signature Page

ASSIGNOR:

Allen Economic Development Corporation,
a Texas non-profit corporation

By: _____

Printed: Dan Bowman

Title: Executive Director/CEO

STATE OF TEXAS §

§

COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me this _____ day of April, 2022, by Daniel S. Bowman, the Executive Director/CEO of Allen Economic Development Corporation, a Texas non-profit corporation, on behalf of said corporation.

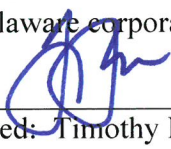
Notary Public, State of Texas

My Commission Expires:_____

Assignee's Signature Page

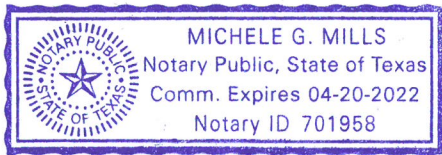
ASSIGNEE:

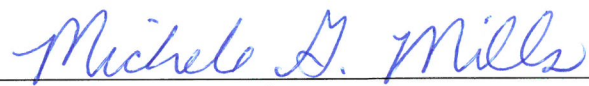
Laurel Real Estate Holdings I, Inc.,
a Delaware corporation

By: 
Printed: Timothy E. Powers
Title: President

STATE OF TEXAS §
 §
COUNTY OF Dallas §

The foregoing instrument was acknowledged before me this 17th day of March, 2022, by Timothy E. Powers, the President of Laurel Real Estate Holdings I, Inc., a Delaware corporation, on behalf of said corporation.




Notary Public, State of Texas

My Commission Expires: 04-20-2022

CONSENT OF CITY OF ALLEN

In accordance with Section 5 of the Dedication Agreement, the undersigned, as City Manager for the City of Allen, Texas, and acting on behalf of said City, hereby consents to the foregoing assignment.

Signed this ____ day of April, 2022.

City of Allen, Texas

By: _____
_____, City Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me this _____ day of April 2022, by _____, the City Manager of the City of Allen, a Texas home rule municipality, on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A
Description of Right of Way Property

EXHIBIT A
RIGHT-OF-WAY
CHELSEA BOULEVARD

Being a 1.396 acre strip of land situated in the G. Estes Survey, Abstract No. 301, City of Allen, Collin County, Texas and being a portion of a tract of land conveyed to Marvin E. Lebow, Trustee, by deed recorded in Volume 1160, Page 765, Deed Records of Collin County, Texas, said strip of land being more particularly described by metes and bounds as follows:

BEGINNING at a TxDOT monument found at the northwest re-entrant corner of said Lebow tract, on the south right-of-way line of State Highway No. 121 (a variable width right-of-way);

Thence North 07°20'06" East, with said right-of-way line, a distance of 20.16 feet to a 5/8 inch iron rod with cap stamped "TNP" set on the proposed east right-of-way line of Chelsea Boulevard (County Road 196), from which a found TxDOT monument bears North 07°20'06" East, 81.48 feet;

Thence with the proposed east right-of-way line of said Chelsea Boulevard the following courses and distances:

South 00°33'52" East, a distance of 245.37 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

South 03°14'58" West, a distance of 150.33 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

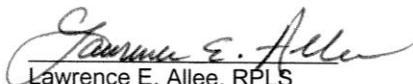
South 00°33'52" East, a distance of 244.55 feet to a 5/8 inch iron rod with a plastic cap stamped "TNP" set in the south line of said Lebow tract, same being a north line of a tract of land conveyed to Allentowne Mall, LP, by deed recorded as Instrument No. 20060403000429310 of said Deed Records;

Thence South 89°33'58" West, leaving said east right-of-way line, with said common line, a distance of 92.89 feet to the southwest corner of said Lebow tract, from which a 1/2 inch iron rod found at the most westerly northwest corner of said Allentowne tract bears South 89°33'58" West, a distance of 15.43 feet;

Thence North 00°36'53" West, along the west line of said Lebow tract, a distance of 620.05 feet to the most southerly northwest corner of said Lebow tract, same being on the aforementioned south right-of-way of State Highway No. 121;

Thence North 89°36'42" East, along a north line of said Lebow tract and along said south right-of-way line, a distance of 100.66 feet to the POINT OF BEGINNING and containing 1.396 acres of land, more or less.

Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD 83). See Exhibit B for sketch.


Lawrence E. Allee, RPLS
Texas Registration No. 4570

DATE: December 15, 2010



EXHIBIT B
DESCRIPTION OF PROPERTY

BEING a tract of land situated in the Johnathan Phillips Survey, Abstract No. 719, City of Allen, Collin County, Texas and being all of a called 31.272 acre tract of land described in the Special Warranty Deed with Vendor's Lien to Allen Economic Development Corporation, a Texas non-profit corporation, recorded in Instrument No. 20150611000696250, Official Public Records, Collin County, Texas (OPRCCT), and being more particularly described as follows:

BEGINNING at a 3-inch brass disk stamped "TXDOT" found at the intersection of the east right-of-way line of Chelsea Boulevard (a variable width right-of-way) with the south right-of-way line of State Highway 121 (Sam Rayburn Tollway, a variable width right-of-way);

THENCE along the common line of said 31.272 acre tract and said south right-of-way line, the following courses and distances:

North 64° 37' 18" East, a distance of 369.04 feet to a 3-inch brass disk stamped "TXDOT" found for corner;

North 67° 13' 20" East, a distance of 321.86 feet to a 3-inch brass disk stamped "TXDOT" found for corner;

North 60° 11' 47" East, a distance of 514.72 feet to a 3-inch brass disk stamped "TXDOT" found for corner;

North 64° 36' 20" East, a distance of 252.00 feet to a 3-inch brass disk stamped "TXDOT" found for the northeast corner of said 31.272 acre tract and being the most northerly northwest corner of that certain 229.0744 acre tract of land described in the Special Warranty Deed to BCO Turnpike Distribution Center M, LLC. and BCO Partners No. 7, LP., recorded in Instrument No. 20210528001083400, OPRCCT;

THENCE along the common line of said 31.272 acre tract and said 229.0744 acre tract, the following courses and distance:

South 00° 37' 35" East, a distance of 1,357.79 feet to a 1/2-inch iron rod found for the southeast corner of said 31.272 acre tract and being an interior corner of said 229.0744 acre tract;

South 89° 37' 52" West, a distance of 1,333.36 feet to the southwest corner of said 31.272 acre tract and being the most westerly northwest corner of said 229.0744 acre tract, and being in the east right-of-way line of said Chelsea Boulevard, from which a 5/8-inch iron rod with yellow plastic cap stamped "TNP" bears South 03° 32' 00" East, 1.3 feet and from which a 5/8-inch iron rod with yellow plastic cap stamped "TNP" bears South 00° 33' 19" East, 155.00 feet;

THENCE along the common line of said 31.272 acre tract and said east right-of-way line, the following courses and distances:

North 00° 33' 19" West, a distance of 243.20 feet to a 5/8-inch iron rod with yellow plastic cap stamped "TNP" found for corner;

North 03° 15' 31" East, a distance of 150.33 feet to a 5/8-inch iron rod found for corner;

North 00° 33' 19" West, a distance of 246.07 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" set for corner;

North 07° 14' 34" East, a distance of 80.93 feet to the **POINT OF BEGINNING** and containing a computed area of 1,361,486 square feet or 31.255 acres of land.

The preceding description was prepared to reflect the current conditions of the property at the time of the survey. The recorded description of the Surveyed Property can be found in the Special Warranty Deed with Vendor's Lien to Allen Economic Development Corporation, a Texas non-profit corporation, recorded in Instrument No. 20150611000696250, (OPRCCT).

After recording return to:

1722 Routh Street, Suite 770
Dallas, Texas 75201
Attn: Legal Specialist

ASSIGNMENT AND ASSUMPTION OF DEDICATION AGREEMENT

This Assignment and Assumption of Dedication Agreement (this “Assignment”) is made and entered by **LAUREL REAL ESTATE HOLDINGS I, INC.**, a Delaware corporation (“Assignor”), and **CROW-CARRARA NO. 2**, a Texas general partnership (“Crow”), and **EPC-BRIC2, LLC**, a Texas limited liability company (“EPC”; collectively with Crow, “Assignee”) to be effective as of the Effective Date (as defined below).

RECITALS

WHEREAS, Assignor’s predecessor-in-interest, David M. Lebow, Trustee of the Simon Lebow Trust B (“Lebow”), entered into that certain Dedication Agreement dated and effective May 12, 2011, filed May 19, 2011, as Instrument No. 20110519000518220 in the Official Public Records, Collin County, Texas (“Dedication Agreement”) between Lebow and the City of Allen, Texas (“City”) with respect to the conveyance to City of a 1.396 acre tract of land in Allen, Texas described in Exhibit “A,” attached hereto and incorporated herein by reference (the “Right of Way Property”), as consideration for the grant of certain rights and privileges by City to Lebow relating to the future development of the Property (defined below);

WHEREAS, Lebow assigned its entire right, title, and interest under the Dedication Agreement to Allen Economic Development Corporation, a Texas non-profit corporation (“AEDC”), in that certain Assignment and Assumption of Dedication Agreement dated effective May 12, 2015, filed on June 11, 2015, as Instrument No. 20150611000696270 in the Official Public Records, Collin County, Texas (“Dedication Agreement Assignment (AEDC)”);

WHEREAS, AEDC assigned its entire right, title, and interest under the Dedication Agreement to Assignor in that certain Assignment and Assumption of Dedication Agreement dated effective March 21, 2022 (“Dedication Agreement Assignment (Laurel)”);

WHEREAS, pursuant to that certain Real Estate Purchase Agreement between Assignor and Assignee dated March 21, 2022 (“the Purchase Agreement”), Assignor has agreed to sell and convey its entire right, title and interest in and to an approximately 31.255 acre tract of land described in Exhibit “B,” attached hereto and incorporated herein by reference (the “Property”) to Assignee and, in conjunction therewith, Assignor has agreed to assign its interest under the Dedication Agreement to Assignee, and Assignee has agreed to assume all of Assignor’s rights and obligations under the Dedication Agreement, all as more particularly set forth in this Assignment.

WHEREAS, Crow accepts and assumes an undivided thirty percent (30%) interest in the Dedication Agreement, and EPC accepts and assumes an undivided seventy percent (70%) interest in the Dedication Agreement.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements set forth herein, Assignor and Assignee agree as follows:

1. **Recitals.**

The recitals above are incorporated herein for all purposes.

2. **Assignment.**

Assignor hereby sells, assigns, grants, transfers and sets over to Assignee, its successors and assigns, all of Assignor's right, title and interest, powers, privileges and other benefits in, to and under the Dedication Agreement, upon and subject to all of the terms, conditions and provisions contained in the Assignment.

3. **Acceptance of Assignment and Assumption of Obligations.**

Assignee hereby accepts the assignment of Assignor's right, title and interest, powers, obligations, privileges and other benefits under the Dedication Agreement and Assignee assumes and agrees faithfully to perform all of the obligations which are required to be performed by the "Owner" under the Dedication Agreement. To the extent allowed by law, Assignee hereby agrees to defend (with counsel reasonably satisfactory to Assignor), indemnify, and hold harmless Assignor, its partners, and their respective directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees) arising out of or related to the Dedication Agreement committed or alleged to have been committed on or after the date of this Assignment.

4. **Transfer of Property; Effective Date**

This Assignment shall be effective on the date of closing of the purchase and sale of the Property by and between Assignor and Assignee in accordance with the Purchase Agreement ("the Effective Date").

5. **Successors and Assigns.**

This Assignment, and each and every provision hereof, shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

6. **Multiple Counterparts.**

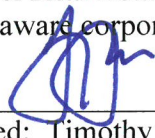
This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on following page.]

Assignor's Signature Page

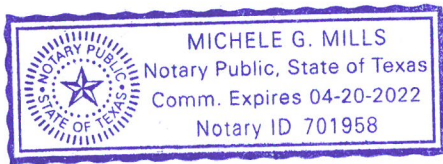
ASSIGNOR:

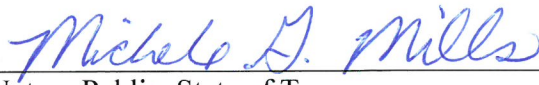
Laurel Real Estate Holdings I, Inc.,
a Delaware corporation

By: 
Printed: Timothy E. Powers
Title: President

STATE OF TEXAS §
 §
COUNTY OF Dallas §

The foregoing instrument was acknowledged before me this 17th day of March, 2022, by Timothy E. Powers, the President of Laurel Real Estate Holdings I, Inc., a Delaware corporation, on behalf of said corporation.




Notary Public, State of Texas

My Commission Expires: 04-20-2022

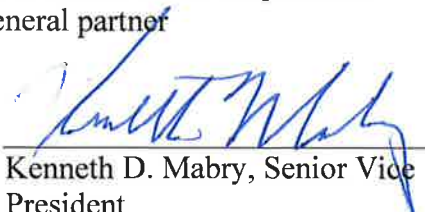
Assignee's Signature Pages

ASSIGNEE:

CROW-CARRARA NO. 2,
a Texas general partnership

By: BCO Dallas Industrial, Ltd, a Texas limited
partnership,
Its managing general partner

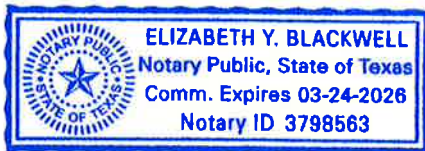
By: 12BCO, Inc., a Texas corporation,
its general partner

By: 
Kenneth D. Mabry, Senior Vice
President

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 4th day of April, 2022 by Kenneth D. Mabry, Senior Vice President of 12BCO Inc., a Texas corporation, general partner of BCO Dallas Industrial, Ltd., a Texas limited partnership, managing general partner of Crow-Carrara No. 2, a Texas general partnership, on behalf of said corporation, general partner, managing general partner, and partnership.




Notary Public, State of Texas

EPC-BRIC2, LLC,
a Texas limited liability company

By:


Kenneth D. Mabry, Manager

ACKNOWLEDGMENT

STATE OF TEXAS

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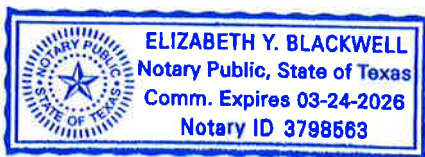
§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the 4th day of April, 2022 by Kenneth D. Mabry, Manager of EPC-BRIC2, LLC, on behalf of said limited liability company.


Notary Public, State of Texas



CONSENT OF CITY OF ALLEN

In accordance with Section 5 of the Dedication Agreement, the undersigned, as City Manager for the City of Allen, Texas, and acting on behalf of said City, hereby consents to the foregoing assignment.

Signed this ____ day of April, 2022.

City of Allen, Texas

By: _____
_____, City Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me this ____ day of April 2022, by _____, the City Manager of the City of Allen, a Texas home rule municipality, on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A
Description of Right of Way Property

EXHIBIT A
RIGHT-OF-WAY
CHELSEA BOULEVARD

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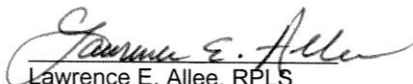
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Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD 83). See Exhibit B for sketch.


Lawrence E. Allee, RPLS
Texas Registration No. 4570

DATE: December 15, 2010



EXHIBIT B
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The preceding description was prepared to reflect the current conditions of the property at the time of the survey. The recorded description of the Surveyed Property can be found in the Special Warranty Deed with Vendor's Lien to Allen Economic Development Corporation, a Texas non-profit corporation, recorded in Instrument No. 20150611000696250, (OPRCCT).

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Authorize the City Manager to Consent to the Assignment and Collateral Assignment of Amended and Restated Development Agreement Dated December 21, 2007, as Amended, Among the City, City of Allen Tax Increment Zone No. 1, and Watters Creek Owner, LLC, Regarding the Watters Creek Shopping Center.
STAFF RESOURCE:	Dan Bowman, Executive Director/CEO, Allen Economic Development Corporation
PREVIOUS COUNCIL ACTION:	In December 2007, the City Council and the Board of the City of Allen Tax Increment Zone No. 1 (the “Board”) approved an Amended and Restated Development Agreement agreeing to provide tax increment funding in relation to the development of the Watters Creek mixed use development. In May 2013 and in January 2015, the City Council and the Board approved supplemental agreements amending the original Amended and Restated Development Agreement.
STRATEGIC PLANNING GOAL:	Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

Effective December 21, 2007, the City Council and the Board of the City of Allen Tax Increment Zone No. 1 (the “Board”) approved an *Amended and Restated Development Agreement* (the “Original Agreement”) with the owners of the property described in the Original Agreement (the “Property”) agreeing to provide tax increment funding on a reimbursement basis in relation to the construction of certain improvements within the Watters Creek mixed-use development at the southwest corner of Bethany Road and U.S. 75. Effective May 1, 2013, the City Council and the Board entered into the *Supplemental Agreement to Amended and Restated Development Agreement* (the “First Supplement”) amending certain provisions of the Original Agreement and providing for the construction of additional improvements on the Property. Effective January 28, 2015, the City Council and the Board entered into the *Second Supplemental Agreement to Amended and Restated Development Agreement* (the “Second Supplement”)(the Original Agreement, First Supplement, and Second Supplement collectively being “the Agreement”) in relation to the funding of construction of additional public improvements adjacent to the Property, specifically the Montgomery Boulevard bridge and roadway west of the U.S. 75 service road, and other improvements relating to the development of the Property. At one point during the term of the Agreement, all of the rights and obligations of the Agreement were assigned to and assumed by Watters Creek Owner, LLC (“WCO”).

WCO has advised the City of the pending sale of the Property to Charter DW Watters Creek Village, LLC (“Charter”). As part of the consideration for the sale of the Property to Charter, WCO has agreed to assign the Agreement to Charter, and Charter has agreed to assume all of WCO’s rights and obligations under the Agreement. The Agreement requires that the City consent to any assignment of the Agreement in order for the assignment to be effective. Consequently, WCO and Charter have requested the City, for itself and on behalf of the Board, consent to the requested assignment. In addition, because the Agreement does not expressly allow, without the City’s consent, a collateral assignment of the Agreement for the purpose of securing the repayment of the loan being made by Charter’s lenders in association with the purchase of the Property, Charter’s lenders have requested the City consent to the collateral assignment of the Agreement for Charter’s lenders in association with said loan. No amendments to the Agreement have been requested in association with the requests for consent to assignment and collateral assignment, respectively.

Ray Washburne manages and has ownership in Charter DW Watters Creek Village and in Charter Holdings, a Dallas-based investment company involved in real estate, restaurants, and diversified financial investments. Charter Holdings is also the owner and operator of Highland Park Village, a premier venue for upscale shopping and dining in Dallas offering a selection of international and local retailers. Additionally, they own offices, industrial properties and single family developments throughout Texas, Colorado, and Louisiana.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager, on behalf of the City and the Board, to consent to the requested assignment and collateral assignment of the Agreement to Charter and for the benefit of Charter’s lenders, respectively.

MOTION

I make a motion to authorize the City Manager to consent to the assignment of the Amended and Restated Development Agreement among the City of Allen, Allen Tax Increment Zone No. 1, and Watters Creek Owner, LLC, as previously amended, to Charter DW Watters Creek Village, LLC.

ATTACHMENT(S)

[Assignment and Assumption of Incentive Agreements - Charter DW Watters.pdf](#)
[Amended and Restated Development Agreement - 2007](#)
[Supplemental Agreement to Amended and Restated Development Agreement - 2013](#)
[Second Supplemental Agreement to Amended and Restated Development Agreement - 2015](#)

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

ASSIGNMENT AND ASSUMPTION OF INCENTIVE AGREEMENTS

This ASSIGNMENT AND ASSUMPTION OF INCENTIVE AGREEMENTS (this "Assignment") is entered into by and between WATTERS CREEK OWNER, LLC, a Delaware limited liability company ("Assignor"), and CHARTER DW WATTERS CREEK VILLAGE, LLC, a Delaware limited liability company ("Assignee"), effective as of April 7, 2022 (the "Effective Date").

RECITALS

A. Assignor, as successor-in-interest to Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership, is a party to that certain: (i) Amended and Restated Development Agreement, recorded on December 21, 2007, as Instrument No. 20071221001690460 in the Official Public Records of Collin County, Texas; (ii) Supplemental Agreement to Amended and Restated Development Agreement dated effective as of May 1, 2013, and (iii) Second Supplemental Agreement to Amended and Restated Development Agreement dated effective as of January 28, 2015 (collectively, the "Incentive Agreements"), all of which affect that certain property situated in Collin County, Texas, as more-specifically described in Exhibit A attached hereto and incorporated herein for all purposes.

B. Assignor desires to assign its interest in the Incentive Agreements to Assignee, and Assignee desires to accept the assignment thereof and assume all obligations under the Incentive Agreements on the terms and conditions herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor does hereby assign to Assignee all of Assignor's right, title and interest in and to the Incentive Agreements.

2. Assumption. Effective as of the Effective Date, Assignee hereby accepts all of Assignor's right, title and interest in and to the Incentive Agreements, and hereby solely and completely assumes all obligations, covenants, and conditions of Assignor contained in the Incentive Agreements, to the extent accruing after the Effective Date.

3. As-Is. ASSIGNEE DOES HEREBY ACKNOWLEDGE AND AGREE THAT THE INCENTIVE AGREEMENTS ARE BEING TRANSFERRED TO ASSIGNEE "AS-IS" AND "WHERE-IS" AND WITH ALL FAULTS, DEFECTS OR OTHER ADVERSE MATTERS. ASSIGNOR SPECIFICALLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE INCENTIVE AGREEMENTS.

4. Assignee's Notice Address. Assignee's address for notice pursuant to the Incentive Agreements is as follows:

Charter DW Watters Creek Manager, LLC
c/o Charter Holdings, Inc.
Attn: Mark O'Briant
47 Highland Park Village, Suite 200
Dallas, TX 75203

5. Counterparts. The parties hereto contemplate that this Assignment shall be signed in counterparts, which when taken together, shall be effective to create a binding agreement between the parties.

6. Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of Texas, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. Entire Agreement. This Assignment constitutes the entire agreement of the parties with respect to the subject matter hereof. The Incentive Agreements are not amended or modified by this Assignment, except for the assignment of Assignor's interests in the Incentive Agreements to Assignee, as expressly set forth herein.

[Remainder of Page Intentionally Left Blank – Signature Page to Follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

ASSIGNOR:

WATTERS CREEK OWNER, LLC,
a Delaware limited liability company

By: [Signature]
Name: Ray Washburne
Its: Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

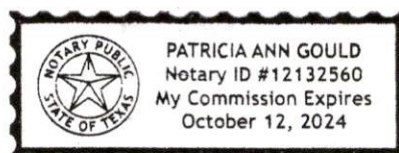
State of ~~California~~ Texas)
County of Dallas)

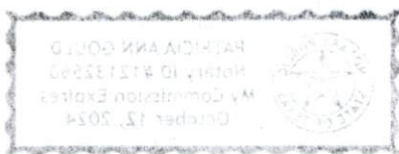
On April 7, 2022 before me, Patricia Ann Gould, a Notary Public, personally appeared Ray Washburne, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Patricia Ann Gould (Seal)






ASSIGNEE:

CHARTER DW WATTERS CREEK VILLAGE, LLC,
a Delaware limited liability company

By: Charter DW Watters Creek Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Charter DW Watters Creek Manager, LLC,
a Texas limited liability company,
its Managing Member

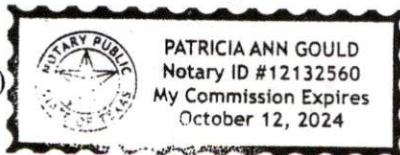
By: Charter Watters Creek, LLC,
a Texas limited liability company,
its Manager

By: 
Ray W. Washburne, Manager

THE STATE OF Texas §
§
COUNTY OF Dallas §

This ASSIGNMENT OF INCENTIVE AGREEMENTS was acknowledged before me on this 17 day of April, 2022, by Ray W. Washburne, in his capacity as the Manager of Charter Watters Creek, LLC, as the Manager of Charter DW Watters Creek Manager, LLC as the Managing Member of Charter DW Watters Creek Holdings, LLC, as the Sole Member of CHARTER DW WATTERS CREEK VILLAGE, LLC, a Delaware limited liability company, on behalf of such entities.

(SEAL)




Notary Public of the State of Texas

My Commission Expires: _____

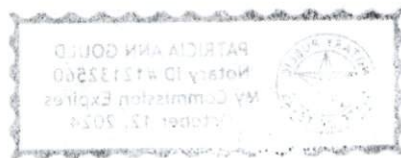


EXHIBIT A

Legal Description

TRACT 1:

The Office Unit, Retail Unit A, Retail Unit B and Future Development Unit of WATTERS CREEK AT MONTGOMERY FARM MASTER CONDOMINIUM, a Condominium created pursuant to the Condominium Declaration filed 12/29/2020, cc# 20201229002346730, Real Property Records, Collin County, Texas. As amended by First Amendment to Condominium Declaration filed 06/10/2021, cc# 20210610001177280; and by Second Amendment to Condominium Declaration filed 12/27/2021, cc# 20211227002582290, Real Property Records, Collin County, Texas, together with its undivided interest in and to the Common Elements (as defined in the Declaration), located upon the following described property: Lots 1R-1 and 3R-3, Block A, of Watters Creek At Montgomery Farm, Phase 1 and 2, an Addition to the City of Allen, Collin County, Texas, according to the Plat thereof recorded in Volume 2017, Page 787, Plat Records, Collin County, Texas.

TRACT 2:

BEING a 2.748 acre tract of land situated in the THOMAS G. KENNEDY SURVEY, ABSTRACT NO. 500, City of Allen, Collin County, Texas, and being the remainder of a called 2.8633 acre tract of land described in a Special Warranty Deed to Coventry II DDR/Trademark Montgomery Farm, L.P., filed for record in the County Clerk's File No. 20061228001826040, Deed Records, Collin County, Texas (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found at the Southwest corner of Lot 3, Block A, Watters Creek at Montgomery Farm, Phase 2, an Addition to the City of Allen, Collin County, Texas, recorded in Volume 2007, Page 617, Plat Records, Collin County, Texas (P.R.C.C.T.) and being on the North line of the remaining portion of a called 0.824 acre tract of land described in a general warranty deed to the City of Allen, recorded in County Clerk's File No. 20090210000139500, D.R.C.C.T., from which a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found for the Southeast corner of said Lot 3 bears South 88 degrees 02 minutes 48 seconds East, a distance of 456.44 feet;

THENCE North 88 degrees 02 minutes 48 seconds West, along the common line of said 2.8633 acre tract and said 0.824 acre, a distance of 115.89 feet, to the center of Watters Creek;

THENCE along the center of Watters Creek as follows:

North 23 degrees 26 minutes 45 seconds East, a distance of 113.16 feet;
North 25 degrees 09 minutes 03 seconds West, a distance of 90.60 feet;
North 14 degrees 41 minutes 58 seconds East, a distance of 63.08 feet;
North 38 degrees 57 minutes 20 seconds East, a distance of 76.80 feet;
North 08 degrees 46 minutes 25 seconds East, a distance of 66.45 feet;
North 08 degrees 39 minutes 47 seconds West, a distance of 95.41 feet;
North 34 degrees 20 minutes 06 seconds West, a distance of 148.76 feet;
North 22 degrees 39 minutes 26 seconds West, a distance of 243.19 feet, to the Northwest corner of the aforesaid 2.8633 acre tract same being the Southwest corner of a called 8.2004 acre tract of

land described in a special warranty deed to the City of Allen, Texas, recorded in County Clerk's File No. 20111222001383680, D.R.C.C.T.;

THENCE North 84 degrees 27 minutes 52 seconds East, along the common line of said 2.8633 acre tract and said 8.2004 acre tract, a distance of 227.39 feet, to a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found for the Southeast corner of said 8.2004 acre tract same being the Northeast corner of said 2.8633 acre tract and being on the West line of Lot 1R, Block A, Watters Creek at Montgomery Farm, Phase 1, an Addition to the City of Allen, Collin County, Texas, recorded in Volume 2011, Page 274, P.R.C.C.T.;

THENCE South 06 degrees 59 minutes 21 seconds East, along said West line, a distance of 241.48 feet, to a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found for the most Southerly Southwest corner of said Lot 1R, and being the most Southerly Northwest corner of the aforesaid Lot 3;

THENCE along the West line of said Lot 3 as follows:

South 11 degrees 24 minutes 47 seconds East, a distance of 84.76 feet, to a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found;

South 41 degrees 24 minutes 55 seconds East, a distance of 25.32 feet, to a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found;

South 11 degrees 24 minutes 47 seconds East, a distance of 104.51 feet, to a 5/8 inch iron rod with a cap stamped "BURY+PARTNERS" found;

South 11 degrees 51 minutes 53 seconds West, a distance of 404.13 feet, to the POINT OF BEGINNING and containing 2.748 acres (119,701 square feet) of land, more or less.

TRACT 3:

Being Lots 3R-2-1 and 3R-2-2, Block A of WATTERS CREEK AT MONTGOMERY FARMS PHASE 1 & 2, an Addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2021, Page 240 (cc# 20210426010001490), Plat Records, Collin County, Texas.

CONSENT TO ASSIGNMENT

In accordance with Section 7.1 of the Amended and Restated Development Agreement, recorded on December 21, 2007, as Instrument No. 20071221001690460 in the Official Public Records of Collin County, Texas, as amended and/or supplemented by (i) that certain Supplemental Agreement to Amended and Restated Development Agreement dated effective as of May 1, 2013, and (ii) that certain Second Supplemental Agreement to Amended and Restated Development Agreement dated effective as of January 28, 2015 (collectively, the "Incentive Agreements"), the City of Allen, Texas, and City of Allen Tax Increment Financing Zone No. 1 hereby consent to the assignment of the Incentive Agreements by Assignor to Assignee in accordance with the provisions of the foregoing Assignment and Assumption of Incentive Agreements, such consent to be effective on the date appearing in the acknowledgements below.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

CITY OF ALLEN TAX INCREMENT FINANCING ZONE NO. 1

By: _____
Eric Ellwanger, Chairman

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged by the undersigned authority on this ____ day of April 2022, by Eric Ellwanger, City Manager of the City of Allen, a Texas home rule municipality, and Chairman of the Board of Directors of the City of Allen Tax Increment Financing Zone No. 1, a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code, for and on behalf of said municipality and zone, respectively.

Notary Public, State of Texas



STATE OF TEXAS § **AMENDED AND RESTATED**
 § **DEVELOPMENT AGREEMENT**
 COUNTY OF COLLIN §

This Amended and Restated Development Agreement ("Agreement") is made by and between the City of Allen, Collin County (the "City"), Texas, the Board of Directors of the City of Allen Tax Increment Financing Zone No. 1 (the "Board"), Montgomery Farm Garden District Ltd., a Texas limited partnership ("MFGDLtd."), Angel Field Office Center, Ltd., a Texas limited partnership ("AFOC"), and Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership ("Trademark"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, on or about December 13, 2005, the City adopted Ordinance Number 2471-12-05 designating a certain contiguous geographical area as Tax Increment Financing Reinvestment Zone No. One ("TIF Zone No. 1") in accordance with the Tax Increment Financing Act, Tax Code, Chapter 311 (the "Act") to promote development within TIF Zone No. 1 through the use of tax increment financing; and

WHEREAS, MFGDLtd. and the City entered into that certain Development Agreement dated December 14, 2005 (the "City Tax Agreement") whereby MFGDLtd. as "Company" under said agreement was to receive reimbursement for expenditures related to the development of the Garden District in Allen, Texas on the Land; and

WHEREAS, the City and Collin County, Texas (the "County") have entered into that certain Allen TIF Zone No. 1 Participation Agreement, dated April 26, 2006, (the "County Agreement") whereby the County agreed to participate in the Development Agreement as more particularly set forth in the County Agreement.

WHEREAS, the City will contribute fifty percent (50%) of the Tax Increment of the City for a period of 25 years and fifty percent (50%) of the increase in Sales Tax Receipts (hereinafter defined) for a period of 15 years, to the Tax Increment Fund (hereinafter defined) for construction of certain improvements within TIF Zone No. 1; and

WHEREAS, the County will contribute fifty percent (50%) of the Tax Increment of the County for a period of 25 years to the Tax Increment Fund for the construction of certain improvements within TIF Zone No. 1; and

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment financing reinvestment zone for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality establishing a reinvestment zone that are listed in the project plan of the reinvestment zone which expenditures and monetary obligations constitute project costs as defined by the Act; and

WHEREAS, the Act authorizes the use of Tax Increment Funds for economic development purposes consistent with Texas Local Government Code, Chapter 380; and

WHEREAS, the contemplated improvements to be developed and constructed within the Garden District and TIF Zone No. 1 as set forth herein are consistent with encouraging development of TIF Zone No. 1 in accordance with the purposes for its creation and applicable laws; and

WHEREAS, the Company (hereinafter defined) and Trademark own or owned approximately 92 acres of land in the City located at the southwest corner of US 75 and Bethany Drive within TIF Zone No-1-and being further described in Exhibit "A" (the "Land") on which the Company and Trademark intend to construct a mixed-use development consisting of certain retail, office, residential, and restaurant buildings and other improvements (hereinafter defined collectively as the "Improvements") (the Land and Improvements hereinafter defined as the "Garden District"); and

WHEREAS, the City desires to promote the development and the redevelopment of the Land by the creation of Tax Increment Financing Zone No. 1; and

WHEREAS, the Company (hereinafter defined) and Trademark have agreed to advance funding for certain infrastructure and parking structure improvements for the Garden District described in the Project Plan for TIF Zone No. 1 (the "Project Plan"); and

WHEREAS, the reimbursement of funds advanced for the costs of the infrastructure improvements and other obligations to be paid from the tax increment fund of TIF Zone No. 1 are Project Costs consistent with and described in the Project Plan and financing plan for TIF Zone No. 1 (the "Financing Plan").

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

Article I

Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"AEDC Agreement" shall mean that certain amended and restated agreement by and between the Allen Economic Development Corporation and MFGDLtd. dated of approximate even date herewith and assigned by MFGDLtd.to Trademark.

"ACDC Agreement" shall mean that certain amended and restated agreement by and between the Allen Community Development Corporation and MFGDLtd. dated of approximate date herewith- and assigned by MFGDLtd. to Trademark.

"Act" shall mean the Tax Increment Financing Act, Chapter 311, Tax Code, as amended.

"Captured Appraised Value" means the total appraised value of all real property taxable by a Taxing Unit and located in TIF Zone No. 1 for the year less the Tax Increment Base of the Taxing Unit.

"City" shall mean the City of Allen, Collin County, Texas.

"City Tax Increment" shall mean the Tax Increment contributed to the Tax Increment Fund by the City.

"Commencement Date" shall mean the later of: (i) January 1 of the tax year that the Taxable Value of the Garden District is at least \$80,000,000.00; and (ii) the date there is at least \$500,000.00 on deposit in the Tax Increment Fund. For illustration purposes assume that the Taxable Value of the Garden District as of January 1, 2008 is \$80,000,000.00 but there is not \$500,000.00 on deposit in the Tax Increment Fund until June 1, 2009, then the Commencement Date would be June 1, 2009.

"Commencement of Construction" shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the respective phase of development, public improvement, Infrastructure and/or Improvements, as the case may be, on the Land; (ii) all necessary permits for the construction of the respective phase of development, public improvement, Infrastructure and/or Improvements, as the case may be on the Land pursuant to the respective plans, therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land for the construction of the respective phase of development, public improvement, Infrastructure and/or construction of the vertical elements of the respective Improvements, as the case may be, has commenced.

"Company" shall mean, singularly and collectively, Montgomery Farm Garden District, Ltd., a Texas limited partnership, Angel Field Office Center, Ltd., a Texas limited partnership; and affiliates of Montgomery Farm Garden District, Ltd. or Angel Field Office Center, Ltd. who may from time to time own any part of the Land.

"Company's Angel Field Projects" shall mean office and residential projects located on the Angel Field portion of the Land as more particularly described on Exhibit "B" attached hereto.

"Completion of Construction" shall mean that (i) the construction of the respective phase of development, public improvement, Infrastructure or Improvements, as the case may be, on the Land has been substantially completed; and (ii) the City has issued, if and as applicable, either a certificate of substantial completion for the

respective phase of development, public improvement, Infrastructure, or a certificate of occupancy for the respective Improvements, as the case may be.

“County” shall mean Collin County, Texas.

“County Maximum Reimbursement Amount” shall mean \$9,300,000.00 or such other amount set forth in the County Participation Agreement.

“County Tax Increment” shall mean the Tax Increment contributed to the Tax Increment Fund by the County pursuant to the County Agreement.

“Developer” shall mean individually Trademark with respect to any right, obligation or duty of Developer concerning Trademark’s Retail Projects or the Ramp Reversal and shall mean the Company with respect to any right, obligation or duty of Developer concerning Company’s Angel Field Projects.

“Effective Date” shall mean December 14, 2005, which was the last date of execution of the initial City Tax Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’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 such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean the earlier of: (i) January 1, 2031; and (ii) the date on which Maximum Reimbursement Amount has been paid in full to each Developer.

“Financing Plan” shall mean the reinvestment zone financing plan for TIF Zone No. 1 as approved by the City Council for the City.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

“Garden District” shall collectively mean the Land, the Trademark Projects, the Parking Structures, Company’s Angel Field Projects, the Garden District Parks, and such other uses as may be approved by the City Council.

“Garden District Parks” shall mean the construction of approximately 16.32 acres of privately owned and maintained parks/open space on the Land including trails, water features and other passive recreation amenities within the Garden District open to public use and recreation, without fee or charge to the public, as depicted in Exhibit “B” and as more fully described in submittals filed by the Developer with the City from time to time.

“Garden District Parks Agreement” shall mean for any portion of the Garden District Parks to which title is not held by the City that certain agreement that grants the City, its citizens and patrons the perpetual and irrevocable right to use such portion of the Garden District Parks, without charge or fee, in the same manner as a City owned public park; and which grants the City a perpetual and irrevocable license, lease or right to use the Garden District Parks at least four (4) times each calendar year for special events for periods of at least four (4) consecutive calendar days for each period of use.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Developer with respect to the Land or Improvements or any property or any business owned by Developer within the City.

“Improvements” shall mean the buildings, structures, parking structures, landscaping and other facilities within and/or comprising the Garden District or portion thereof, but excluding water, sewer and electric utilities, gas utilities, drainage and related improvements, and telecommunications and internet improvements.

“Infrastructure” means the Parking Structures and the infrastructure necessary to promote or develop the Improvements limited to streets and roads, site improvements, rail spurs, water, sewer and electric utilities, gas utilities, drainage and related improvements, and telecommunications and internet improvements for the Garden District including but not limited to: (1) the design, engineering and construction of the Parking Structures (along with related landscaping, driveways and utilities), streets, roads, bridges, rail road spur improvements on or off site of the Improvements (and related type of improvements) necessary for the Improvements or for access or improved access to the Land; (2) the design, engineering, construction and installation of water, electric and gas utilities on or off site of the Improvements necessary for the Improvements, and any portion of the underlying facilities necessary to extend, enlarge, support or provide such utility systems to the Improvements; (3) the design, engineering, construction and installation of drainage and related improvements on or off site of the Improvements (e.g. storm sewers, detention ponds, retention ponds, drainage pipes, culverts, over sizing of facilities) necessary for the Improvements; (4) the design, engineering, construction and installation of telecommunication and internet improvements, on or off the site of the Improvements, which may include telephone, radio, wireless or other communication systems, fiber optics or other types of networks, cabling, computers and high technology equipment, or software necessary to provide,

enlarge, expand or improve the telecommunications and internet improvements for the Improvements; and (5) the Ramp Reversal.

"Infrastructure Costs" shall mean the Developer's actual costs for the acquisition, design and construction of Infrastructure not to exceed the Maximum Reimbursement Amount as verified by the City. Infrastructure Costs shall include land costs, design and engineering for Infrastructure, but shall not include interest (other than capitalized construction interest) or management fees for the construction of Infrastructure.

"Land" shall mean the real property described in Exhibit "A".

"Maximum Reimbursement Amount" shall mean \$32,010,000.00 contributed to the Tax Increment Fund by the City and the County (it being agreed that \$22,710,000.00 shall be the Maximum Reimbursement Amount for the City (the "Maximum City Reimbursement Amount") and \$9,300,000.00 shall be the Maximum Reimbursement Amount for the County (the "Maximum County Reimbursement Amount")). The Maximum Reimbursement Amount does not include any funds contributed to the Tax Increment Fund by any other Taxing Units. In the event another Taxing Unit contributes to the Tax Increment Fund, pursuant to a Participation Agreement, such Tax Increment shall be then added to the Maximum Reimbursement Amount, subject to any restrictions, terms or maximum contributions set forth in the respective Participation Agreement. The portion of the Maximum Reimbursement Amount allocated to Trademark's Retail Projects shall be \$27,016,400.00 (\$19,076,400.00 out of the Maximum City Reimbursement Amount and \$7,940,000.00 out of the Maximum County Reimbursement Amount), including funding to Trademark out of the Maximum County Reimbursement Amount for (i) Ramp Reversal Costs in accordance with Section 5.9 herein, (ii) Montgomery Boulevard and Bridge (on Watters Branch) pursuant to Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization), and (iv) deceleration lanes for Bethany Drive and US 75. The portion of the Maximum Reimbursement Amount allocated to Company's Angel Field Projects shall be \$4,993,600.00 (\$3,633,600.00 out of the Maximum City Reimbursement Amount and \$1,360,000.00 out of the Maximum County Reimbursement Amount), which shall not be subject to reduction due to funding to Trademark out of the Maximum County Reimbursement Amount for reimbursement of (i) Ramp Reversal Costs in accordance with Section 5.9 herein, (ii) Montgomery Boulevard and Bridge (on Watters Branch) pursuant to Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization), and (iv) deceleration lanes for Bethany Drive and US 75.

"Parking Lease" shall mean that certain agreement by and between the City and Developer for the lease of the Public Parking Spaces for a period of 25 years substantially in the form attached as Exhibit "F".

"Parking Structures" shall mean one or more multi-level structures (above and below ground) designed for the public parking of motor vehicles, and including parking spaces for any or all commercial and residential uses, and containing a minimum of 1,985

structured parking spaces within the Garden District as a whole and a minimum of 1,667 structured parking spaces within Trademark's Retail Projects, and containing other ancillary facilities such as reasonably required landscaping, driveways and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit, but excluding non-structured surface parking.

"Participation Agreement" shall mean an Agreement between the City and a Taxing Unit for the Taxing Unit to contribute Tax Increment to the Tax Increment Fund.

"Payment Request" shall mean a written request from Developer to the City for annual Reimbursement Payment accompanied by: (i) copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document Infrastructure Costs (including soft costs, land costs, landscaping costs, driveways, utilities and capitalized construction interest associated with the Parking Structures or other Infrastructure) and the number of parking spaces within a Parking Structure for which Completion of Construction has occurred; and (ii) satisfactory written proof that all amounts owing to contractors and subcontractors for the Parking Structures have been paid in full evidenced by the customary affidavits executed by Developer and/or its contractors.

"Project Costs" shall mean (i) the costs for: (a) the Ramp Reversal required pursuant to Section 5.9 herein, (b) Montgomery Boulevard and Bridge (on Watters Branch) required pursuant to Section 4.2 herein, (c) traffic signalization for Bethany Drive (2 sets of signalization) required pursuant to Section 4.2 herein, and (d) deceleration lanes for Bethany Drive and US 75 required pursuant to Section 4.2 herein, and (ii) the cost to lease the Public Parking Spaces within the Parking Structures.

"Project Plan" shall mean the project plan for the development or redevelopment of TIF Zone No. 1 as approved by the City.

"Public Parking Spaces" shall mean parking spaces located within the Parking Structures that are encumbered by the Parking Lease and that conform to the use provisions of the Parking Lease.

"Ramp Reversal" shall mean the design, engineering and construction of the reversal of the southbound entrance and exit ramps for US Highway 75 between Bethany Drive and Rowlett Creek as depicted in Exhibit "E".

"Ramp Reversal Costs" shall mean the total costs for the design, engineering and construction of the Ramp Reversal.

"Reimbursement Payment" shall mean the annual payment to Developer for the Project Costs as set forth herein.

"Reimbursement Period" shall mean the period between April 1 of a calendar year until April 1 of the following calendar year or such other annual period as may be reflected by the State of Texas in the Sales Tax Reports .

"Retail Phase I" shall mean the development of approximately 350,000 square feet of space for retail uses, approximately 70,000 square feet for office uses, approximately 75,000 square feet of space for hotel uses and approximately 310,000 square feet of space for residential uses on the Retail Phase I Land as depicted in Exhibit "B" (and other ancillary facilities such as reasonably required parking and landscaping, driveways, and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit).

"Retail Phase I-A" shall mean the development of not less than 210,000 square feet of retail uses on approximately 16 acres within Retail Phase I.

"Retail Phase II" shall mean the development of approximately 50,000 square feet of space for retail uses and approximately 75,000 square feet of office uses on the approximately 8.20 acres depicted as the Retail Phase II Land on Exhibit B (and other ancillary facilities such as reasonably required parking and landscaping, driveways, and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit).

"Retail Phase III" shall mean the development of a mixed use development on the approximately 8.33 acres depicted as the Retail Phase III Land on Exhibit B (and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit).

"Sales and Use Tax" shall mean the City's one percent (1%) sales and use tax imposed pursuant to Chapter 321, Texas Tax Code (it being expressly understood that such sales and use tax receipts are being used only as a measurement for City participation through the use of general funds) on the sale of Taxable Items by Developer, its tenants and lessees, and by the tenants and lessees of the Garden District consummated in the City at the Garden District. Sales and Use Tax does not include any additional sales and use tax imposed by the City for any purpose, the ½ of one percent (1%) sales and use tax imposed by the City on behalf of the Allen Community Development Corporation pursuant to 4B of the Development Corporation Act, or the ½ of one percent (1%) sales and use tax imposed by the City on behalf of the Allen Economic Development Corporation pursuant to 4A of the Development Corporation Act

"Sales Tax Receipts" shall mean the City's receipts from the State of Texas from the collection of the Sales and Use Tax as a result of the sale of Taxable Items by Developer, its tenants and lessees, and the tenants and lessees of the Garden District consummated within the City at the Garden District which shall be contributed to the TIF Fund until January 1, 2021.

“Sales Tax Report” shall mean a report provided by the State of Texas pursuant to Tax Code Section 321.3022 or such other documentation in a form reasonably acceptable to the City setting forth the collection of Sales and Use Tax by the Developer, its tenants and lessees, and the tenants and lessees of the Garden District received by the City from the State of Texas, for the sale of Taxable Items by the Developer its tenants and lessees, and the tenants and lessees of the Garden District consummated in the City at the Garden District, together with such supporting documentation required herein, and as the City may reasonably request.

“State of Texas” shall mean the office of the Texas Comptroller, or its successor.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, TEX. TAX CODE, as amended.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

“Tax Increment” means the total amount of property taxes by a Taxing Unit for the year on the Captured Appraised Value of real property taxable by a Taxing Unit and located in TIF Zone No. 1. The amount of Tax Increment contributed by the City or any other Taxing Unit shall be limited to any maximum amount or other terms set forth in the respective Participation Agreement of such Taxing Unit or the ordinance creating Tax Increment Financing Reinvestment Zone No. 1, in the case of the City.

“Tax Increment Base” means the total appraised value of all real property taxable by a Taxing Unit and located in the TIF Zone No. 1 for 2005, which is the year in which TIF Zone No. 1 was designated, minus the 2005 value attributable to any property subsequently excluded from the boundaries of TIF Zone No. 1.

“Tax Increment Fund” shall mean the funds deposited by the City and any Taxing Unit in the tax increment fund for TIF Zone No. 1.

“Taxing Unit” shall mean Collin County and any other political subdivision or special district that taxes real property within TIF Zone No. 1 that enters into a Participation Agreement with the City to contribute to the Tax Increment Fund.

“TIF Zone No. 1” shall mean City of Allen Tax Increment Financing Zone No. 1.

“Trademark's Retail Projects” shall mean Retail Phase I, Retail Phase II and Retail Phase III.

Article II

Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

TIF Projects

3.1 Garden District.

- a. The City will contribute fifty percent (50%) of the City Tax Increment for a period of 25 years and fifty percent (50%) of the increase in Sales Tax Receipts for a period of 15 years, to the Tax Increment Fund subject to the City Maximum Reimbursement Amount and in accordance with the City Ordinance creating TIF Zone No. 1.
- b. The County, subject to a Participation Agreement, will contribute fifty percent (50%) of the County Tax Increment for a period of 25 years to the Tax Increment Fund pursuant to the County Participation Agreement.
- c. The TIF projects subject to Reimbursement Payments as provided herein shall consist of: (i) the Public Parking Spaces, (ii) the Ramp Reversal required pursuant to Section 5.9 herein, (iii) Montgomery Boulevard and Bridge (on Watters Branch) required pursuant to Section 4.2 herein, (iv) traffic signalization for Bethany Drive (2 sets of signalization) required pursuant to Section 4.2 herein, and (v) deceleration lanes for Bethany Drive and US 75 required pursuant to Section 4.2 herein.
- d. Developer agrees to design and construct, or cause to be designed and constructed, the various phases of the Garden District.
- e. Trademark shall, subject to events of Force Majeure, cause completion of construction of Retail Phase I to occur on or before October 1, 2012 and Completion of Construction Retail Phase I-A to occur on or before October 1, 2008.
- f. Company shall, subject to events of Force Majeure, cause completion of construction of the Company's Angel Field Projects to occur on or before October 1, 2013.
- g. Trademark shall not be responsible for, nor shall its rights under this Agreement be subject to, the construction of any improvements to any other part of the Garden District by any specified date.
- h. Company shall not be responsible for, nor shall its rights under this Agreement be subject to, the construction of any improvements to Trademark's Retail Projects by any specified date.
- i. The Garden District shall be designed to substantially conform with the preliminary concept plan furnished to the City attached as Exhibit "C", or as otherwise approved by the City Council. City acknowledges that as of the Effective Date, no sales taxes had been received for the Garden District.

Therefore, any sales taxes received following the Effective Date shall be deemed an increase in Sales Tax Receipts for purposes of calculating city's contribution to the Tax Increment Fund.

3.2 Infrastructure. In conjunction with the development of the Garden District, Developer agrees to design and construct certain Infrastructure as generally described in Exhibit "D".

3.3 Parking Structures. In conjunction with the construction of the Garden District, Developer agrees to construct the Parking Structures within the Garden District, and to lease the same to the City under a lease agreement substantially in the form of the Exhibit "F" (the "Parking Lease"). The Parking Structures shall be designed and constructed to conform to the Allen Land Development Code applicable to construction of Parking Structures on the Land, and all exposed facades shall be a minimum of fifty percent (50%) brick (with the remaining fifty percent (50%) brick, air or glass) without exposed cables and metal traffic barriers, unless otherwise approved by the City Council.

3.4 Design and Construction of Projects. (a) The Developer shall cause all necessary permits and approvals required by the City and any applicable governmental authorities to be issued for the construction of the Parking Structures, other Infrastructure and Improvements for the Garden District. The Developer shall be responsible for the design, inspection and supervision of the construction of the Parking Structures, other Infrastructure and the Improvements.

(b) Prior to Commencement of Construction of the Parking Structures, the other Infrastructure and/or the Improvements, the Developer shall submit plans and specifications for the respective Parking Structure, other Infrastructure and/or Improvements, as the case may be, for approval by the City, which approval shall follow regular City processes for approval of development plans and shall not be unreasonably withheld, denied or delayed (provided the respective Parking Structure, other Infrastructure and/or the Improvements comply with the Project Plan and the Financing Plan and applicable law).

(c) The Developer shall comply with all local and state laws and regulations regarding the design and construction of the Infrastructure and Improvements for the Garden District applicable to similar facilities constructed by the City, including but not limited to any applicable requirement relating to payment, performance and maintenance bonds. Upon Completion of Construction of a respective Parking Structure, other Infrastructure and/or an Improvement, the Developer shall provide the City with a final cost summary of all costs associated with the construction of such Parking Structure, other Infrastructure and/or Improvement, as the case may be, and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the customary affidavits executed by the Developer and/or its contractors.

3.5 City Use of Garden District Parks. The Developer shall convey and grant, or cause to be conveyed and granted to the City the right to use the Garden District Parks for special events without charge, cost or fee at least four (4) times each year for periods of not to

exceed four consecutive days each time. In the event the Developer sells, conveys or transfers control and/or ownership of the Garden District Parks to another person or entity, the Developer shall cause such entity to grant a license or lease the Garden District Parks to the City for the above stated purposes under the same terms and conditions.

Article IV Project Cost Reimbursement

4.1 **Reimbursement Payments.** (a) Subject to the Developer's continued satisfaction of all the terms and conditions of this Agreement, the City agrees as consideration for the lease of the Parking Structures to make Reimbursement Payments to the Developer solely from the Tax Increment Fund as set forth herein.

(b) The City shall make Reimbursement Payments to the Developer on an annual basis within 30 days after receipt of a Payment Request following April 1 of the calendar year beginning with April 1 of the calendar year following the Commencement Date.

- i. The amount of each annual reimbursement out of the City Tax Increment shall be \$11,440.81 per parking space subject to the maximum allocation for the Company and Trademark out of Maximum City Reimbursement Amount (the "City Parking Space Reimbursement").
- ii. The amount of each annual reimbursement out of the County Tax Increment shall be \$4,685.14 (\$9,300,000.00 divided by 1,985 parking spaces) per parking space subject to the maximum allocation for the Company and Trademark out of Maximum County Reimbursement Amount (the "County Parking Space Reimbursement").
- iii. Together, the City Parking Space Reimbursement and the County Parking Space Reimbursement shall be referred to herein as the "Per Space Contribution".
- iv. The total amount of each annual reimbursement amount shall be the Per Space Contribution multiplied by the number of Public Parking Spaces for which Completion of Construction has occurred during the Reimbursement Period, not to exceed the Maximum Reimbursement Amount (the "Reimbursement Payment"); provided however the first Reimbursement Payment shall be based on the number of Public Parking Spaces within a Parking Structure for which there has been Completion of Construction from the Effective Date through April 1 of the calendar year following the Commencement Date. Thereafter, the Reimbursement Payment shall be based on the number of parking spaces within a Parking Structure for which there has been Completion of Construction for the then ending Reimbursement Period.
- v. The City shall make the Reimbursement Payments to Company and Trademark in the order of Completion of Construction of the Public Parking Spaces in question based on certificates of occupancy presented to City for the respective Public Parking Spaces. The amount of the annual Reimbursement Payment is for Completion of Construction of each Public Parking Space during the

- Reimbursement Period and not for a cumulative or running total of Public Parking Spaces constructed within a Parking Structure.
- vi. Notwithstanding anything else contained herein to the contrary, the reimbursement for Public Parking Spaces reimbursed out of the Maximum County Reimbursement Amount shall only be paid to the Developer after reimbursement to Trademark for (i) the Ramp Reversal Costs as set forth in Section 5.9 herein, (ii) Montgomery Boulevard and Bridge (on Watters Branch) as set forth in Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization), and (iv) deceleration lanes for Bethany Drive and US 75. For illustration purposes assume that the Taxable Value of the Garden District as of January 1, 2008 is \$80,000,000.00 but there is not \$500,000.00 Dollars on deposit in the Tax Increment Fund until June 1, 2009, thus the Commencement Date would be June 1, 2009 and the first annual reimbursement date would be within 30 days after City receipt of a Payment Request following April 1, 2010. For further illustration assume that the Company had caused Completion of Construction of 200 parking spaces as of the Commencement Date, then the amount of Reimbursement Payment out of the City Tax Increment would be $200 \times \$11,440.81$ or \$2,288,162.00. Further, assume that from April 1, 2010 to April 1, 2011 that the Company has caused Completion of Construction of 50 additional Public Parking Spaces to have occurred then the amount of the next Reimbursement Payment would be $50 \times \$11,440.81$ or \$572,040.50 to be paid 30 days after receipt of a Payment Request following April 1, 2011.
 - vii. If there are insufficient funds in the Tax Increment Fund to reimburse costs per Public Parking Space within a Parking Structure, then costs are carried forward, without the accrual of any interest, to the succeeding annual payment dates until payment or termination of this Agreement whichever occurs first.

(c) The parties agree that the Reimbursement Payments shall be made solely from the Tax Increment Fund, and only to the extent that funds in excess of \$500,000.00 Dollars are initially available in the Tax Increment Fund. Notwithstanding any other provision to the contrary, in no event shall the monies on deposit in the Tax Increment Fund be used to make Reimbursement Payments under this Agreement in excess of the Maximum Reimbursement Amount. The Company and Trademark acknowledge and agree that the City is only obligated to make Reimbursement Payments to a Developer to the extent that there are available funds in the Tax Increment Fund not to exceed the Maximum Reimbursement Amount during the term of this Agreement. The obligation of the City to pay the Developer the Reimbursement Payments is limited to the extent that there are Tax Increment Funds available during the term of this Agreement in an amount not to exceed the Maximum Reimbursement Amount.

(d) The Developer agrees to look solely to the Tax Increment Fund, not the City general or other funds, for payment of the Reimbursement Payments to the extent monies in the Tax Increment Fund are available. Nothing in this Agreement shall be construed to obligate the City to approve Reimbursement Payments from any other source of funds or to otherwise require the City to pay the Developer for the Project Costs for the costs of Public Parking Spaces in the event there are insufficient funds in the Tax Increment Fund for reimbursement or in the event

TIF Zone No. 1 terminates prior to payment of the Maximum Reimbursement Amount. Upon expiration of the term of this Agreement and/or the expiration of TIF Zone No. 1, any Project Costs for the costs of Public Parking Spaces under this Agreement that remain un-reimbursed, due to lack or availability of Tax Increment Funds or due to the failure of the Developer to satisfy any precondition of reimbursement under this Agreement, shall no longer be considered Project Costs of TIF Zone No. 1, and any obligation of the City to reimburse the Developer for such costs shall automatically expire and terminate on such date.

(e) The Developer agrees and acknowledges that the City payment of Project Costs shall be interest free (except for reimbursement of capitalized construction interest) and without the accrual of any interest on any unpaid portion thereof for the reimbursement of the costs for (i) the Ramp Reversal required pursuant to Section 5.9 herein, (ii) Montgomery Boulevard and Bridge (on Watters Branch) required pursuant to Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization) required pursuant to Section 4.2 herein, (iv) deceleration lanes for Bethany Drive and US 75 required pursuant to Section 4.2 herein, and (v) the leasing of Public Parking Spaces.

(f) The Company, Trademark and City agree and acknowledge that other Taxing Units may participate in TIF Zone No. 1 by contributing funds to the Tax Increment Fund. Any funds contributed by any other Taxing Unit, shall not be included in the Maximum Reimbursement Amount and the Maximum Reimbursement Amount will increase by the amount contributed by any other Taxing Unit. Tax Increment contributed by any other Taxing Units shall be used and distributed in accordance with the Participation Agreement of such Taxing Unit.

4.2 Tax Increment Fund Priorities. Except as otherwise provided herein, the funds deposited in the Tax Increment Fund shall be applied in the following order of priority: (i) amounts pledged or required for payment of outstanding bonds or debt issued for TIF Zone No. 1 projects, if any; (ii) reasonable administrative costs of TIF Zone No. 1; (iii) maintenance of a minimum balance of \$50,000.00 in the Tax Increment Fund; (iv) with respect to payments out of the County Tax Increment only, payments to Trademark pursuant to Section 5.9 and any other priorities under the County Participation Agreement for (a) the Ramp Reversal Costs, (b) Montgomery Boulevard and Bridge (on Watters Branch) pursuant to Section 4.2, (c) traffic signalization for Bethany Drive (2 sets of signalization), and (d) deceleration lanes for Bethany Drive and US 75; and (v) Reimbursement Payments to Developers in connection with the lease of the Public Parking Spaces.

4.3 Reimbursement Limitations. The City shall not be required to make any reimbursement payments to a Developer until: (i) such time as there is at least \$500,000.00 Dollars on deposit in the Tax Increment Fund; and (ii) the Taxable Value of the Garden District is at least \$80,000,000.00;

4.4 Current Revenue. The reimbursement payments to be provided herein shall be paid solely from lawful available funds in the Tax Increment Fund. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this

Agreement, the City shall have no obligation or liability to pay any Reimbursement Payment unless and until there is at least \$500,000.00 Dollars on deposit in the Tax Increment Fund and the Taxable Value of the Garden District is at least \$80,000,000.00.

4.5 Amended Returns. In the event the Developer, its tenants and lessees and/or the tenants and lessees of the Garden District file an amended sales and use tax return, or report, or if additional Sales and Use Tax is due and owing by Developer, its tenants and lessees and/or the tenants and lessees of the Garden District, to the State of Texas, as determined by or as approved by the State of Texas affecting Sales Tax Receipts for a previous a period covered by prior reimbursement payment, then the next annual reimbursement payment shall be adjusted accordingly. City may require that as a condition precedent to payment of such adjustment, Developer shall provide City with a copy of any such amended Sales and Use Tax report or return, and the approval thereof by the State of Texas.

4.6 Refunds. The Developer shall promptly, but in no case later than thirty (30) days after becoming aware of their existence, notify the City in writing of any adjustments found, determined or made by Developer, its tenants and lessees and/or the tenants and lessees of the Garden District, the State of Texas or by an outside audit that results or will result in either a refund or the payment of additional Sales and Use Tax. Such notification shall also include the amount of any such adjustment in Sales and Use Tax Receipts. In the event the State of Texas determines that the City erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to the City exceeds the correct amount of Sales and Use Tax for a previous period for which the Developer has received a reimbursement payment the Developer shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Sales and Use Tax Receipts exceeded the corrected amount to which the City was entitled pursuant to such State of Texas determination, repay such portion of the prior reimbursement payment that reflects such excess amount or over payment of Sales and Use Tax Receipts, to the City. Alternatively the City may at its option adjust the next annual reimbursement payment immediately following such State of Texas determination to adjust for the overpayment of the reimbursement amount to the Developer. As a condition precedent to payment of such refund or adjustment, the City shall provide the Developer with a copy of such determination by the State of Texas.

Article V

Conditions to Reimbursement Payments

The obligation of the City to provide any Reimbursement Payments to a Developer shall be conditioned upon the Developer's continuing compliance and satisfaction of each of the following conditions:-

5.1 Payment Request. Developer shall, as a condition precedent to each annual Reimbursement Payment, provide the City with a Payment Request for the applicable Reimbursement Period and if a Sales Tax Report is not provided by the State as contemplated in Section 5.2 below, such documentation of Sales Tax Receipts as may reasonably be required by the City.

5.2 Sales Tax Report. As a condition to the payment of any reimbursement payment hereunder, City shall have received an annual Sales Tax Report for the previous ending calendar year, or alternative documentation as set forth herein. The City shall have no duty to calculate the Sales Tax Receipts during the term of this Agreement until such time as City has received a Sales Tax Report for the applicable Reimbursement Period or other documentation of Sales Tax Receipts reasonably acceptable to the City. At the request of the City, the Developer shall provide taxpayer identification numbers for all businesses located on Developer's portion of the Garden District as well as such additional documentation as may be reasonably requested by the City to evidence, support and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State of Texas pursuant to a direct payment permit) by the Developer, its tenants and lessees and the tenants and lessees of the applicable portion of the Garden District for the sale of Taxable Items by the Developer, its tenants and lessees and the tenants and lessees of the Garden District consummated at the applicable portion of Garden District and received by City from the State of Texas.

The City agrees to the extent allowed by law to maintain the confidentiality of the Sales Tax Report or other documentation concerning Sales Tax Receipts.

5.3 Good Standing. The Developer shall not have an uncured breach or default of this Agreement.

5.4 Construction of the Garden District. Trademark, subject to events of Force Majeure, shall cause (i) Completion of Construction of Retail Phase I to occur on or before October 1, 2012, (ii) Completion of Construction of Retail Phase I-A to occur on or before October 1, 2008, and (iii) Completion of Construction of Retail Phases II and III to occur on or before October 1, 2012. Trademark shall not be responsible for, nor shall its rights under the Development Agreement or this Agreement be subject to, the construction of any improvements to any other part of the Garden District by any specified date. Company shall not be responsible for, nor shall its rights under this Agreement be subject to, the construction of any improvements to Trademark's Retail Projects. Company shall, subject to events of Force Majeure, cause completion of construction of the Company's Angel Field Projects to occur on or before October 1, 2013.

5.5 Trademark Development. Trademark agrees that as a condition to receipt of Reimbursement Payments from the Tax Increment Fund as set forth herein that the Retail Phase I shall be developed by Trademark Property Company or other qualified developer approved by the City Council (the "Approved Developer") as required in this Section 5.5. The City agrees that Trademark is the initial Approved Developer.

5.6 Sales and Use Tax Information. The Developer shall cause its tenants and lessees, and the tenants and lessees of the Garden District to agree to provide such information as the Developer may require in order for the Developer to provide the City with required documentation concerning the Sales Tax Receipts.

5.7 City Use of Garden District Parks. The City shall have the continuing right pursuant to Section 3.5 to use any portion of the Garden District Parks for special events without charge, cost or fee at least four (4) times each calendar year for periods of not to exceed four consecutive days each time. City and Trademark agree to mutually cooperate in the scheduling of any special events to occur in any portion of the Garden District Parks within Trademark's Retail Projects to avoid any conflict with periods of high retail demand.

5.8 Right-of-Way Dedication; Montgomery Boulevard; Watters Branch Bridge.

(a) **Right-of-Way Dedication.** Trademark shall, without cost to the City, by plat or separate instrument reasonably acceptable to the City, dedicate 20 feet of street right-of-way with an additional 10 foot utility/pedestrian easement at the time of the Commencement of Construction of Retail Phase I for the future widening of US Highway 75 to facilitate eight (8) main lanes (4 in each direction) plus 2 HOV lanes (one in each direction) and a minimum of three (3) lanes of frontage road in each direction (collectively the "ROW"). The required dedication for the ROW may be modified with a Texas Department of Transportation approved schematic and right-of-way map illustrating the ultimate configuration of US Highway 75 with the prior written consent of the City Council.

(b) **Montgomery Boulevard Extension.** Trademark shall design and construct, or cause to be designed and constructed the four lane divided roadway section of Montgomery Boulevard from US Highway 75 to Watters Branch on the Land (the "Montgomery Boulevard Extension"). Trademark shall cause Commencement of Construction of the Montgomery Boulevard Extension to occur within sixty (60) days after the later of: (i) the issuance of the first permit for the development of the property abutting the Montgomery Boulevard Extension, either to the north or the south; and (ii) the date the City has acquired the necessary right-of-way for the Montgomery Boulevard Extension (the "Montgomery Boulevard Right-of-Way"). Trademark shall, cause fifty percent (50%) of the Montgomery Boulevard Right-of-Way (of at least thirty (30) feet in width), to be dedicated to the City, without costs, by plat at the time of development of the property abutting the Montgomery Boulevard Extension, or conveyed to the City by separate instrument, reasonably acceptable to the City, within sixty (60) days prior to the Commencement of Construction of the Montgomery Boulevard Extension (with the remaining fifty percent (50%) to be acquired independently by the City or contributed by a third party).

(c) **Watters Branch Bridge.** Trademark shall cause fifty percent (50%) of the estimated cost for the design and construction for a four lane bridge across Watters Branch (the "Watters Branch Bridge") as determined by the City Engineer to be escrowed with the City (the "Bridge Escrow") within sixty (60) days prior to the Commencement of Construction of the Montgomery Boulevard Extension as provided in Section 5.9 (b) above. The Bridge Escrow shall be deposited into an interest bearing account maintained by the City. The funds deposited in the Bridge Escrow, and any interest earned thereon, shall be applied in payment of the costs to design and construct the Watters Branch Bridge, including any right-of-way acquisition costs (the "Bridge Costs"). In the event the Bridge Escrow, including interest earned thereon, are insufficient to pay fifty percent (50%) of the Bridge Costs, Trademark shall pay, or cause to be

paid the difference between the Escrow amount and fifty percent (50%) of the actual final Bridge Costs within thirty (30) days after receipt of a written invoice for the same from the City. In the event the amount of the funds deposited in the Bridge Escrow, including any interest earned thereon, exceed fifty percent (50%) of the final actual final Bridge Costs, such excess shall be refunded to Trademark within thirty (30) days after City acceptance of the Watters Branch Bridge. The final Bridge Costs shall be determined by the City Engineer. Trademark shall have the right to inspect the City's records and receipts relating to the Bridge Costs during normal business hours, upon reasonable notice to the City.

5.9 Ramp Reversal. Trademark agrees to advance to the City, 1/3 of the "Ramp Reversal Costs" provided the Ramp Reversal is approved, funded and constructed by the State of Texas or its contractors; subject to reimbursement from available TIF Funds out of the County Tax Increment upon Completion of Construction of the Ramp Reversal. Trademark acknowledges and agrees that the reimbursement for the advance of Ramp Reversal Costs is subject to the availability of TIF Funds out of the County Tax Increment prior to the Expiration Date (or sooner termination of this Agreement). Notwithstanding any provision of this Agreement, the Reimbursement Payments shall be made to Trademark for Ramp Reversal Costs out of the County Tax Increment as soon as funds are available in the County Tax Increment after Trademark submits written invoices requesting such payments, which payments shall have priority over any other payments out of the County Tax Increment.

5.10 Parking Lease. Trademark shall enter into a Parking Lease with the City for the required portion of the Parking Structures in Trademark's Retail Projects, and the Company shall enter into a Parking Lease with the City for the remaining required portion of the Parking Structures. However, the requirement that Company enter into a Parking Lease with the City shall not be a condition to Trademark's rights under this Agreement or Trademark's receipt of Reimbursement Payments related to Trademark's Retail Projects. Nor shall the requirement that Trademark enter into a Parking Lease with the City be a condition to Company's rights under this Agreement or Company's receipt of Reimbursement Payments.

Article VI Termination

6.1 Unless terminated earlier as provided herein, this Agreement shall terminate on the Expiration Date. Except as limited by Section 6.5, this Agreement may be terminated prior to the Expiration Date upon any one of the following:

- (a) by written agreement of all parties;
- (b) by any party in the event another 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; provided however, that if (i) such breach is a non-monetary breach that cannot in the exercise of commercial reasonableness be cured within thirty (30) days of notice of the breach, and (ii) the party in breach commences to cure the breach within thirty (30) days of notice thereof such cure period may be extended upon the mutual agreement of the defaulting and nondefaulting parties; provided, however, Trademark shall not be

- permitted to terminate this Agreement in the event of a breach by the Company and the Company shall not be permitted to terminate this Agreement in the event of a breach by Trademark; and
- (c) by City, if Company or Trademark suffers an Event of Bankruptcy or Insolvency;
 - (d) by City, if any Impositions owed to the City or the State of Texas by Developer shall become delinquent (provided, however the Developer retains the right to timely and properly protest and contest any such Impositions);
 - (e) by the City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; and,
 - (f) by payment of the Maximum Reimbursement Amount.

6.2 In the event the Agreement is terminated by the City pursuant to Section 6.1(b), (c), (d) or (e), the City shall be relieved of any further obligation to make Reimbursement Payments to the applicable Developer. In the event the Agreement is terminated pursuant to Section 6.1(b) by the City the City may also seek specific performance against the breaching party, and/or actual damages incurred as a result of such uncured default.

6.3 In the event the Agreement is terminated by the Company or Trademark pursuant to Section 6.1(b) the terminating party may seek specific performance against the breaching party, and/or actual damages incurred as a result of such uncured default.

6.4 **Right of Offset.** The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Company or Trademark, respectively, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court. City shall not, however, offset amounts owed to Trademark under the Development Agreement against any debt lawfully due to the City from Company and the City shall not offset amounts owed to Company under the Development Agreement against any debt lawfully due to the City from Trademark.

6.5 Notwithstanding any provision of this Article VI to the contrary:

- (a) a breach by Company under this Agreement shall not be deemed a breach by Trademark absent a breach by Trademark and the City shall have no right to terminate this Agreement as to Trademark's Retail Projects in consequence of such breach by Company;
- (b) a breach by Trademark under this Agreement shall not be deemed a breach by Company absent a breach by Company and the City shall have no right to terminate this Agreement as to Company's projects in the Garden District in consequence of such breach by Trademark;

(c) an Event of Bankruptcy or Insolvency of Company shall not result in termination of this Agreement as between City and Trademark or otherwise affect the rights of Trademark under this Agreement; and

(d) an Event of Bankruptcy or Insolvency of Trademark shall not result in termination of this Agreement as between City and Company, or otherwise affect the rights of Company under this Agreement.

Article VII Miscellaneous

7.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may not be assigned without the consent of the City. Upon consent of the City, an assignment to a purchaser of any portion of the Land along with an assumption by said purchaser of all respective Developer obligations of its seller (Company or Trademark) concerning such portion of the Land, the seller shall be released from any further Developer obligations hereunder respecting such portion of the Land. Consistent with the foregoing: the City has consented to Trademark and AFOC receiving an assignment of this Agreement, and assuming obligations under this Agreement, with respect to the respective portions of the Land acquired by each from MFGD Ltd.; and MFGD, Ltd. is released from any further Developer obligations under this Agreement respecting such portions of the Land.

7.2 **Limitation on Liability.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Developer, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

7.3 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement. Developer represents and warrants to the City that Developer is a duly formed, validly existing Texas limited partnership in good standing under the laws of the State of Texas and is authorized to transact business in the State of Texas.

7.4 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Montgomery Farm Garden District, Ltd. and/or
Angel Field Office Center, Ltd.
Attention: Philip L. Williams
10005 Technology Blvd., West, Suite 151
Dallas, Texas 75220 .

With a copy to:

William S. Dahlstrom
Jackson Walker, L.L.P.
901 Main Street
Suite 6000
Dallas, Texas 75202

If intended for Trademark:

Coventry II DDR/Trademark Montgomery Farm L.P.
c/o Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attention: Executive Vice President

With a copy to:

Trademark Property Company
301 Commerce Street, Suite 3635
Fort Worth, TX 76102
Attention: Tom Carter

and

David A. Wolff
Drenner & Golden Stuart Wolff, LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701

7.5 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

7.6 Governing Law. The Agreement shall be governed by the laws of the State of Texas; 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.

7.7 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

7.8 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.9 Recitals. The recitals to this Agreement are incorporated herein.

7.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.13 Insurance. Throughout the term of this Agreement, each Developer shall, at its expense, maintain in full force and effect, the following insurance with respect to the obligations of that Developer:

- (a) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to Developer's

performance of its obligations pursuant to this Agreement with (1) a policy of commercial general liability (public) insurance with a minimum combined single limit of not less than \$1 Million Dollars per occurrence for bodily injury and property damage with an aggregate of not less than \$2 Million Dollars; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Developer, its officers, agents, and employees, and used in the performance of its obligations hereunder with a minimum of \$1 Million Dollars; and (3) statutory Worker's Compensation Insurance covering all employees involved in the performance of its obligations hereunder.

- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insured's as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) 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.
- (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 evidencing the required insurance shall be submitted prior to commencement of services.
- (e) City shall be entitled during the term of the contract to require Developer to increase the amount of required insurance. City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions. Upon such request by City, Developer shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (f) Without limiting any of the other obligations or liabilities of Developer, Developer shall require its general contractors, at the general contractor's own expense, to maintain during the term of this Agreement, the required insurance including the required certificate and policy conditions as stated herein.

7.14 Release and Indemnification.

THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF DEVELOPER PURSUANT TO THIS AGREEMENT. DEVELOPER HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS 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 SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. DEVELOPER DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE 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 ARISING FROM DEVELOPER'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF DEVELOPER, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OF THE CITY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY AND DEVELOPER, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, DEVELOPER SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

7.15 **Approval of Parties.** Whenever this Agreement requires or permits the approval or consent to be given by a party, the parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

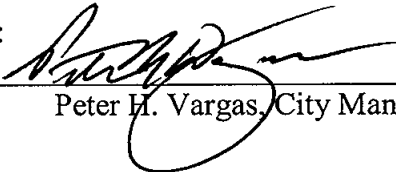
7.16 **Further Assurances.** Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

7.17 **Covenants and Representations.** Developer represents, warrants and covenants that: (i) it has the authority to enter into this Agreement and has the authority to execute and deliver this Agreement; and (ii) it has the authority to perform and comply with all of the terms, covenants and conditions to be performed and complied with by the Developer hereunder. The City represents warrants and covenants that (i) it has the authority to enter into this Agreement and has the authority to execute and deliver this Agreement; and (ii) it has the authority to perform and comply with all of the terms, covenants and conditions to be performed and complied with by the City hereunder.

Executed on this 6th day of December, 2007.

CITY OF ALLEN, TEXAS

By:


Peter H. Vargas, City Manager

Executed on this 27th day of November, 2007.

MONTGOMERY FARM GARDEN DISTRICT, LTD.

By: Emerson Farm Company General Partner, Ltd,
its general partner a Texas limited partnership
By: Emerson Farm Company GP, L.L.C., its
general partner a Texas limited liability company
By: Emerson Partners Inc., a Texas Corporation,
its sole member

By: P.L.Williams
Name: Phillip L. Williams
Title: President

ANGEL FIELD OFFICE CENTER, LTD., a Texas
limited partnership

By: Emerson Farm Company General Partner, Ltd., a
Texas limited partnership, its general partner

By: Emerson Farm Company GP, L.L.C., a
Texas limited liability company, its general
partner

By: Emerson Partners, Inc., a Texas
Corporation its sole member

By: Philip Williams
Philip Williams, President

**COVENTRY II DDR/TRADEMARK
MONTGOMERY FARM L.P.**, a Texas limited
partnership

By: Coventry II DDR Montgomery Farm Holdings
LLC, its General Partner

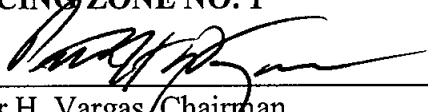
By: Coventry II DDR Montgomery Farm LLC,
its Sole Member

By: Coventry Real Estate Fund II,
L.L.C., its Managing Member

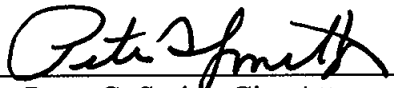
By: Coventry Fund II Partners,
L.L.C., its Managing
Member

By: Peter Henkel
Name: Peter Henkel
Title: President

**CITY OF ALLEN TAX INCREMENT
FINANCING ZONE NO. 1**

By: 
Peter H. Vargas, Chairman

Approved as to Form:

By: 
Peter G. Smith, City Attorney
(PGS:tc 11/15/07 21707)

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 6th day of December, 2007
by Peter H. Vargas, being the City Manager of the City of Allen, on behalf of said city.

Connie Schofield
Notary Public, State of Texas



My Commission expires: 9-16-09

COMPANY'S ACKNOWLEDGMENT

STATE OF TEXAS

§

§

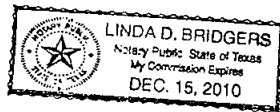
COUNTY OF COLLIN

§

This instrument was acknowledged before me on the 27th day of November, 2007, by Phillip L. Williams, President of Emerson Partners Inc., a Texas Corporation the sole member of Emerson Farm Company GP, L.L.C., a Texas limited liability company the general partner of Emerson Farm Company General Partner, Ltd a Texas limited partnership the general partner of Montgomery Farm Garden District Ltd. on behalf of said partnership.

Linda D. Bridgers

Notary Public, State of Texas



My Commission expires: 12-15-2010

AFOC'S ACKNOWLEDGMENT

STATE OF TEXAS

§

§

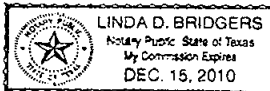
COUNTY OF COLLIN

§

This instrument was acknowledged before me on the 27th day of November, 2007, by Philip Williams, President of Emerson Partners Inc., a Texas corporation, on behalf of said corporation in its capacity as the sole member of Emerson Farm Company GP, L.L.C., a Texas limited liability company, on behalf of said limited liability company in its capacity as the general partner of Emerson Farm Company General Partner, Ltd., a Texas limited partnership, on behalf of said limited partnership in its capacity as the general partner of Angel Field Office Center, Ltd., a Texas limited partnership, on behalf of said partnership.

Linda D. Bridgers

Notary Public in and for the State of Texas



LINDA D. BRIDGERS

[Printed name]

My Commission expires:

12-15-2010

TRADEMARK'S ACKNOWLEDGMENT

STATE OF New York §
COUNTY OF New York §

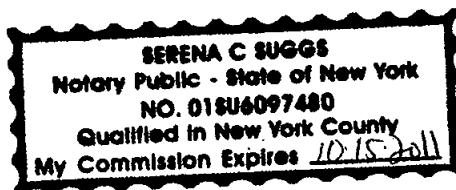
This instrument was acknowledged before me on the 5th day of December, 2007, by Peter Henkel, President of Coventry Fund II Partners, L.L.C., Managing Member of Coventry Real Estate Fund II, L.L.C., Managing Member of Coventry II DDR Montgomery Farm LLC, Sole Member of Coventry II DDR Montgomery Farm Holdings LLC, General Partner of Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership, on behalf of said limited liability companies and said limited partnership.

[SEAL]

Serena C. Suggs
Notary Public, State of New York

My Commission Expires:
10-15-2011

Serena C. Suggs
(Printed Name of Notary Public)



BOARDS' ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the 6th day of December, 2007 by Peter H. Vargas, being the chairman of the City of Allen Tax Increment Financing Zone No. 1, on behalf of said tax increment financing zone.

Connie Schofield
Notary Public, State of Texas

My Commission expires:

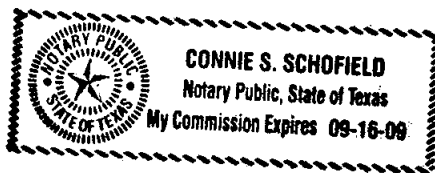


Exhibit "A"
Legal Description of the Land

TRACT I

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, the Michael See Survey, Abstract No. 543, and the Rufus Sewell Survey, Abstract No. 875, being located in the City of Allen, Collin County, Texas, and being part of that tract of land known as Angel Field East and part of that tract of land known as Angel Field West described in Special Warranty Deed to Emerson Farm Company, LTD., as recorded in Volume 5034, Page 00158, County Clerks File Number 2001-0136720, Deed Records, Collin County, Texas (D.R.C.C.T), all of that tract described in deed to Bethany Corner, Ltd. as recorded in Volume 5565, Page 004511, County Clerks File Number 2003024133, D.R.C.C.T., and all of that tract of land known as Proposed Bel Air Drive and being more particularly described as follows:

BEGINNING at a point for the intersection of the south right-of-way line of Bethany Drive (a variable width right-of-way) as recorded in Volume 3918, Page 01167, D.R.C.C.T., with the westerly right-of-way line of U.S. Highway. 75 Central Expressway (a variable width right-of-way), said point also being the most northerly northeast corner of said Bethany Corner;

THENCE South 22 degrees 25 minutes 37 seconds East, along said westerly right-of-way line, a distance of 19.73 feet to a point for corner;

THENCE South 00 degrees 44 minutes 48 seconds West, continuing along said westerly right-of-way line, a distance of 193.24 feet to a point for corner;

THENCE South 06 degrees 48 minutes 27 seconds West, continuing along said westerly right-of-way line, a distance of 99.22 feet to a point for corner;

THENCE South 13 degrees 05 minutes 02 seconds West, continuing along said westerly right-of-way line, a distance of 223.84 feet to a point for corner;

THENCE South 07 degrees 10 minutes 22 seconds West, continuing along said westerly right-of-way line, a distance of 237.76 feet to a point for corner;

THENCE South 13 degrees 14 minutes 53 seconds West, continuing along said westerly right-of-way line, a distance of 1,036.93 feet to a point for corner;

THENCE North 88 degrees 17 minutes 33 seconds West, continuing along said westerly right-of-way line, at a distance of 96.30 feet passing a point for the southwest corner of that tract of land described as Tract 1, as recorded in Volume 4783, Page 2013, D.R.C.C.T., and continuing along said westerly right-of-way line for a total distance of 125.51 feet to a point for corner; THENCE South 00 degree 52 minutes 46 seconds West, continuing along said westerly right-of-way line, a distance of 46.98 feet to a point for corner;

THENCE South 37 degrees 35 minutes 41 seconds East, continuing along said westerly right-of-way line, at a distance of 46.08 feet passing a point for the southwest corner of that tract of land described as Tract 2, as recorded in Volume 4783, Page 2013, D.R.C.C.T., and continuing along said westerly right-of-way line for a total distance of 145.73 feet to a point for corner;

THENCE South 13 degrees 12 minutes 33 seconds West, continuing along said westerly right-of-way line, at a distance of 309.27 feet passing a point for the most southerly corner of said Tract 2, and continuing along said westerly right-of-way line for a total distance of 320.80 feet to a point for corner;

THENCE North 88 degrees 51 minutes 08 seconds West, departing said westerly right-of-way line and along the southerly line of said Bethany Corner, a distance of 591.69 feet to a point in Watters Branch, also known as Little Rowlett Creek, for the southwest corner of said Bethany Corner;

THENCE North 22 degrees 35 minutes 11 seconds East, departing said southerly line and along the west line of said Bethany Corner, a distance of 112.42 feet to a point for corner;

THENCE North 26 degrees 00 minute 37 seconds West, along said west line of Bethany Corner, a distance of 90.60 feet to a point for corner;

THENCE North 13 degrees 50 minutes 24 seconds East, along said west line of Bethany Corner, a distance of 63.08 feet to a point for corner;

THENCE North 38 degrees 05 minutes 46 seconds East, along said west line of Bethany Corner, a distance of 76.80 feet to a point for corner;

THENCE North 07 degrees 54 minutes 51 seconds East, along said west line of Bethany Corner, a distance of 66.45 feet to a point for corner;

THENCE North 09 degrees 31 minutes 21 seconds West, along said west line of Bethany Corner, a distance of 95.41 feet to a point for corner;

THENCE North 35 degrees 11 minutes 40 seconds West, along said west line of Bethany Corner, a distance of 148.76 feet to a point for corner;

THENCE North 23 degrees 31 minutes 00 seconds West, along said west line of Bethany Corner, a distance of 264.82 feet to a point for corner;

THENCE North 01 degree 55 minutes 19 seconds West, along said west line of Bethany Corner, a distance of 126.78 feet to a point for the common southeast corner of said Angel Field East and northeast corner of that tract of land described in deed to Southwest Guaranty Trust Company, Accepting Trustee of the William S. Montgomery Family Trust 1994 as recorded in County Clerk's File Number 1996-0105327, D.R.C.C.T.;

THENCE North 88 degrees 18 minutes 25 seconds West, departing said Watters Branch and along the common south line of said Angel Field East and north line of said Southwest Guaranty Trust tract, at a distance of 1,281.58 feet passing a point for the common southwest corner of said Angel Field East and southeast corner of said Proposed Bel Air Drive, in all a total distance of 1,337.58 feet to a point for the common southwest corner of said Angel Field East and southeast corner of said Angel Field West;

THENCE North 88 degrees 17 minutes 09 seconds West, along the common line between said Angel Field West and said Southwest Guaranty Trust Company tract, a distance of 34.00 feet to a point for corner;

THENCE North 02 degrees 20 minutes 30 seconds East, departing said common line and over and across said Angel Field West, a distance of 301.43 feet the point of curvature of a circular curve to the right having a radius of 1,095.00 feet and whose chord bears North 11 degrees 18 minutes 22 seconds East a distance of 341.25 feet;

THENCE in a Northerly direction, continuing over and across said Angel Field West and along said circular curve to the right, at an arc distance of 314.61 feet, passing the common east line of Angel Field West and west line Angel Field East, then continuing across said Angel Field East, through a central angle of 17 degrees 55 minutes 44 seconds for a total arc distance of 342.65 feet to the point of tangency of said circular curve;

THENCE North 20 degrees 16 minutes 14 seconds East, continuing over and across said Angel Field East, a distance of 112.68 feet to the point of curvature of a non-tangent circular curve to the left having a radius of 1,040.75 feet and whose chord bears North 15 degrees 22 minutes 49 seconds East a distance of 171.35 feet;

THENCE in a Northeasterly direction, along said circular curve to the left, through a central angle of 09 degrees 26 minutes 38 seconds, an arc distance of 171.54 feet to the point of curvature of a non-tangent circular curve to the left having a radius of 312.00 feet and whose chord bears North 07 degrees 00 minutes 43 seconds East a distance of

51.64 feet;

THENCE in a Northerly direction, along said circular curve to the left, through a central angle of 09 degrees 29 minutes 37 seconds, an arc distance of 51.70 feet to a point for the end of said circular curve;

THENCE North 00 degrees 13 minutes 04 seconds East, a distance of 280.02 feet to a point for corner;

THENCE North 45 degrees 57 minutes 32 seconds West, a distance of 34.63 feet to a point on a circular curve to the right having a radius of 3,152.01 feet and whose chord bears North 88 degrees 01 minute 03 seconds East a distance of 38.20 feet, said point being in said south right-of-way line of Bethany Drive;

THENCE in an Easterly direction, along said south right-of-way line and said circular curve to the right, through a central angle of 00 degrees 41 minutes 40 seconds, an arc distance of 38.20 feet to the point of tangency;

THENCE North 88 degrees 21 minutes 53 seconds East, continuing along said south right-of-way line, at a distance of 121.86 passing a point for the common corner of said Proposed Bel Air Drive and said Angel Field East, in all a total distance of 301.05 feet to the point of curvature of a circular curve to the right having a radius of 2,466.49 feet and whose chord bears North 89 degrees 48 minutes 32 seconds East a distance of 124.31 feet;

THENCE in an Easterly direction, continuing along said south right-of-way line and along said circular curve to the right, through a central angle of 02 degrees 53 minutes 17 seconds, an arc distance of 124.33 feet to a point for corner;

THENCE South 88 degrees 44 minute 50 seconds East, continuing along said south right-of-way line, a distance of 154.28 feet to a point for the most easterly corner of that tract of land described in Right-of-Way Dedication Deed to the City of Allen, Texas as recorded in Volume 5093, Page 02663, D.R.C.C.T.;

THENCE South 66 degrees 09 minutes 20 seconds East, along said south right-of-way line, a distance of 11.97 feet passing a point for the most easterly corner of said Right-of-Way Dedication Deed, in all a total distance of 149.58 feet to a point for corner;

THENCE South 88 degrees 45 minutes 46 seconds East, continuing along said south right-of-way line, at a distance of 73.58 feet passing a point for corner in said Watters Branch for the common most easterly northeast corner of said Angel Field East and most westerly northwest corner of said Bethany Corner, in all a total distance of 200.00 feet to a point for corner;

THENCE North 54 degrees 01 minute 27 seconds East, continuing along said south right-of-way line, a distance of 101.03 feet to a point for corner;

THENCE South 88 degrees 44 minutes 42 seconds East, continuing along said south right-of-way line, a distance of 1352.21 feet to the POINT OF BEGINNING AND CONTAINING 3,721,118 square feet or 85.43 acres of land, more or less.

This description is not part of a signed and sealed survey. This description does not represent a survey performed on the ground and is not intended to be used as a conveyance.

TRACT II

BEING a tract of land situated in the T.G. Kennedy Survey, Abstract No. 500, in the City of Allen, Collin County, Texas, and being all of that tract of land described as Green Property, Tract A and Tract B in Special Warranty Deed to Emerson Farm Company, LTD., as recorded in Volume 5034, Page 00158, County Clerks File Number 20010136720, of the Deed Records of Collin County, Texas (D.R.C.C.T), and being more particularly described as follows:

BEGINNING at a point for the northeast common corner of said Tract A and southeasterly corner of that tract of land described in deed to Marian M. Montgomery by Special Warranty Deed as recorded in County Clerks File Number 1997-0065172, D.R.C.C.T., said point also being on the west right-of-way line of U.S. Highway 75 Central Expressway (a variable width right-of-way);

THENCE South 13 degrees 12 minutes 33 seconds West, along the east line of said Tract A and said west right-of-way line, a distance of 975.14 feet to a point for the common southeast corner of said Tract A and northeasterly corner of that tract of land described in deed to Marian M. Montgomery as recorded in County Clerks File Number 19970051411, D.R.C.C.T.;

THENCE South 88 degrees 18 minutes 08 seconds West, departing said west right-of-way line and along the south line of said Tract A, a distance of 123.54 feet to a point for corner;

THENCE North 15 degrees 53 minutes 19 seconds West, departing said Marian M. Montgomery Tract and along the west line of said Tract A, a distance of 40.00 feet to a point for a common southwesterly corner of said Tract A and the southernmost corner of said Tract B;

THENCE North 81 degrees 16 minutes 57 seconds West, along the south line of said Tract B, a distance of 153.12 feet to a point for corner;

THENCE North 24 degrees 30 minutes 42 seconds West, a distance of 98.09 feet to a point for corner;

THENCE North 13 degrees 23 minutes 02 seconds West, a distance of 242.79 feet to a point for corner;

THENCE North 15 degrees 39 minutes 02 seconds East, a distance of 377.51 feet to a point for corner;

THENCE North 02 degrees 21 minutes 30 seconds East, a distance of 214.02 feet to a point for the northwest corner of said Tract B;

THENCE North 89 degrees 34 minutes 25 seconds East, along the north line of said Tract B, a

distance of 84.91 feet to a point for the common corner of said Tract B and Tract A;

THENCE South 88 degrees 18 minutes 27 seconds East, along said the north line of said tract A, a distance of 410.14 feet to the POINT OF BEGINNING AND CONTAINING 406,530 square feet or 9.33 acres of land, more or less.

This description is not part of a signed and sealed survey. This description does not represent a survey performed on the ground and is not intended to be used as a conveyance.

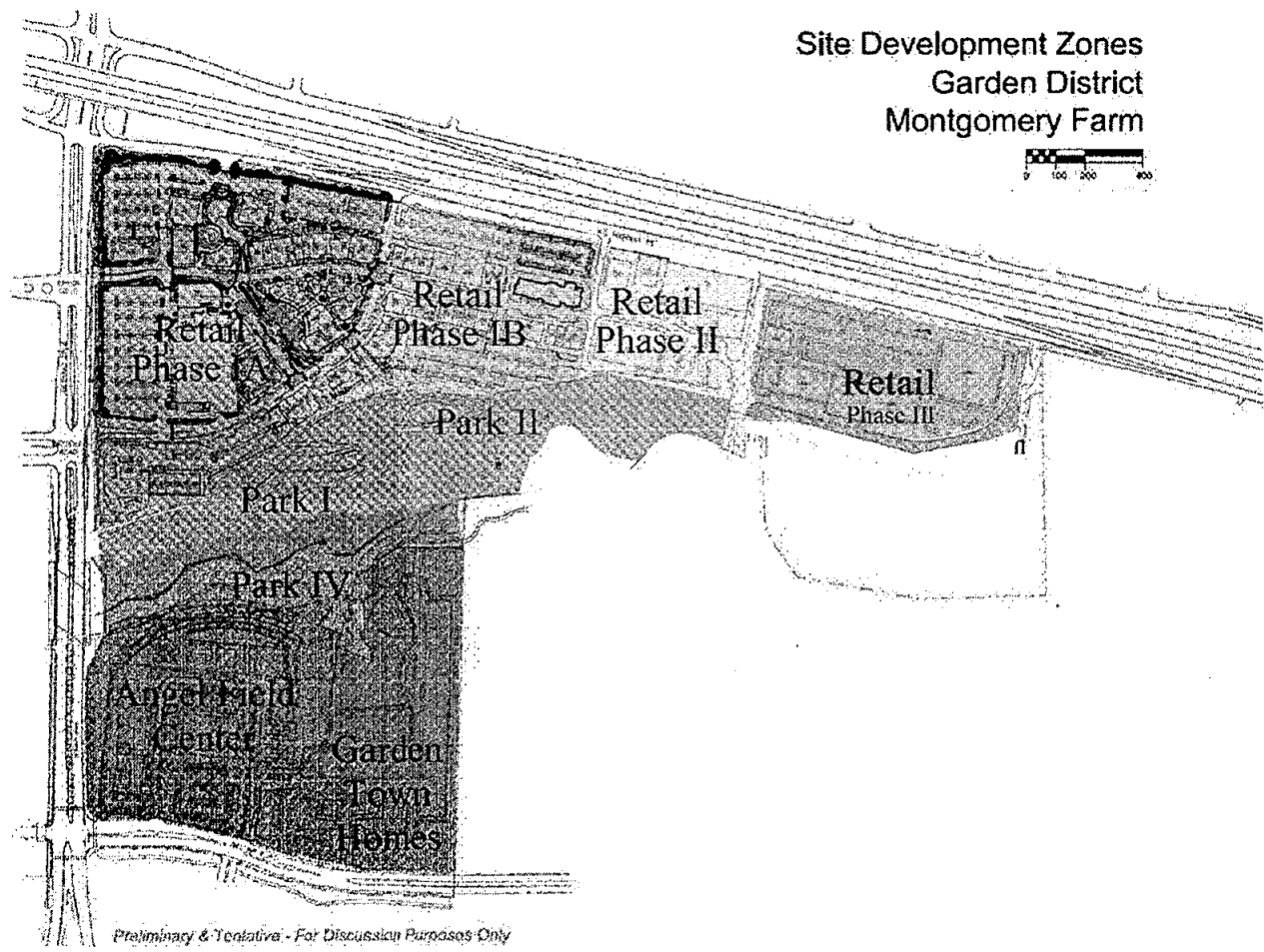
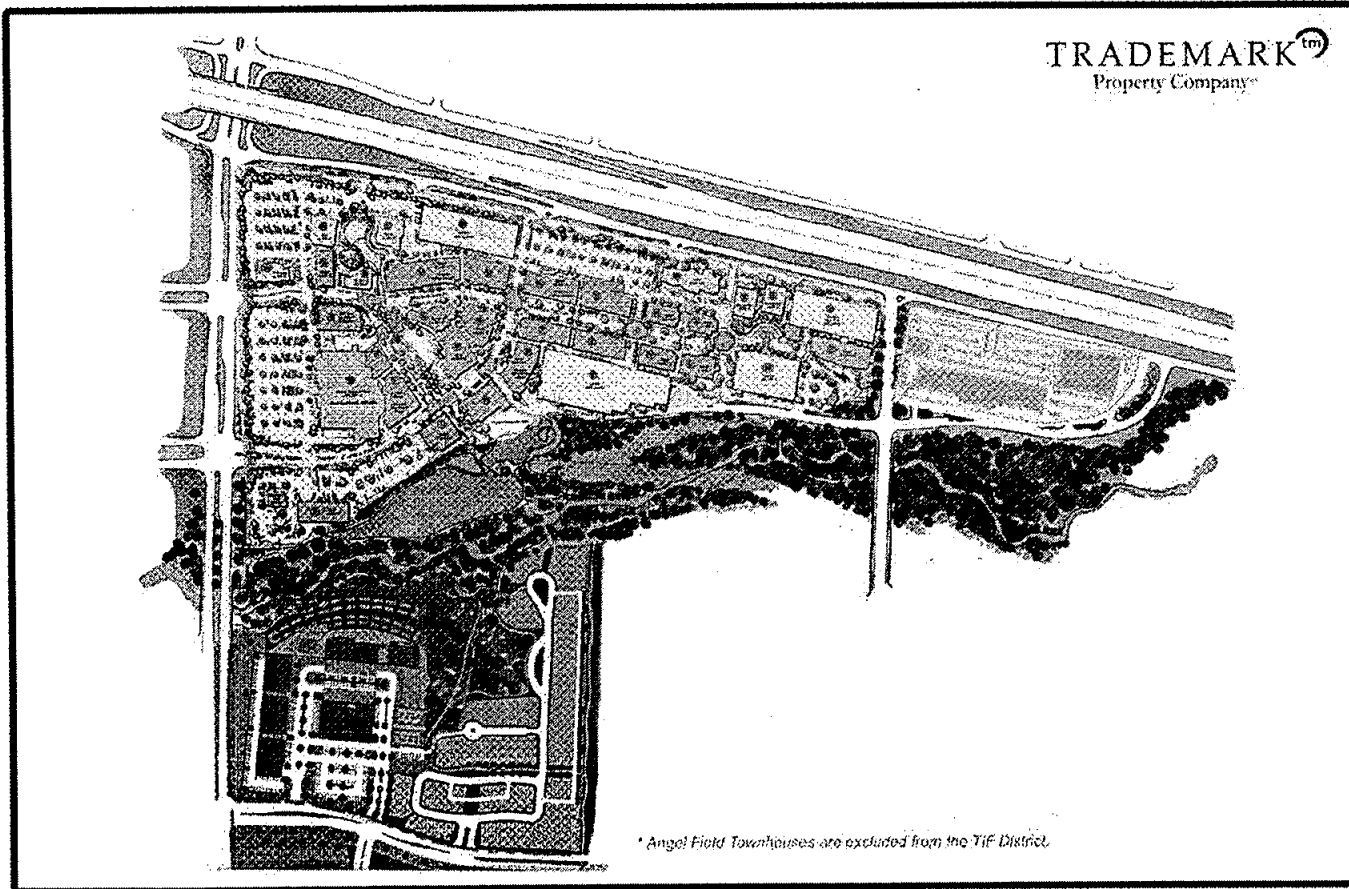


Exhibit B: Proposed Development Map

Exhibit C: Concept Plan for Garden District



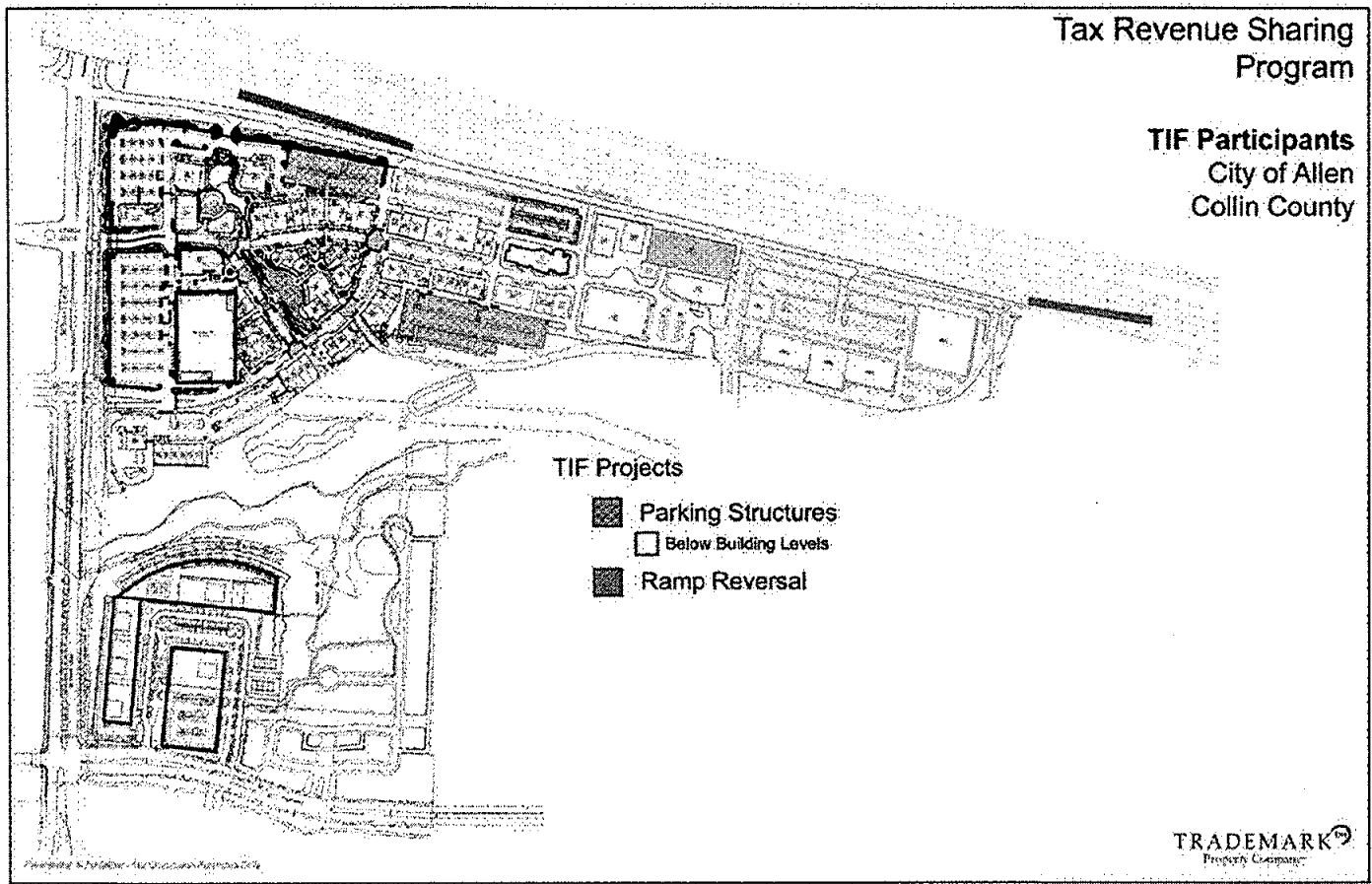


Exhibit D: Parking Structures & Infrastructure Improvements

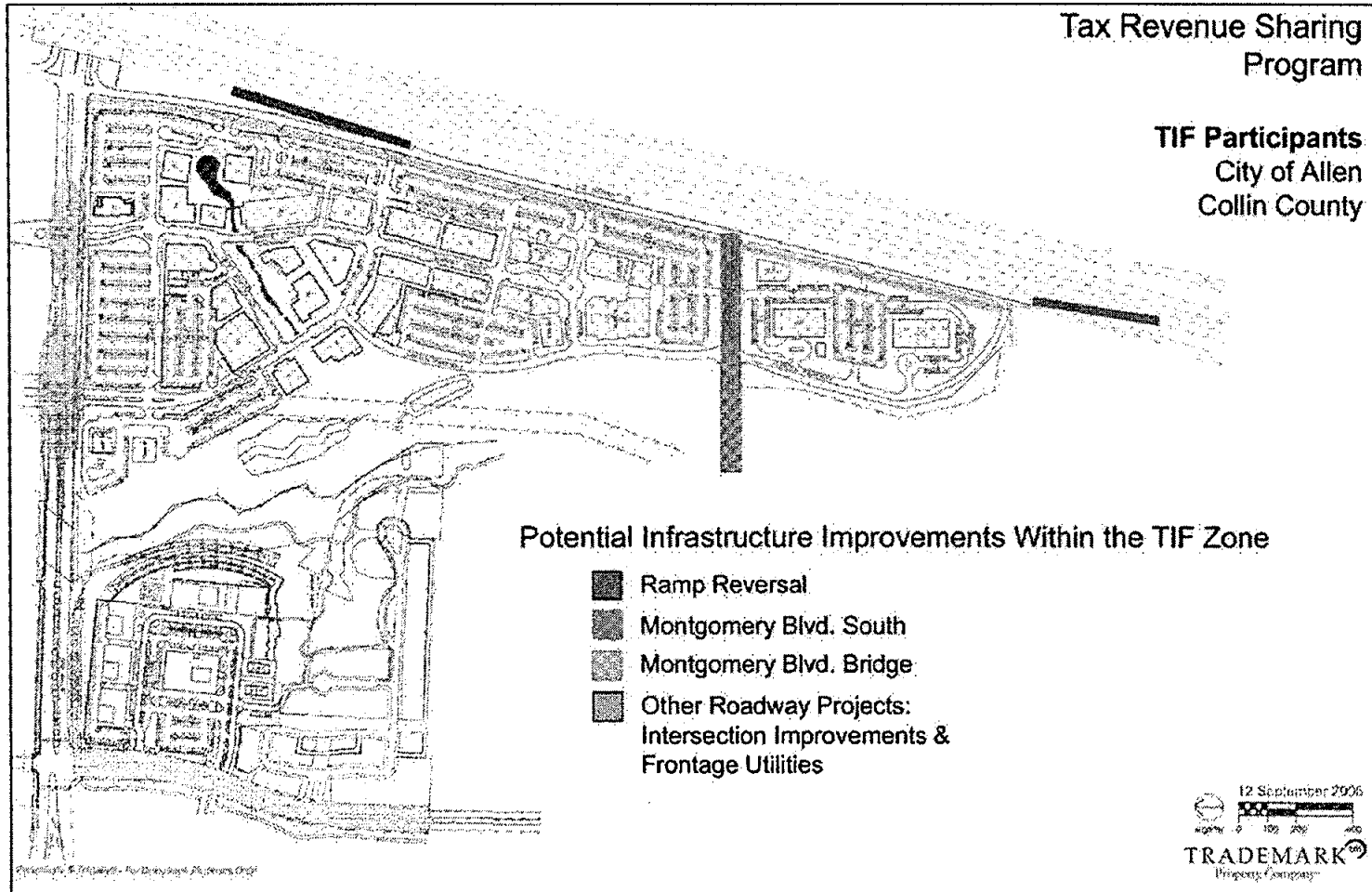


Exhibit D: (cont)

Exhibit "F"

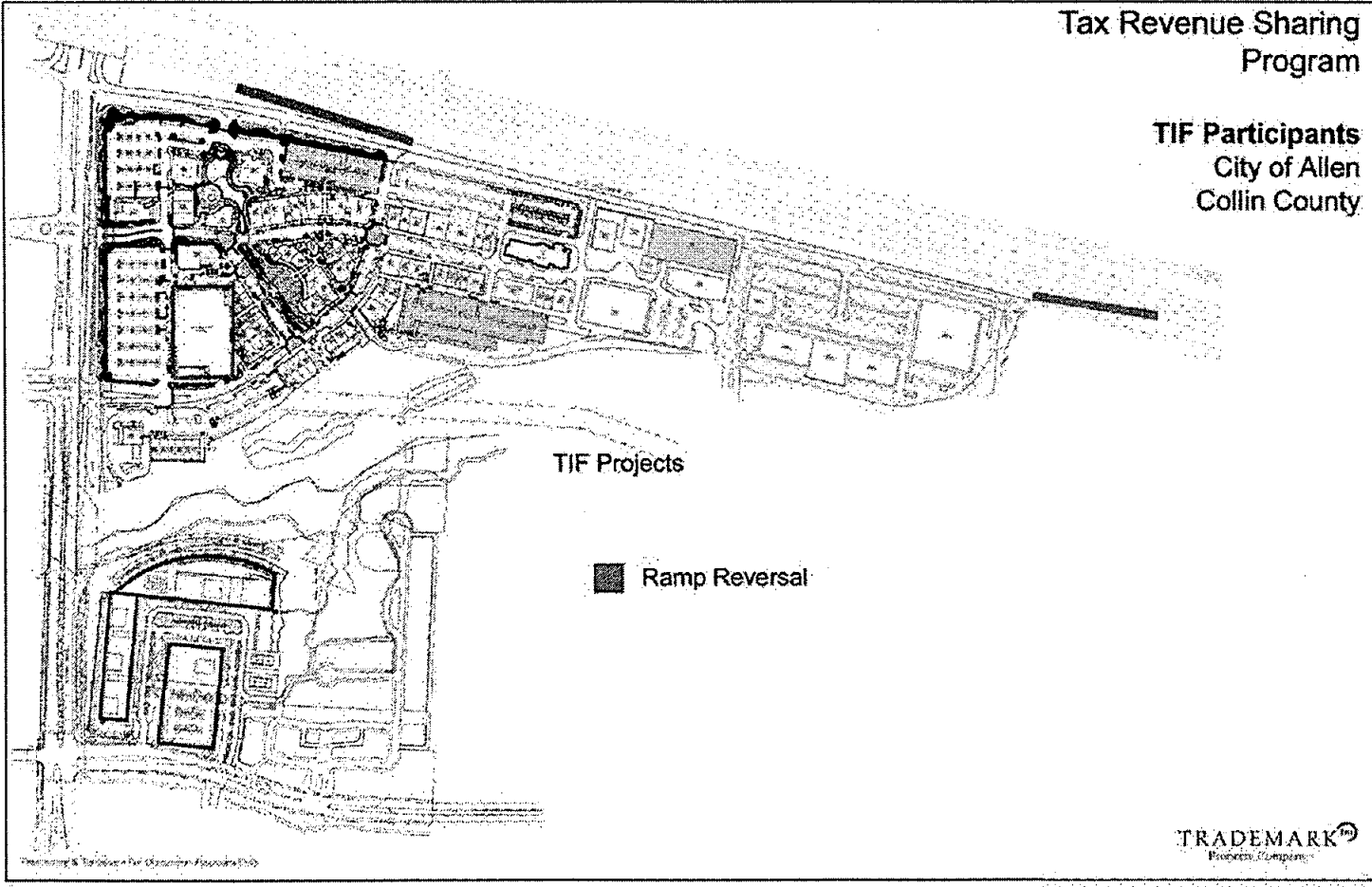


Exhibit E: Ramp Reversal Depiction

Parking Lease
PARKING LEASE AGREEMENT

1. DEFINITIONS AND BASIC PROVISIONS.
 - A. Date of Lease:
 - B. "Landlord": -[Developer's Name]
 - C. Address of Landlord: [Developer's Address]
 - D. "City": City of Allen
 - E. Address of City: 305 Century Parkway
Allen, Texas 75013

Each of the definitions and basic provisions of this Lease shall be construed in conjunction with the reference thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the definitions and basic provisions shall be construed to incorporate each term set forth under such definition or provision.

"City" shall mean the City of Allen, Collin County, Texas.

"City TIF Reimbursement Agreement" shall mean that certain Amended and Restated Development Agreement by and between the City and Montgomery Farm Garden District Ltd., Angel Field Office Center, Ltd., and Coventry II DDR/Trademark Montgomery Farm L.P., dated October __, 2007.

"Completion of Construction" shall mean that (i) the construction of the respective phase of development, public improvement, Infrastructure or Improvements, as the case may be, on the Land has been substantially completed; and (ii) the City has issued, if and as applicable, either a certificate of substantial completion for the respective phase of development, public improvement, Infrastructure, or a certificate of occupancy for the respective Improvements, as the case may be.

"Effective Date" shall mean the last date of execution hereof.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party'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 such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean the earlier of: (i) January 1, 2031; and (ii) the date TIF Zone No. 1 terminates.

“Financing Plan” shall mean the reinvestment zone financing plan for TIF Zone No. 1 as approved by the City Council for the City.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

“Garden District” shall collectively mean the Land, Trademark Retail Projects, Company's Angel Field Projects, the Parking Structures, and the Garden District Parks, as those terms are defined herein or in the City TIF Reimbursement Agreement, and such other uses as may be approved by the City Council.

“Garden District Parks Agreement” shall mean for any portion of the Garden District Parks to which title is not held by the City that certain agreement that grants the City, its citizens and patrons the perpetual and irrevocable right to use such portion of the Garden District Parks, without charge or fee, in the same manner as a City owned public park; and which grants the City a perpetual and irrevocable license, lease or right to use the Garden District Parks at least four (4) times each calendar year for special events for periods of at least four (4) consecutive calendar days for each period of use.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Landlord with respect to the Land or Improvements or any property or any business owned by Landlord within the City.

“Improvements” shall mean the Parking Structures.

“Land” shall mean the real property described in Exhibit “A”.

“Landlord” shall mean [Developer]

“Leased Premises” shall mean the parking spaces in the Parking Structures upon Completion of Construction thereof.

"Parking Structures" shall mean one or more multi-level structures (above and below ground) designed for the public parking of motor vehicles, and including parking spaces for any or all commercial and residential uses, and containing a minimum of 1,985 structured parking spaces within the Garden District as a whole and a minimum of 1,667 structured parking spaces within Trademark's Retail Projects, and containing other ancillary facilities such as reasonably required landscaping, driveways and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit), but excluding non-structured surface parking.

"Project Plan" shall mean the project plan for the development or redevelopment of TIF Zone No. 1 as approved by the City.

"Retail Phase I" shall mean the development of approximately 350,000 square feet of space for retail uses, approximately 75,000 square feet of space for hotel uses and approximately 310,000 square feet of space for residential uses on the Retail Phase I Land as depicted in Exhibit "B" (and other ancillary facilities such as reasonably required parking and landscaping, driveways, and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit).

"Tax Increment" means the total amount of property taxes by a Taxing Unit for the year on the Captured Appraised Value of real property taxable by a Taxing Unit and located in TIF Zone No. 1.

"Tax Increment Base" means the total appraised value of all real property taxable by a Taxing Unit and located in the TIF Zone No. 1 for 2005, which is the year in which TIF Zone No. 1 was designated-, minus the 2005 value attributable to any property subsequently excluded from the boundaries of TIF Zone No. 1.

"Tax Increment Fund" shall mean the funds deposited by the City and any Taxing Unit in the tax increment fund for TIF Zone No. 1.

"Taxing Unit" shall mean Collin County, Texas and any other political subdivision or special district that taxes real property within TIF Zone No. 1 that enters into a contract with the City to contribute to the Tax Increment Fund.

"City" shall mean the City of Allen, Collin County, Texas.

"TIF Zone No. 1" shall mean City of Allen Tax Increment Financing Zone No. 1.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

1. **GRANTING CLAUSE.** Landlord, in consideration of the covenants and agreements to be performed by City and upon the terms and conditions hereinafter stated, does

hereby lease, demise and let unto City, and City does hereby lease from Landlord, the Leased Premises to have and to hold for the Term of this Lease.

2. RENTAL. As rental for the Lease and use of the Leased Premises, City will pay Landlord or Landlord's assigns, at the address of Landlord specified herein, the Reimbursement Payments in accordance with the City TIF Reimbursement Agreement. Rental shall be paid only from current funds in the TIF Fund and only to the extent such funds are on deposit in the TIF Fund. Landlord shall look solely to the TIF Fund, not City's general funds or City Bond Funds, for satisfaction of rental obligations. Nothing in this Lease shall be construed to require City to approve rental payments from any source of City funds other than the TIF Fund, or require City to issue any debt. Upon the expiration of the term of the TIF Zone No. 1, as provided by the City Ordinance creating same, as amended, any portion of the Rental that remains unpaid due to the lack of availability of TIF Funds shall no longer be considered a project cost of the TIF Zone No. 1, and City's obligation to any or all of the Rental that remains unpaid shall automatically expire on such date.

3. USE. City shall allow Landlord to use the Leased Premises for public, City, occupant, and other parking purposes in connection with and in support of the Garden District, including but not limited to, use by members of the general public who are customers of the Garden District or use by residents, including the reservation of portions of the Leased Premises for exclusive parking for residents, provided that such reservations do not exceed 30% of the total number of spaces otherwise open and available to the public. City shall not impose any charge for parking without the approval of Landlord and shall cause and allow Landlord to keep such parking open and available for use during all hours that the Garden District, or any part thereof, is open for business, use, and/or occupancy, including for at least one hour before and after Retail Phase I opens or closes.

4. SERVICES TO BE PROVIDED BY LANDLORD. Subject to the rules and regulations hereinafter referred to, Landlord shall furnish City, at Landlord's expense, while City is using the Leased Premises and is not in default hereunder, the following services during the Term of this Lease:

- (i) Cleaning and refuse removal services in and about the Leased Premises, consistent with a first class parking structure in the Dallas Metropolitan area;
- (ii) All utilities associated with operations on the Leased Premises; and
- (iii) Operation and maintenance of the Leased Premises in a manner consistent with the manner in which a similar parking facilities located at first class retail and mixed use developments in the metropolitan Dallas, Texas area are operated and maintained.

5. REPAIR AND MAINTENANCE. Landlord shall, at Landlord's own cost and expense, make necessary repairs of any damage to the Leased Premises or any approaches thereto.

6. FIRE AND OTHER CASUALTY. In the event of total or partial destruction of the Leased Premises by fire or other peril insured against under the "All Risk" coverage provided by Landlord, Landlord agrees to promptly restore or repair the Leased Premises at Landlord's expense, either through the use of insurance proceeds or separate funds.

7. HANDICAPPED ACCESSIBILITY. Landlord and City acknowledge that, Landlord shall be responsible for the design and operation of the Leased Premises to comply with the provisions of the Americans with Disabilities Act of 1990 and the Texas Elimination of Architectural Barriers Act, each as amended from time to time, and all regulations and guidelines issued by authorized agencies with respect thereto.

8. OPERATING EXPENSES. Landlord shall be responsible for all Operating Expenses associated with all the Leased Premises. For purposes of this Agreement, the term "Operating Expenses" shall mean all expenses, costs and disbursements of every kind and nature that are customary and usual in connection with the ownership, operation, maintenance, repair, replacement, protection and security of first class parking structures in the Dallas, Texas metropolitan area and which Landlord shall pay or become obligated to pay because of or in connection with the ownership, operation, maintenance, repair, replacement, protection and security of the Parking Structure, including, without limitation, the following:

- (i) Salaries and wages of all employees engaged in the operation, maintenance and security of the Parking Structure, including taxes, insurance and benefits (including pension, retirement and fringe benefits) relating thereto;
- (ii) Cost of all supplies and materials used in the operation, maintenance and security of the Parking Structure;
- (iii) Cost of all water, power and sewage service supplied to, and all heating, lighting, air conditioning and ventilating of, the Parking Structure;
- (iv) Cost of all maintenance and service agreements for the Parking Structure and the equipment therein, including, without limitation, security, janitorial service, landscaping, fire protection, sprinklers, and elevator maintenance;
- (v) Cost of all insurance relating to the Parking Structure, including the cost of casualty, and liability insurance applicable to the Parking Structure and Landlord's personal property used in connection therewith;

- (vi) All taxes, assessments and governmental charges (foreseen or unforeseen, general or special, ordinary or extraordinary) whether federal, state, county or municipal and whether levied by taxing districts or authorities presently taxing the Parking Structure or by others subsequently created or otherwise, and any other taxes and assessments attributable to the Parking Structure or its operation, and all taxes of whatsoever nature that are imposed in substitution for or in lieu of any of the taxes, assessments or other charges herein defined.
- (vii) Cost of repairs and general maintenance, including, without limitation, reasonable depreciation charges applicable to all equipment used in repairing and maintaining the Parking Structure;
- (viii) Cost of capital improvement items, including installation thereof, which are acquired primarily for the purpose of reducing Operating Expenses; and
- (ix) Management fees paid by Landlord to third parties or reasonable management fees (not to exceed the then prevailing market rate for management of high quality parking structures comparable to and located in the same general geographical area of the Parking Structure paid to management companies owned by, or management divisions of, Landlord.
- (x) All other cost and expense of maintaining and operating the Leased Premises as provided for in the City TIF Reimbursement Agreement.

9. TAXES. Landlord shall be responsible for the payment of all taxes levied or assessed against the Leased Premises including any assessment against the City's leasehold interest created hereby, and shall seek no reduction in valuation based on the demise of the Leased Premises to City.

10. NOTICE. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager

City of Allen
305 Century Parkway
Allen, Texas 75013

If intended for Landlord:

[Developer's address]

With a copy to:

William S. Dahlstrom
Jackson Walker, L.L.P.
901 Main Street
Suite 6000
Dallas, Texas 75202

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

11. ENTIRE AGREEMENT. This Agreement, together with the City TIF Reimbursement Agreement, is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided or referred to in the City TIF Reimbursement Agreement, in this Agreement or in any Exhibits attached hereto.

12. GOVERNING LAW. The Agreement shall be governed by the laws of the State of Texas; 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.

13. AMENDMENT. This Agreement may be amended by the mutual written agreement of the parties.

14. 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

15. RECITALS. The recitals to this Agreement are incorporated herein.

16. COUNTERPARTS. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

17. EXHIBITS. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

18. SURVIVAL OF COVENANTS. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

19. INSURANCE. Throughout the term of this Agreement, Landlord shall, at its expense, maintain in full force and effect, the following insurance:

- (a) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Landlord's performance of its obligations pursuant to this Agreement with (1) a policy of commercial general liability (public) insurance with a minimum combined single limit of not less than \$1 Million Dollars per occurrence for bodily injury and property damage with an aggregate of not less than \$2 Million Dollars; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by the Landlord, its officers, agents, and employees, and used in the performance of its obligations hereunder with a minimum of \$1 Million Dollars; and (3) statutory Worker's Compensation Insurance covering all employees involved in the performance of its obligations hereunder.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insured's as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) 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.
- (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 evidencing the required insurance shall be submitted prior to commencement of services.

- (e) City shall be entitled during the term of the contract to require the Landlord to reasonably increase the amount of required insurance. City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions. Upon such request by City, Landlord shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (f) Without limiting any of the other obligations or liabilities of Landlord, the Landlord shall require its general contractor, at the general contractor's own expense, to maintain during the term of this Agreement, the required insurance including the required certificate and policy conditions as stated herein.

20. RELEASE AND INDEMNIFICATION.

THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE LANDLORD PURSUANT TO THIS AGREEMENT. THE LANDLORD HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS 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 SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. THE LANDLORD DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE 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 ARISING FROM THE LANDLORD'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF THE LANDLORD, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OF THE CITY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY AND LANDLORD, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL

IMMUNITY AVAILABLE TO THE CITY AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, THE LANDLORD SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT THE LANDLORD'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

21. CONTINGENCIES. This Agreement is contingent upon: (i) the Landlord and the Allen Community Development Corporation entering into the ACDC Agreement; (ii) the Landlord and the City entering into the Garden District Parks Agreement for any portion of the Garden District Parks to which the Landlord holds title; (iii) the Allen Economic Development Corporation and the Landlord entering into the AEDC Agreement; and (iv) the City and Landlord have entered into the City TIF Reimbursement Agreement.

22. APPROVAL OF PARTIES. Whenever this Agreement requires or permits the approval or consent to be given by a party, the parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

23. FURTHER ASSURANCES. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

EXECUTED on this _____ day of _____, 2007.

LANDLORD:

[DEVELOPER'S SIGNATURE BLOCK]

EXECUTED on this _____ day of _____, 2007.

CITY:

CITY OF ALLEN, TEXAS

By:

Name: Peter Vargas

Title:

Return To:
CITY SECRETARY
City of Allen
One Allen Civic Plaza
Allen, Texas 75013

Filed and Recorded
Official Public Records
Stacey Kemp
Collin County, TEXAS
12/21/2007 11:08:06 AM
\$224.00 BNOPP
20071221001690460



STATE OF TEXAS §
 §
 § **SUPPLEMENTAL AGREEMENT TO**
 § **AMENDED AND RESTATED DEVELOPMENT AGREEMENT**
COUNTY OF COLLIN §

This Supplemental Agreement to Amended and Restated Development Agreement ("Agreement") is made by and between the City of Allen, Collin County (the "City"), Texas, the Board of Directors of the City of Allen Tax Increment Financing Zone No. 1 (the "Board"), and Watters Creek Owner, LLC, a Delaware limited liability company, successor to Coventry II DDR/Trademark Montgomery Farm L.P., a Texas limited partnership ("Watters Creek, and together with "City" and the "Board", collectively the "Parties"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City, Board, Watters Creek, Montgomery Farm Garden District, Ltd. ("MFGD Ltd"), Angel Field Office Center, Ltd., a Texas limited partnership ("AFOC") (MFGD Ltd. and AFOC, collectively, the "Company"), previously entered into that certain Amended and Restated Development Agreement dated December 6, 2007 (the "Amended and Restated Development Agreement"); and

WHEREAS, the Parties desire to supplement certain terms and conditions of the Amended and Restated Development Agreement with respect to the Parties without amending the terms and conditions of the Amended and Restated Development Agreement with respect to the Company; and

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties agree as follows:

1. That notwithstanding the Amended and Restated Development Agreement, the definition of "Maximum Reimbursement Amount" shall, with respect to the Parties, read and mean:

 "'Maximum Reimbursement Amount" shall mean \$32,010,000.00 contributed to the Tax Increment Fund by the City and the County (it being agreed that \$22,710,000.00 shall be the Maximum Reimbursement Amount for the City (the "Maximum City Reimbursement Amount") and \$9,300,000.00 shall be the Maximum Reimbursement Amount for the County (the "Maximum County Reimbursement Amount"). The Maximum Reimbursement Amount does not include any funds contributed to the Tax Increment Fund by any other Taxing Units. In the event another Taxing Unit contributes to the Tax Increment Fund, pursuant to a Participation Agreement, such Tax Increment shall be then added to the Maximum Reimbursement Amount, subject to any restrictions, terms or maximum contributions set forth in the respective Participation Agreement. The portion of the Maximum Reimbursement Amount allocated to Trademark's Retail Projects shall be \$22,737,589.00 (\$16,131,542.00 out of the Maximum City Reimbursement Amount and \$6,606,047.00 out of the Maximum County Reimbursement

Amount), including funding to Trademark out of the Maximum County Reimbursement Amount for (i) Ramp Reversal Costs in accordance with Section 5.9 herein (such work associated therewith having been completed heretofore), (ii) Montgomery Boulevard and Bridge (on Watters Branch) pursuant to Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization), which has been completed heretofore, and (iv) deceleration lanes for Bethany Drive and US 75, which has been completed. The portion of the Maximum Reimbursement Amount allocated to Company's Angel Field Projects shall be \$4,993,600.00 (\$3,633,600.00 out of the Maximum City Reimbursement Amount and \$1,360,000.00 out of the Maximum County Reimbursement Amount), which shall not be subject to reduction due to funding to Trademark out of the Maximum County Reimbursement Amount for reimbursement of (i) Ramp Reversal Costs in accordance with Section 5.9 herein, (ii) Montgomery Boulevard and Bridge (on Watters Branch) pursuant to Section 4.2 herein, (iii) traffic signalization for Bethany Drive (2 sets of signalization), and (iv) deceleration lanes for Bethany Drive and US 75."

2. That notwithstanding the Amended and Restated Development Agreement, the definition of "Parking Structures" shall, with respect to the Parties, read and mean:

"“Parking Structures” shall mean one or more multi-level structures (above and below ground) designed for the public parking of motor vehicles, and including parking spaces for any or all commercial and residential uses, and containing a minimum of 1,728 structured parking spaces within the Garden District as a whole and a minimum of 1,410 structured parking spaces within Trademark's Retail Projects, and containing other ancillary facilities such as reasonably required landscaping, driveways and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit, but excluding non-structured surface parking.”

3. That notwithstanding the Amended and Restated Development Agreement, Section 4.1 (b) ii. shall, with respect to the Parties, read and mean:

“ii. The amount of each annual reimbursement out of the County Tax Increment shall be \$4,685.14 (\$6,606,047.00 divided by 1,410 parking spaces) per parking space subject to the maximum allocation for Trademark out of Maximum County Reimbursement Amount (the “County Parking Space Reimbursement”).”

4. That notwithstanding the Amended and Restated Development Agreement, the general locations of Retail Phase I, Retail Phase II and Retail Phase III shall, with respect to the Parties, be as depicted on Exhibit “A” attached hereto; and that all references in the Amended and Restated Development Agreement to Exhibit “B” shall mean references to Exhibit “A” attached hereto.

5. That notwithstanding the Amended and Restated Development Agreement, the definition of Retail Phase I shall, with respect to the Parties, read and mean:

““Retail Phase I” shall mean the development of approximately 350,000 square feet of space for retail uses, approximately 70,000 square feet for office uses, and

approximately 250,000 square feet of space for residential uses on the Retail Phase I Land as depicted in Exhibit "B" (and other ancillary facilities, such as reasonably required parking and landscaping, driveways, and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit)."

6. That notwithstanding the Amended and Restated Development Agreement, the definition of Retail Phase II shall, with respect to the Parties, read and mean:

““Retail Phase II” shall mean the development of approximately 60,000 square feet of space for mixed use development including retail, residential, hotel and/or hotel uses depicted as the Retail Phase II Land on Exhibit "B" (and other ancillary facilities such as reasonably required parking and landscaping, driveways, and utilities, more fully described in the submittals filed by Developer with the City from time to time in order to obtain a building permit).”

7. That notwithstanding the Amended and Restated Development Agreement, Section 3.1.a. shall, with respect to the Parties, read and mean:

“a. The City will contribute to the Tax Increment Fund, subject in all respects to the Maximum Reimbursement Amount and in accordance with the City ordinance creating TIF Zone No. 1, (i) fifty percent (50%) of the City Tax Increment for the period commencing on the Effective Date and ending at 11:59 PM on the day immediately prior to the tenth (10th) anniversary of the Effective Date (that is, years 1-10), and, with respect to subsequent years, forty-five percent (45%) of the City Tax Increment for years 11-12, and forty percent (40%) of the City Tax Increment for years 13-25; and (ii) fifty percent (50%) of the increase in Sales Tax Receipts for the period commencing on the Effective Date and ending at 11:59 pm on December 31, 2015, and, with respect to subsequent years, forty-five percent (45%) of the increase in Sales Tax Receipts commencing on January 1, 2016, through 11:59 pm on December 31, 2017, and forty percent (40%) of the increase in Sales Tax Receipts for years commencing on January 1, 2018, and ending on the Expiration Date.”

8. That notwithstanding the Amended and Restated Development Agreement, the Parties agree that with respect to existing Parking Structures as of the date of this Agreement, that such Parking Structures are in compliance with Section 3.3.

9. That notwithstanding the Amended and Restated Development Agreement, Section 5.4 shall, with respect to the Parties, read and mean:

5.4 Construction of the Garden District. Trademark, subject to events of Force Majeure: (i) has caused Completion of Construction of Retail Phase I to occur on or before October 1, 2012, (ii) has caused Completion of Construction of Retail Phase I-A to occur on or before October 1, 2008, and (iii) shall cause Completion of Construction

of Retail Phase II to occur on or before October 1, 2017. Trademark shall not be responsible for, nor shall its rights under the Development Agreement or this Agreement be subject to, the construction of any improvements to any other part of the Garden District by any specified date. Company shall not be responsible for, nor shall its rights under this Agreement be subject to, the construction of any improvements to Trademark's Retail Projects. Company shall, subject to events of Force Majeure, cause completion of construction of the Company's Angel Field Projects to occur on or before October 1, 2013.

10. Additional Projects. Watters Creek shall cause the Completion of Construction of: (i) an LED project sign in the location depicted on Exhibit "B" on or before December 31, 2013, and (ii) a children's play area, site lighting, shade structures, and public amenities, all as depicted on Exhibit "B" on or before December 31, 2014, with the costs incurred by Watters Creek not to exceed \$1,000,000.

11. Good Standing. The Amended and Restated Development Agreement, as of the Effective Date of this Agreement, was in full force and effect, and there is deemed to be no uncured default of the Amended and Restated Development Agreement by Watters Creek.

12. Employment of Undocumented Workers. During the term of this Agreement Watters Creek agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Watters Creek shall repay the amount of the Grants and any other funds received by Watters Creek from the City as of the date of such violation within 120 business days after the date that Watters Creek is notified by City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. Watters Creek is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Watters Creek or by a person with whom Watters Creek contracts.

13. Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement.

14. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for City or Board, to:

With a copy to:

Attention: City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 N. Akard
Dallas, Texas 75201

If intended for Watters Creek:

Watters Creek Owner, LLC,
c/o Trademark Property Company
100 East 15th Street
Fort Worth, Texas 76102

With a copies to:

PFP Holding Company III, LLC
c/o Prime Finance Partners
233 North Michigan Avenue, Suite 2318
Chicago, Illinois 60601
Attention: Steve Gerstung

Attention: Aaron Lehrfield, Esq
Kaye Scholer LLP
425 Park Avenue, New York, NY 10022.

15. Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

16. Governing Law. The Agreement shall be governed by the laws of the State of Texas; 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.

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

18. 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

19. Recitals. The recitals to this Agreement are incorporated herein.

20. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

21. Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

22. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

23. Effective Date. This agreement shall become effective on the last date of execution hereof by all Parties (the “Effective Date”); provided however this Agreement is subject to and conditioned upon the execution and approval of the following: (1) that certain Second Amended and Restated Economic Development Agreement by and between the Allen Economic Development Corporation and Watters Creek dated of approximate even date herewith; and (2) that certain Second Amended and Restated Project Reimbursement Agreement by and between the Allen Community Development Corporation and Watters Creek dated of approximate even date herewith. Except as supplemented by this Agreement, the Amended and Restated Development Agreement shall be in full force and effect with respect to the Parties.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2013.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

**CITY OF ALLEN TAX INCREMENT
FINANCING ZONE NO. 1**

By: _____
Peter H. Vargas, Chairman

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2013.

WATTERS CREEK OWNER, LLC
a Delaware limited liability company

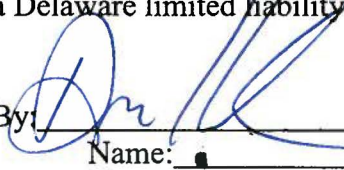
By:  _____
Name: _____
Title: **Donald H. Kuemmeler**
Authorized Signatory

Exhibit "A" Concept Plan

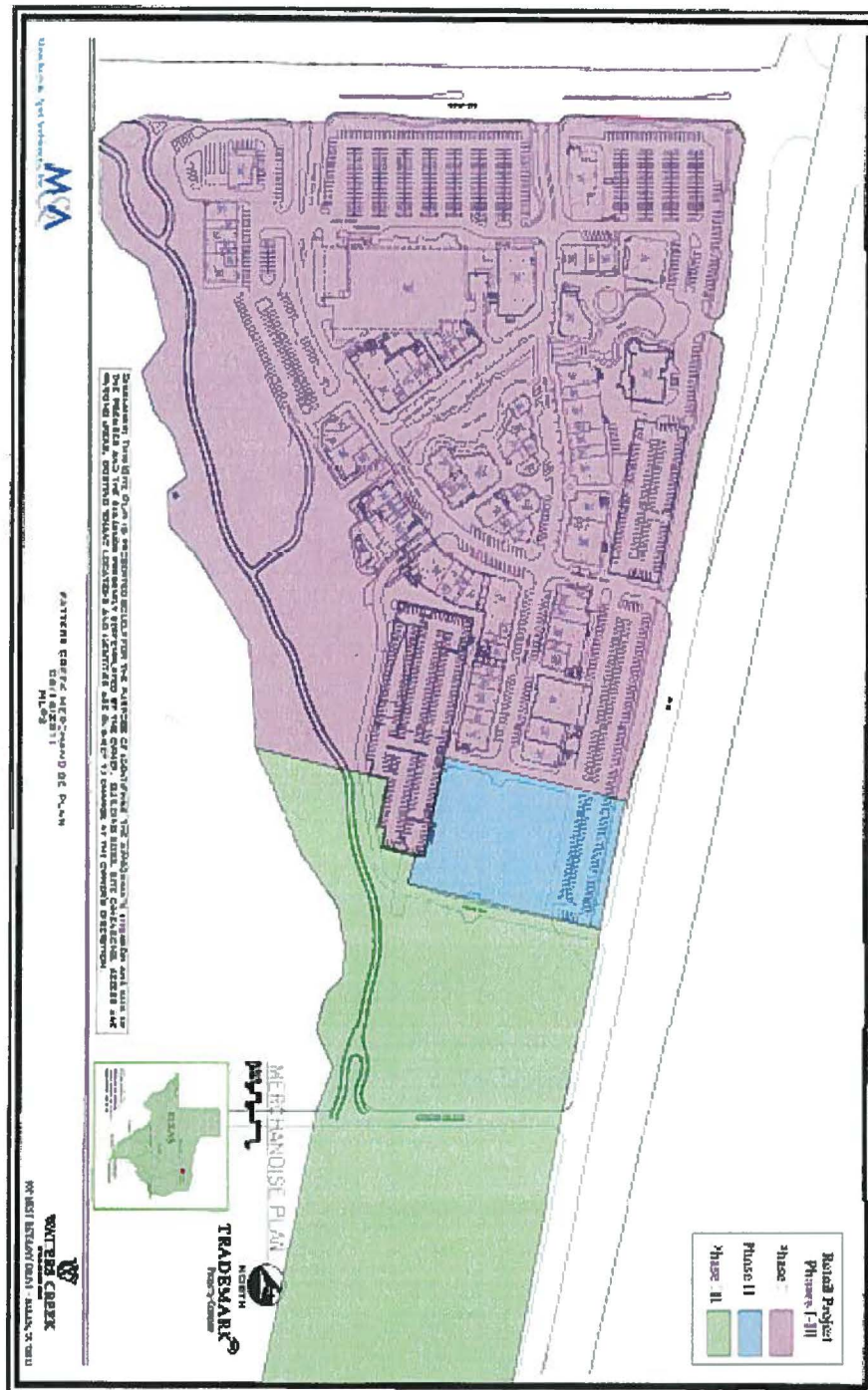
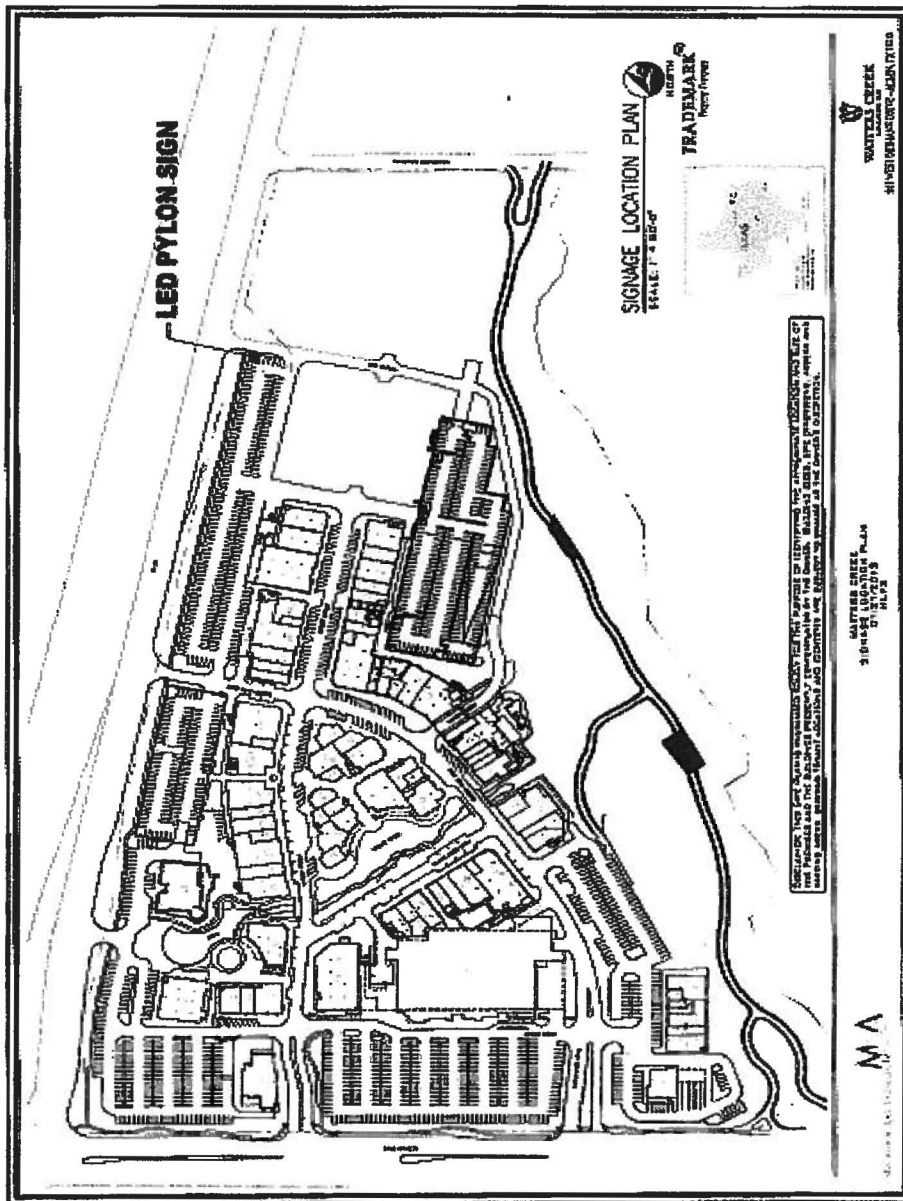


Exhibit “B”
Additional Common Area Improvements

1. LED Project Sign
 - a. Install a project sign to help brand Watters Creek and promote the center, shops, and community activities.
 - b. Proposed location shown on Exhibit “B-1”.
2. Children’s Play Area
 - a. Develop a unique children’s play area to match the harmony of Watters Creek and to meet the needs of patrons and residents.
 - b. Proposed location to be within the Garden District Park.
3. Site Lighting Enhancements
 - a. Install lighting features to enhance both the natural and architectural beauty of Watters Creek while increasing visibility and provide a greater sense of safety.
 - b. Proposed location to cover the interior of Watters Creek.
4. Shade Structures
 - a. Install shade structures to provide greater pedestrian comfort and promote more productive shopping environment.
 - b. Proposed location to be primarily on the east side of Market Street Drive.
5. Public Amenities
 - a. Install a series of amenities in the public areas to provide elements of discovery and improve the pedestrian experience. Examples:
 - i. Pop fountain;
 - ii. Public art;
 - iii. Enhanced wayfinding signage.

Exhibit "B-1"
LED Pylon Sign Location Map



THE STATE OF TEXAS §
 §
 §
 COUNTY OF COLLIN §

**SECOND SUPPLEMENTAL AGREEMENT TO
 AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

This **Second Supplemental Agreement to Amended and Restated Development Agreement** ("Second Supplemental Agreement") is made by and between the City of Allen, Texas (the "City"), the Board of Directors of the City of Allen Tax Increment Financing Zone No. 1 (the "Board"), and Watters Creek Owner, LLC, a Delaware limited liability company ("WCO") (each a "Party" and collectively the "Parties"), acting by and through their respective authorized officers.

RECITALS:

WHEREAS, City, the Board, and Coventry II DDR/Trademark Montgomery Farm L.P., as predecessor-in-interest to WCO, entered into that certain Amended and Restated Development Agreement dated December 6, 2007 (the "Amended and Restated Development Agreement"); and

WHEREAS, on or about May 1, 2013, City, the Board, and WCO entered into that certain Supplemental Agreement to Amended and Restated Development Agreement (the "First Supplement") setting forth the obligations of the Parties relating to certain terms and provisions set forth in the Amended and Restated Development Agreement; and

WHEREAS, the right-of-way for the extension of Montgomery Boulevard on the WCO Property and for Watters Branch Bridge has previously been conveyed to City, as required by the Amended and Restated Development Agreement, except the dedication of the 10-ft access and utility easement for US 75, south of Montgomery Boulevard, remains outstanding; and

WHEREAS, Wretched Land L.P., a Texas limited partnership ("Wretched") and City have entered into an Amended and Restated Facilities Agreement for the construction of Montgomery Boulevard from the west bank of Watters Branch Bridge (hereinafter defined as the "Amended and Restated Facilities Agreement"); and

WHEREAS, pursuant to the Amended and Restated Facilities Agreement, City is obligated to design and construct (inclusive of construction management) Montgomery Boulevard adjacent to the WCO Property and Watters Branch Bridge (collectively the "Project"), as generally depicted in **Exhibit "B"**; and

WHEREAS, WCO, as an inducement for this Second Supplemental Agreement, intends to expand the existing retail space through the construction and completion of a residential and/or commercial building located on the WCO Property that initially conforms to the footprint shown on **Exhibit "C"** ("Building V"), which footprint may be revised from time to time so long City approval therefor is obtained; and

WHEREAS, the Parties desire to further supplement their agreement pursuant to the Amended and Restated Development Agreement by providing for additional terms related to WCO's obligations with respect to construction of and payment for the Project;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

The capitalized words and phrases used in this Second Supplemental Agreement shall have the meaning assigned to them by the Amended and Restated Development Agreement. In addition, for purposes of this Second Supplemental Agreement, the following words and phrases shall have the following meanings:

"Amended and Restated Facilities Agreement" shall mean that certain Amended and Restated Facilities Agreement for Montgomery Boulevard and Watters Branch Bridge by and between City and Wretched dated August 27, 2014.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any part of a Party's property and such appointment is not terminated within one hundred eighty (180) 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 such Party, and such proceeding is not dismissed within one hundred eighty (180) days after the filing thereof.

"City" shall mean the City of Allen, Texas.

"Commencement of Construction" shall mean that: (1) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project; (ii) all necessary permits for the construction of the Project pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property has commenced.

"Completion of Construction" shall mean that (i) the construction of the Project has been substantially completed; and (ii) City has inspected the Project and issued a written acceptance of the respective portion of the Project.

"Construction Agreement" shall mean an agreement for the design and/or construction of Project as approved by City and Wretched.

"Contractor" shall mean the company selected by the City of Allen to undertake the construction of the Project.

“Effective Date” shall mean the last date of execution of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, terrorism, explosions or floods, strikes, slowdowns or work stoppages.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Property or any portion thereof or with respect to any property located thereon or any business conducted thereon.

“Montgomery Boulevard” shall mean the roadway depicted in Exhibit “B” and illustrated on the City of Allen Thoroughfare Plan, and to include paving, underground storm sewer, water lines, and the Watters Branch Bridge.

“Montgomery Boulevard Extension” shall mean the extension of Montgomery Boulevard from Watters Creek to the frontage road of US Highway 75, including a deceleration lane along US 75, in the manner and pursuant to the illustration shown on Exhibit “B”, Montgomery Boulevard Extension does not include the construction of the Watters Branch Bridge.

“Montgomery Ridge Phase I Development” shall mean that single-family residential development project, with zoning approved by Allen City Council by amending Planned Development 74 through Zoning Case Z-11/19/13-83.

“Project” shall collectively mean the design and construction of: (i) the Montgomery Boulevard Extension; and (ii) Watters Branch Bridge in accordance with plans and specifications approved by the City.

“Project Costs” shall mean (i) the actual cost incurred by City for the design and construction of the Project, and (ii) those costs expressly stated to be such as set forth in this Agreement.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City and WCO, or any of its affiliated or related entities.

“Watters Branch Bridge” shall mean the bridge to be constructed across Watters Branch, as generally depicted in Exhibit “B” in accordance with plans and specifications approved by the City.

“WCO Project Costs” shall mean WCO’s portion of the actual final costs for the design and construction of the Project (including, without limitation, Project Costs) pursuant to the Construction Agreement(s) as approved by City pursuant to the Amended and Restated Facilities Agreement consisting of (i) one hundred percent (100%) of approved final costs of design and

construction of the Montgomery Boulevard Extension; and (ii) fifty percent (50%) of the approved final costs of the Watters Branch Bridge.

“WCO Property” shall mean the real property described in Exhibit “A”.

Article II Supplemental Terms

2.1 Project Supplemental Terms.

(a) General. Notwithstanding anything to the contrary, the following terms and conditions shall apply to the Parties and supersede Section 5.1 (b) and (c) of the Amended and Restated Development Agreement with respect to the Parties.

(b) WCO Project Costs. WCO agrees to pay to City the WCO Project Costs in installments as set forth herein.

(i) First Installment. Following Commencement of Construction of the Project by City, WCO shall pay to City the first installment of the WCO Project Costs in the amount of the City-approved portion of the WCO Project Costs, which first installment shall not exceed \$600,000.00 (the “First Installment”), which First Installment shall be paid by the WCO via electronic transfer of funds to City within fifteen (15) days after the latter of: (i) WCO receipt of a First Installment invoice from City; and (ii) receipt by WCO of the Annual Reimbursement Payment (as that term is defined in the Amended and Restated Development Agreement) for the year in which the First Installment is to be paid. The First Installment invoice of the WCO Project Costs shall be accompanied by a copy of City’s approval of the first application of Contractor’s payment of Project Costs pursuant to the Amended and Restated Facilities Agreement. Any unpaid portion of the WCO Project Costs shall be carried forward and added to the Second Installment to be paid by WCO pursuant to Section 2.1 (b) (ii) below.

(ii) Second Installment. WCO shall pay to City the second installment of the WCO Project Costs less the amounts paid pursuant to the First Installment (plus any unpaid portion of the First Installment), which Second Installment shall not exceed \$700,000.00 (the “Second Installment”), and which Second Installment shall be paid by WCO via electronic transfer of funds to City within fifteen (15) days after the later of: (i) WCO receipt of the Second Installment invoice from City; and (ii) receipt by WCO of the Annual Reimbursement Payment for the year in which the Second Installment is to be paid pursuant to the Amended and Restated Agreement, for the year in which the Second Installment is to be paid. The Second Installment invoice of the WCO Project Costs shall be accompanied by a copy of City’s approval of the application of Contractor’s payment of Project Costs pursuant to the Amended and Restated Facilities Agreement. Any unpaid portion of the WCO Project Costs shall be carried forward to Third Installment to be paid by WCO pursuant to Section 2.1 (b) (iii) below.

(iii) Final Installment. If the WCO Project Costs have not been paid to City as provided in Section 2.1 (b) (i) and (ii) above, WCO shall pay to City the final installment of the WCO Project Costs, less the amounts paid pursuant to the First and Second Installments (the "Final Installment," together with the First Installment and Second Installment, an "Installment"), which Final Installment shall be paid via electronic transfer of funds to City within fifteen (15) days after the later of: (i) WCO receipt of the Second Installment invoice from City; and (ii) receipt by WCO of the Annual Reimbursement Payment for the year in which the Final Installment is to be paid. The Final Installment invoice of the WCO Project Costs shall be accompanied by a copy of City's approval of the application of Contractor's payment of Project Costs pursuant to the Amended and Restated Facilities Agreement.

(c) Only one Installment will occur per calendar year. WCO shall have the right to inspect all design drawings, concept plans and bid documents relating to the Project upon request throughout the design development of the Project.

2.2 Construction Easements; Right-of-Way Dedication.

(a) WCO shall, without cost, grant and convey to City and Contractor (to the extent necessary) a right of entry onto the WCO Property then owned by WCO at the time of such request for the purpose of allowing City and/or Contractor to cause the design and construction of the portion of the Project to be constructed on the WCO Property. WCO shall further grant to City and/or its Contractor in a timely manner such temporary easements relating to the WCO Property then owned by WCO at the time of such request for the staging of equipment and materials as may be reasonably necessary in forms reasonably approved by City and WCO. WCO shall grant a temporary license or easement to the City and its contractors on approximately one acre of the WCO Property at a location to be mutually approved by the City and WCO for the temporary location and operation of a concrete batching plant for the Project.

(b) WCO shall, by plat or separate instrument reasonably approved by the City, dedicate and convey to the City, without cost, approximately thirty (30) feet of right-of-way along US 75 south of Montgomery Boulevard in accordance with survey prepared by the City and WCO prior to earlier of: (i) Commencement of Construction of the Project; and (ii) March 31, 2015.

2.3 Project Records and Audits. City shall: (i) maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for review and inspection by WCO during the term of this Agreement; (ii) keep a complete and accurate record to document the performance of the Project work; and (iii) to expedite any audit that might be conducted by WCO.

2.4 City Payments. If Completion of Construction of Building V occurs prior to the occurrence of the Expiration Date, then upon the first date of occupancy of Building V, the provisions of Section 3.1.a. of the Amended and Restated Development Agreement (as amended and supplemented by the First Supplement) will be amended as follows: the City will contribute to the Tax Increment Fund (up to the Maximum Reimbursement Amount) (i) fifty percent (50%)

of the City Tax Increment until the Expiration Date, and (ii) fifty percent (50%) of the increase in Sales Tax Receipts until the Expiration Date.

2.5 Sidewalks. Notwithstanding any inference to the contrary contained in the Amended and Restated Development Agreement (as amended and supplemented by the First Supplement), WCO will construct each section of sidewalks on an incremental basis. Concurrent with the development of any parcel abutting the extension of Montgomery Boulevard and US 75, WCO will complete that portion of the sidewalk abutting such parcel along both US 75 and Montgomery Boulevard, at the expense of the owner whose parcel is being developed, all as depicted on Exhibit "B". Such sidewalks shall be of like quality and contain materials materially consistent with those found in like improvements located on the WCO Property and in accordance with City standards. WCO acknowledges and agrees that the costs of design and construction of such sidewalks shall not be eligible for reimbursement under the Amended and Restated Development Agreement or under any agreement by and between WCO and the Allen Economic Development Corporation and/or the Allen Community Development Corporation.

2.6 Completion of Construction of Retail Phase II. The Parties acknowledge that, upon Completion of Construction of Building V, WCO will be deemed to have effected Completion of Construction of Retail Phase II.

2.7 Floodplain modification. City shall cause the Watters Branch Bridge design and resultant floodplain impacts to be reviewed and approved through the Federal Emergency Management Agency (FEMA) process for floodplain modification. The cost of such efforts and submittal fees to FEMA shall be included as Project Costs. If a rise in floodplain elevation over 2007 FEMA-mandated levels results from the design and/or construction of the Watters Branch Bridge (such rise, a "Floodplain Elevation Increase"), a written confirmation by WCO of this change may be required by FEMA. In such event WCO shall, within thirty (30) days after written request by City and/or FEMA, provide such written confirmation in a form acceptable to FEMA, provided City demonstrates to the reasonable satisfaction of WCO that the finished-floor elevations of buildings within the WCO property are 18-inches above the new floodplain elevation through engineering study prepared by a licensed engineer in the State of Texas. If WCO is required to engage in reclamation efforts to meet FEMA requirements because any portion of the WCO Property suffers a Floodplain Elevation Increase, the actual cost of such reclamation efforts will be deemed to be part of Project Costs.

Article III Termination

3.1 This Second Supplemental Agreement may be terminated upon any one of the following events:

- (a) by written agreement of the Parties to terminate;
- (b) upon written notice from 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;

- (c) upon written notice from either Party, if the other Party suffers an Event of Bankruptcy or Insolvency; and
- (d) upon written notice from City, if any Impositions owed to City or the State of Texas by WCO shall become delinquent and shall remain delinquent for more than thirty (30) days after written notice of such delinquency from City to WCO (provided, however, WCO retains the right to timely and properly protest and contest any such Impositions).

3.2 Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to City from WCO, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

Article IV Miscellaneous

4.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned by the WCO without the prior written consent of the City Manager.

4.2 Limitation on Liability. It is understood and agreed that the Parties, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

4.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

4.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

4.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax.

If intended for City, to:

Attn: Peter H. Vargas
City Manager
City of Allen, Texas

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower

3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

500 N. Akard Street
Dallas, Texas 75201

With a copy to:

Attn: City Engineer
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If intended for the Board, to:

Attn: Peter H. Vargas
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

If intended for WCO, to:

Watters Creek Owner, LLC
c/o Trademark Property Company
100 East 15th Street
Fort Worth, Texas 76102

4.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

4.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive 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.

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

4.9 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 other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal,

invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

4.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

4.11 Recitals. The recitals to this Agreement are incorporated herein.

4.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

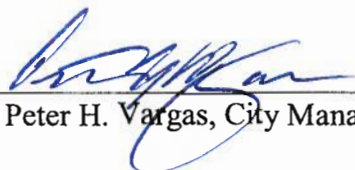
4.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

4.14 Amended and Restated Agreement. Amended and Restated Agreement as supplemented by the First Supplement shall remain in full force and effect except as supplemented herein. Notwithstanding anything to the contrary herein the Maximum Reimbursement Amount and the Expiration Date as set forth in the Amended and Restated Development Agreement as supplemented by the First Supplement shall remain in full force and effect.

[Signature page to follow]

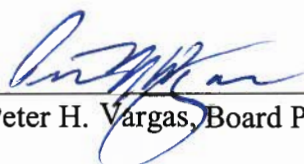
EXECUTED on this 28th day of January, 201⁵~~4~~.

CITY OF ALLEN, TEXAS

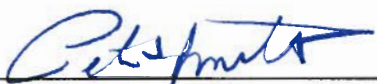
By: 
Peter H. Vargas, City Manager

EXECUTED on this 28th day of January, 201⁵~~4~~.

CITY OF ALLEN TAX INCREMENT
FINANCING ZONE NO. 1

By: 
Peter H. Vargas, Board President

APPROVED AS TO FORM:

By: 
Peter G. Smith, City Attorney

EXECUTED on this 23rd day of January, 201⁵~~4~~.

WATTERS CREEK OWNER, LLC,
a Delaware limited Liability Company


By: 
Name: Aaron A. Givara
Title: Vice President

EXHIBIT "A"
(WCO Property)

Lots 1 and 2, Block A, as shown on the Amended Plat recorded at the Plat Records of Collin County Texas under instrument number 20080721010002570.

Lot 3A, Block A, as shown on the Final Plat recorded at the Plat Records of Collin County Texas under instrument number 20071109010004030.

Parcels A & B, as described in the Deed Records of Collin County Texas under file number 06-1826050.

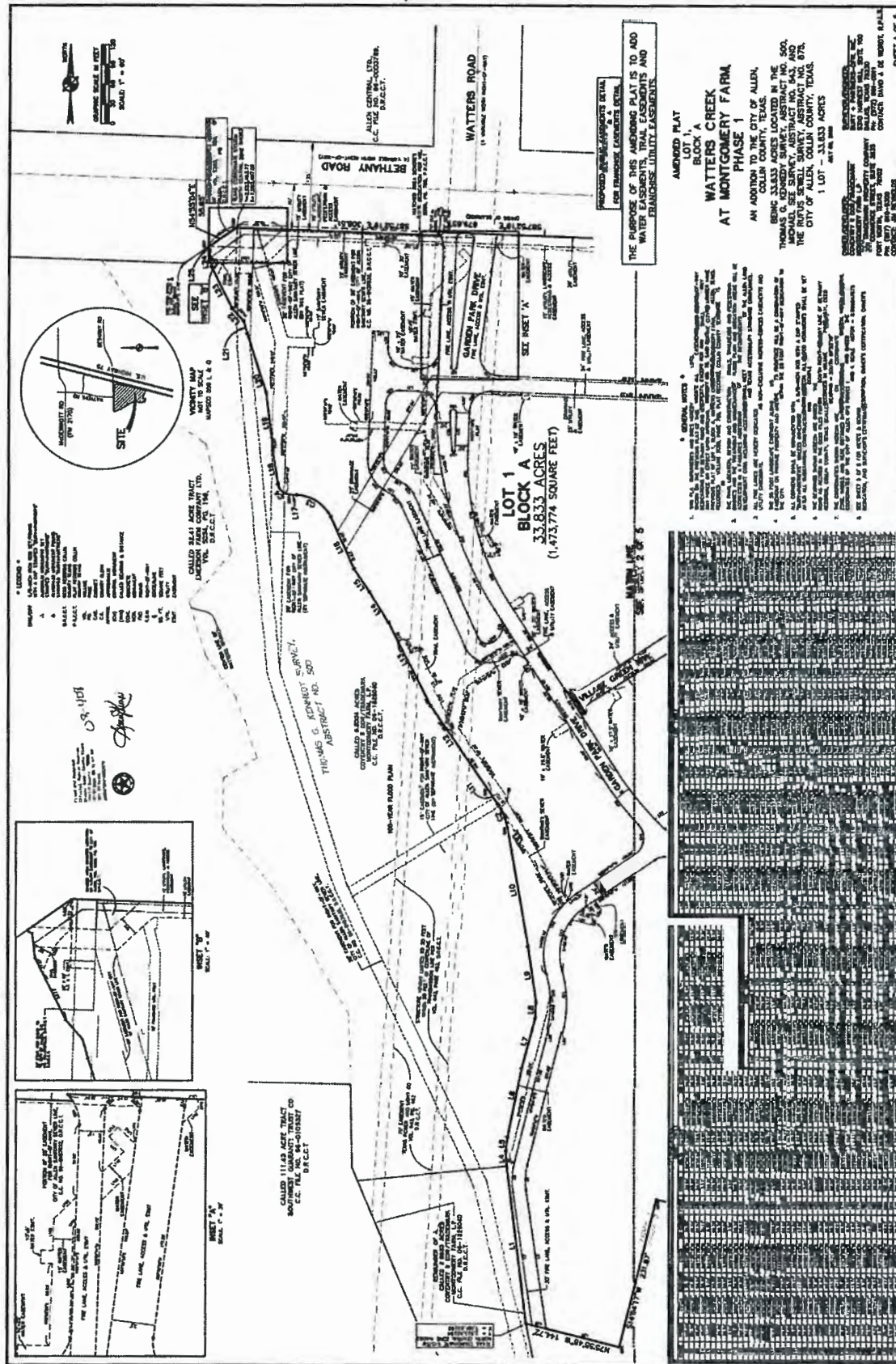
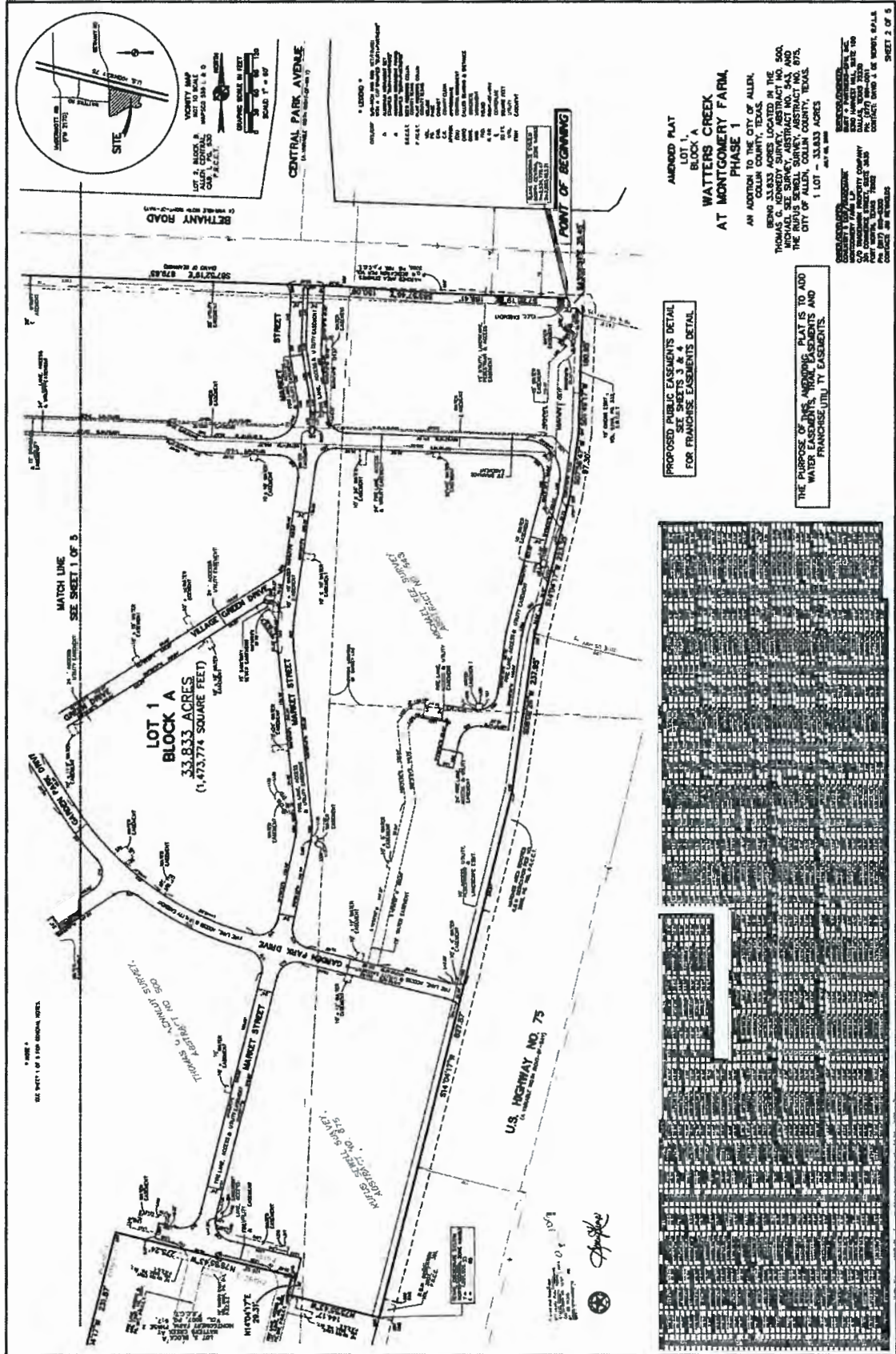
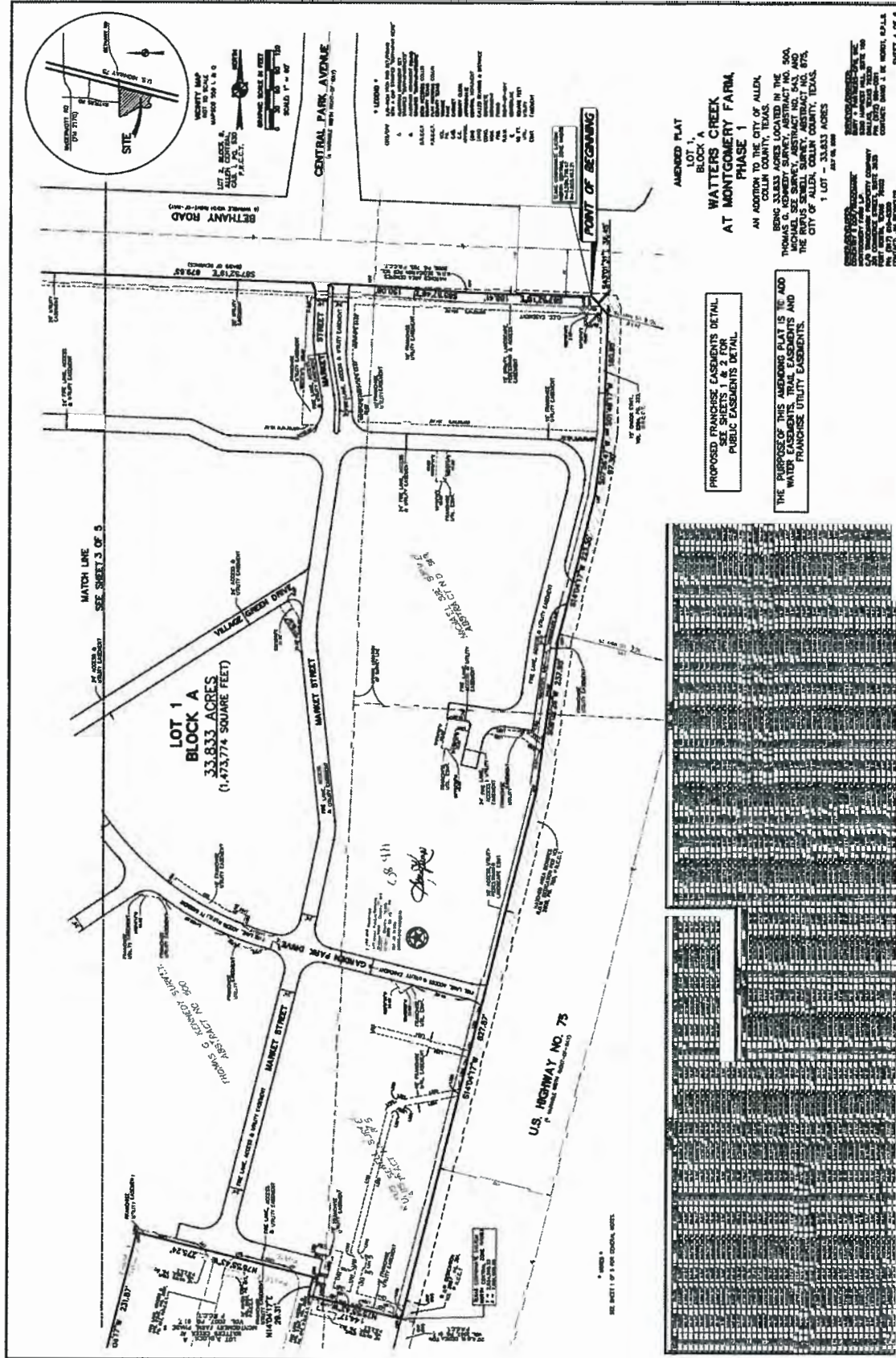


EXHIBIT "A" (WCO Property)



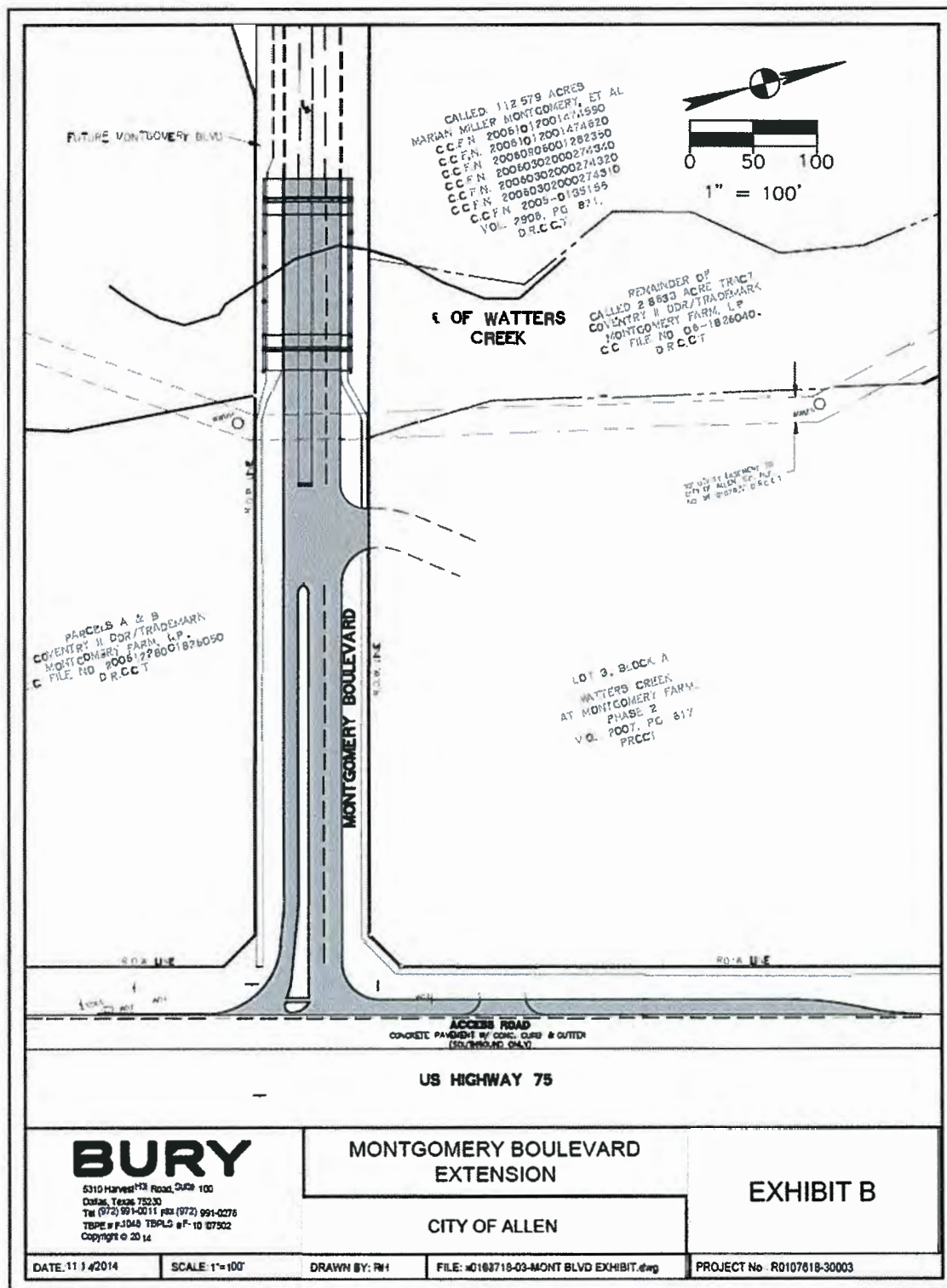
1. LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839,

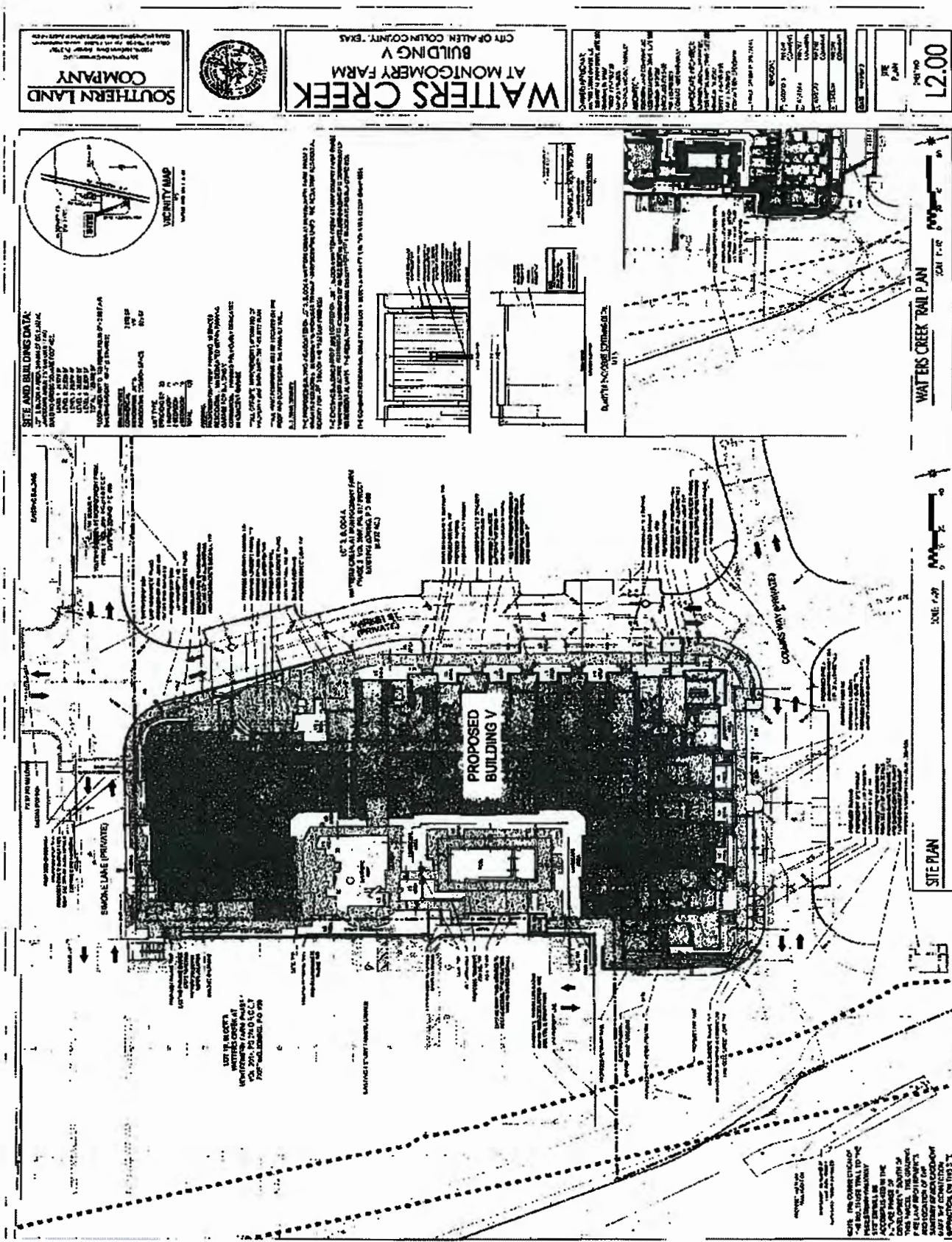
(WCO Property)



[illegible]

EXHIBIT "B"
(Depiction of the Project)





CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
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AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Authorize the City Manager to Execute an Agreement with Baird, Hampton, & Brown, Inc., for an Assessment of Mechanical and Electrical Equipment at Credit Union of Texas Event Center in the Amount of \$144,500.
STAFF RESOURCE:	Kate Meacham, Parks and Recreation Director Bill Herman, General Manager
BOARD/COMMISSION ACTION:	The Allen Community Development Corporation recommended approval for funding in FY2022 in the amount of \$120,000.
STRATEGIC PLANNING GOAL:	Financially Sound and Transparent City Government.

BACKGROUND

Credit Union of Texas Event Center is in its 13th year of operation. Over time, various components of the facility's mechanical and electrical systems have required significant maintenance, repair, and upkeep. In an effort to mitigate related costs and follow a proactive preventive maintenance and equipment replacement schedule, it has been determined that an extensive assessment of the facility's major mechanical and electrical equipment be taken to measure their current levels of effectiveness and efficiencies.

The assessment will include a site survey of various components of mechanical and electrical systems equipment identified on architectural drawings and new equipment added after initial construction. Systems assessed will consist of heating, air conditioning, plumbing, ice refrigeration, and electrical power distribution.

The results of this study and all associated recommendations provided by the contractor will be reviewed and included in the Parks and Recreation Department 10-Year Investment Plan and be part of the annual budget process. The study will identify the following:

- Report on the general operating condition of each piece of equipment, with any deficiencies identified. Deficiencies will be categorized as either a maintenance item, minor repair, or major repair. Estimated budget costs will be provided for the repairs.
- Estimate of the expected remaining years of life for each piece of equipment, with an estimated budget for replacement cost.
- Recommendations for any other system upgrades or improvements that are identified.

Specific assessment of the Heating, Air Conditioning, Plumbing, and Ice Refrigeration systems will be made up of several elements:

- Visual inspection of each piece of equipment to observe the general operating condition.

- Perform a run test of each piece of equipment to measure and compare the actual performance to the design requirements. The testing will be performed by an American Air Balance Council (AABC) accredited testing agency. Any deficiencies will be noted.

The assessment of the Electrical Power Distribution system will be made up of several major elements:

- Thermographic Infrared (I/R) Scan of the electrical distribution equipment. The scan will conform to all the specifications as set forth by the International Electric Testing Association (NETA). To receive the most benefit of the thermal scanning, it should be performed when the system is loaded to at least 40% of the design load. If the facility is still operating at reduced capacity, it would be appropriate to postpone this portion of the work until the facility is back closer to full operation.
- Circuit Breaker Testing. The testing would include removal, cleaning, inspection, and primary injection test for the circuit breakers in the Main Switchboards and Distribution Switchboards. The testing will conform to the ANSI/NETA MTS-2019 standard. This will require a power shutdown scheduled with Oncor to turn the power off to the Main Switchboards. NETA recommends circuit breaker testing be performed every three years. While the electrical gear is de-energized, the overcurrent device settings and conductor sizes will be documented for the preparation of the following study.
- Short Circuit Current/Protective Device Coordination/Arc Flash Hazard Risk Study. Based on information gathered during circuit breaker testing, this study will include a short circuit analysis, provide a coordination study of the overcurrent protection devices to develop recommended breaker settings, and create an arc flash study to assess the available arc flash exposure at the panelboards.
- Note: City of Allen/Credit Union of Texas Event Center will need to provide an Electrician with the proper certification to open the panelboards for the I/R Scans. This is estimated to take two days. An Electrician may also be required to open panels for the Arc Flash Hazard Study if all the needed data cannot all be collected while panels are de-energized for the Circuit Breaker Testing.

Total fee breakdown:

HVAC, Plumbing, Ice Refrigeration Systems Assessment	\$54,500
Thermal Scanning of Electrical Distribution Equipment	\$5,300
Testing of Circuit Breakers	\$42,150
Short Circuit/Overcurrent Protection Device/Arc Flash Study	<u>\$42,550</u>
Total Fees for all Testing and Studies	\$144,500

BUDGETARY IMPACT

The Allen Community Development Corporation recommended approval for funding in FY2022 in the amount of \$120,000. The Credit Union of Texas Event Center FY22 operating budget will cover the remaining \$24,500.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute an Agreement with Baird, Hampton, & Brown, Inc., for an assessment of mechanical and electrical equipment at Credit

Union of Texas Event Center in the amount of \$144,500.

MOTION

I make a motion to authorize the City Manager to execute an agreement with Baird, Hampton, & Brown, Inc., for an assessment of mechanical and electrical equipment at Credit Union of Texas Event Center in the amount of \$144,500.

ATTACHMENT(S)

BHB Agreement
Scope of Work

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Baird, Hampton & Brown, Inc., a Texas Corporation (“Professional”) (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 Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist the City in the Mechanical and Electrical Equipment Assessment BHB Project No. 2020-184.000 (the “Project”) on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of 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

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) 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 II
Scope of Service

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. The Professional shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, 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 engineer or architect, as the case may be. If the Professional is not a

licensed engineer or registered architect, the Professional shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 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.

2.4 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the standard of care applicable by law to the services performed hereunder.

2.5 Upon execution of this Agreement the City has the right to use the Professional's instruments of service, including but not limited to reports, maps, cost estimates, recommendations or other deliverables for the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's employees, agents, contractors and subcontractors may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due Professional hereunder, all deliverables, materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall, upon completion of the services, or earlier termination, provide the City with the deliverables, drawings, reports, maps, and materials prepared by Professional as set forth in the Scope of Services.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees,

agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. 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. The final payment of the compensation shall be made after satisfactory completion of the services following the City acceptance of the study, report, recommendation or other work set forth in the Scope of Services, and the submittal of “AS BUILT” drawings, or record drawings, as applicable.

4.2 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.

4.3 The hourly rates set forth in the Scope of Services, if any shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the 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.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished

and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

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 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public

property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, 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 or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City:

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
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 - fax

If intended for Professional:

Baird, Hampton & Brown, Inc.

Attn: Les Brown, P.E.
6300 Ridglea Place Ste 700
Fort Worth, TX 76116
817-338-1277 - telephone
817-338-9245 - fax

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a commercial general liability policy of insurance for bodily injury, death and property damage including the property of the City, its council, 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 limit per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations; (ii) automobile liability insurance covering all vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, independent contractors and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and

property damage; (iii) statutory Worker's Compensation 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 \$1,000,000.00; and (iv) Professional Liability with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement. Such professional liability insurance shall be annually renewed and remain in effect for not less than twenty-four (24) months after substantial completion of the services.

- (b) All 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 and Professional Liability; (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, except for Professional Liability 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 Consultant 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. All policies must be written on a primary basis, non-contributory with any insurance coverage and/or self-insurance maintained by the City
- (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 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. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Professional by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this contract 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 contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City of Allen.
- (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 Allen 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 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, 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 AGENT, ITS CONSULTANT 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).

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS.

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.

6.13 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.

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

6.15 Prohibition of Boycott Israel. Professional 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 Professional is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the 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.

6.16 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.

6.17 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 _____ day of _____, 2022.

BAIRD, HAMPTON & BROWN, INC.

By: Les Brown

Name Les Brown, P.E.

Title: Senior Associate

**EXHIBIT “A”
SCOPE OF SERVICES
(TO BE ATTACHED)**



March 17, 2022

Mr. Bill Herman, General Manager
Credit Union of Texas Event Center
200 E. Stacy Road #1350
Allen, Texas 75002

**RE: MECHANICAL AND ELECTRICAL EQUIPMENT ASSESSMENT
CREDIT UNION OF TEXAS EVENT CENTER
ALLEN, TEXAS
BHB PROJECT NO. 2020.184.000**

Dear Bill:

We have updated our proposal to provide the mechanical and electrical engineering services as we have discussed. This proposal is to provide an overall assessment of the equipment for the mechanical and electrical systems in the Credit Union of Texas Events Center.

The assessment will include a site survey of each piece of mechanical and electrical systems equipment that is identified on the building drawings, as well as any additional equipment added after the initial construction. Systems will include Heating, Air Conditioning, Plumbing, Ice Refrigeration and Electrical Power Distribution. The Technology systems will not be included.

As part of the assessment we will interview the building maintenance personnel to review history of the systems and any known past or recurring issues. We will review the current regular maintenance program and provide recommendations.

The results of the assessment will be compiled in a bound report that will present all findings and recommendations. The report will include-

- a. Report on the general operating condition of each piece of equipment, with any deficiencies identified. Deficiencies will be categorized as either a maintenance item, minor repair, or major repair. Estimated budget costs will be provided for the repairs.
- b. Estimate of the expected remaining years of life for each piece of equipment, with estimated budget for replacement cost.
- c. Recommendations for any other system upgrades or improvements that are identified.

6300 Ridglea Place, Suite 700 | Fort Worth, Texas 76116 | PH: 817.338.1277 | FX: 817.338.9245

TBPE Firm #44, TBPLS Firm #10011300, #10011302, #10194146

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The assessment of the Heating, Air Conditioning, Plumbing and Ice Refrigeration systems will be made up of several elements.

1. Visual inspection of each piece of equipment to observe the general operating condition.
2. Perform a run test of each piece of equipment so that the actual performance can be measured and compared to the design requirements. The testing will be performed by an American Air Balance Council (AABC) accredited testing agency. Any deficiencies will be noted.

The assessment of the Electrical Power Distribution system will be made up of several major elements.

1. Thermographic Infrared (I/R) Scan of the electrical distribution equipment. The scan will conform to all the specifications as set forth by the International Electric Testing Association (NETA). To receive the most benefit of the thermal scanning, it should be performed when the system is loaded to at least 40% of the design load. If the facility is still operating at reduced capacity, it would be appropriate to postpone this portion of the work until the facility is back closer to full operation.
2. Circuit Breaker Testing. The testing would include removal, cleaning, inspection and primary injection test for the circuit breakers in the Main Switchboards and Distribution Switchboards. The testing will conform to the ANSI/NETA MTS-2019 standard. This will require that a power shutdown be scheduled with Oncor, to turn power off to the Main Switchboards. NETA recommends circuit breaker testing be performed every 3 years. While the electrical gear is de-energized, the overcurrent device settings and conductor sizes will be documented for use in preparation of the following study.
3. Short Circuit Current/Protective Device Coordination/Arc Flash Hazard Risk Study. Based on information gathered during circuit breaker testing, this study will include a short circuit analysis, will provide a coordination study of the over current protection devices to develop recommended breaker settings, and to develop an arc flash study which will assess the available arc flash exposure at the panelboards.

Note: The Owner will need to provide an Electrician with the proper PPE to open the panelboards for the I/R Scans. This is estimated to take 2 days. An Electrician may also be required to open panels for the Arc Flash Hazard Study if all the needed data cannot all be collected while panels are de-energized for the Circuit Breaker Testing.

The GENERAL CONDITIONS attached hereto is made a part of this Agreement.

In consideration for the scope described above we propose the following stipulated sum fee:

HVAC, Plumbing, Ice Refrigeration Systems Assessment	\$54,500.00
Thermal Scanning of Electrical Distribution Equipment	\$5,300.00
Testing of Circuit Breakers	\$42,150.00
Short Circuit/Overcurrent Protection Device/Arc Flash Study	<u>\$42,550.00</u>
Total Fees for all Testing and Studies	\$144,500.00

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Invoices will be forwarded to your office based upon the percentage of services completed during each billing period and will be due upon receipt of each invoice. Stipulated sum includes cost of travel expenses for travel to the project site, but does not include reproduction expenses, other than single copy of original report. Travel expenses, printing and reproduction expenses, other than those identified above will not be incurred without your prior approval, at which point these expenses will be payable under the same conditions as the stipulated sum.

If you agree with the terms of this proposal, please indicate your approval by signing below and returning to our office.

We will consider receipt of this signed agreement as our notice to proceed. Thank you for the opportunity to work with you on this project.

Sincerely,

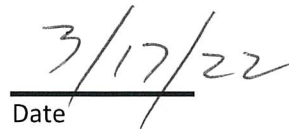
BAIRD, HAMPTON & BROWN, INC.

Les Brown, P.E.

APPROVED FOR CREDIT UNION OF TEXAS EVENTS CENTER BY:



Signature



Date

Attachment: General Conditions

GENERAL CONDITIONS

THE GENERAL CONDITIONS HEREIN ARE MADE A PART OF THE AGREEMENT BETWEEN BAIRD, HAMPTON & BROWN, INC., HEREIN AFTER REFERRED TO AS "BHB" AND CREDIT UNION OF TEXAS EVENTS CENTER, HEREIN AFTER REFERRED TO AS "THE CLIENT".

Services under this agreement will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of this profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended.

COMPENSATION

Compensation to BHB for the basic services shall be as described in the agreement. If BHB sees the Scope of Services Changing so that additional services are needed, BHB will notify the client for approval before proceeding. Additional Services shall be computed based on the BHB hourly rate schedule as shown below:

Engineering:

Engineering & Management – Principal/VP	\$ 285.00 /hr.
Project Management	\$ 190.00 /hr.
Engineering – Senior PE	\$ 190.00 /hr.
Landscape Architectural Services	\$ 135.00 /hr.
Engineering Services – PE	\$ 135.00 /hr.
Engineering Services – EIT	\$ 100.00 /hr.
Design Services – Senior Designer	\$ 135.00 /hr.
Design Services – Designer	\$ 100.00 /hr.
CAD / Drafting Services	\$ 70.00 /hr.
Clerical Services	\$ 65.00 /hr.

DIRECT EXPENSES - Direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include any review or permit fees paid by BHB, outside printing and reproduction expenses, travel, transportation, and subsistence away from the DFW metroplex and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, tests, and other work to be done by independent persons other than staff members. Travel will be reimbursed at \$0.585 per mile or the current reimbursement rate allowed by the IRS at the time of this agreement.

ESTIMATES OF PROBABLE CONSTRUCTION COST - In providing estimates of probable construction cost, the Client understands that BHB has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that BHB's estimates of probable construction costs are made on the basis of BHB's professional judgment and experience. BHB makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from BHB's estimate of probable construction cost.

PAYMENT DUE. Invoices will be submitted based upon the work performed during the billing period and are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.

CERTIFICATIONS, GUARANTEES AND WARRANTIES - BHB shall not be required to sign any documents, no matter by whom requested, that would result in BHB's having to certify, guarantee or warrant the existence of conditions whose existence BHB cannot ascertain. The Client also agrees not to make resolution of any dispute with BHB or payment of any amount due to BHB in any way contingent upon BHB's signing any such certification.

MEDIATION - In an effort to resolve any conflicts that arise during the provision of services for the Project or following the completion of the Project, the Client and BHB agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation.

6300 Ridglea Place, Suite 700 | Fort Worth, Texas 76116 | PH: 817.338.1277 | FX: 817.338.9245

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Electrical Distribution Circuit Breaker Listing

Drawing E0.01

"MS1"

Qty: 1 ea. Low Voltage Circuit Breaker 4000A
Qty: 1 ea. Low Voltage Circuit Breaker 1600A
Qty: 1 ea. Low Voltage Circuit Breaker 1200A
Qty: 3 ea. Low Voltage Circuit Breakers 800A
Qty: 1 ea. Low Voltage Circuit Breaker 600A
Qty: 1 ea. Low Voltage Circuit Breaker 450A
Qty: 1 ea. Low Voltage Circuit Breaker 400A
Qty: 3 ea. Low Voltage Circuit Breakers 100A

"MS2"

Qty: 1 ea. Low Voltage Circuit Breaker 4000A
Qty: 3 ea. Low Voltage Circuit Breakers 1000A
Qty: 3 ea. Low Voltage Circuit Breakers 800A
Qty: 2 ea. Low Voltage Circuit Breakers 400A
Qty: 1 ea. Low Voltage Circuit Breaker 350A
Qty: 2 ea. Low Voltage Circuit Breakers 225A
Qty: 3 ea. Low Voltage Circuit Breakers 200A
Qty: 1 ea. Low Voltage Circuit Breaker 100A

"SPDP1"

Qty: 1 ea. Low Voltage Circuit Breaker 1000A
Qty: 2 ea. Low Voltage Circuit Breakers 400A
Qty: 2 ea. Low Voltage Circuit Breakers 200A

"SPDP2"

Qty: 1 ea. Low Voltage Circuit Breaker 800A
Qty: 2 ea. Low Voltage Circuit Breakers 400A
Qty: 1 ea. Low Voltage Circuit Breaker 200A
Qty: 2 ea. Low Voltage Circuit Breakers 100A

"BDP"

Qty: 1 ea. Low Voltage Circuit Breaker 500A
Qty: 1 ea. Low Voltage Circuit Breaker 250A
Qty: 2 ea. Low Voltage Circuit Breakers 200A

"SB12A"

Qty: 2 ea. Low Voltage Circuit Breakers 400A
Qty: 1 ea. Low Voltage Circuit Breaker 250A
Qty: 1 ea. Low Voltage Circuit Breaker 225A
Qty: 1 ea. Low Voltage Circuit Breaker 175A
Qty: 4 ea. Low Voltage Circuit Breakers 125A

"SB13A"

Qty: 1 ea.	Low Voltage Circuit Breaker 600A
Qty: 1 ea.	Low Voltage Circuit Breaker 250A
Qty: 1 ea.	Low Voltage Circuit Breaker 225A
Qty: 1 ea.	Low Voltage Circuit Breaker 200A
Qty: 3 ea.	Low Voltage Circuit Breakers 125A

Drawing E0.02

"SB11A"

Qty: 1 ea.	Low Voltage Circuit Breaker 600A
Qty: 1 ea.	Low Voltage Circuit Breaker 400A
Qty: 1 ea.	Low Voltage Circuit Breaker 225A
Qty: 1 ea.	Low Voltage Circuit Breaker 150A
Qty: 1 ea.	Low Voltage Circuit Breaker 100A

"SB14A"

Qty: 1 ea.	Low Voltage Circuit Breaker 600A
Qty: 1 ea.	Low Voltage Circuit Breaker 400A
Qty: 1 ea.	Low Voltage Circuit Breaker 175A
Qty: 1 ea.	Low Voltage Circuit Breaker 100A

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
--

AGENDA DATE: April 12, 2022

AGENDA CAPTION: Motion to Reappoint Dr. Joe Farmer to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2022 through May 31, 2024.

STAFF RESOURCE: Eric Ellwanger, City Manager
Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: Appointed November 15, 1998, and reappointed in 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014, 2016, 2018, and 2020.

STRATEGIC PLANNING GOAL: Engaged and Connected Allen Community.

BACKGROUND

Dr. Joe Farmer and Mr. James Kerr serve as the appointed NTMWD Board Members representing the City of Allen. Each member serves a two-year term and terms are staggered.

Dr. Farmer's term expires May 31, 2022. The City Council, by a majority vote, should reappoint Dr. Farmer or appoint another Director to serve a term from June 1, 2022, to May 31, 2024.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in the city from which he is appointed. No member of a governing body of a city and no employee of a city shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed.

STAFF RECOMMENDATION

Staff recommends that the City Council reappoint Dr. Farmer to the NTMWD Board as a representative for the City of Allen.

MOTION

I make a motion to reappoint Dr. Joe Farmer to the North Texas Municipal Water District Board as a representative for the City of Allen for a two-year term effective June 1, 2022, through May 31, 2024.

ATTACHMENT(S)

[NTMWD Notice of Appointment](#)
[Letter from Dr. Farmer](#)



Regional. Reliable. Everyday.

March 15, 2022

Mr. Eric Ellwanger, City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013

RE: NTMWD BOARD MEMBER APPOINTMENT

Dear Mr. Ellwanger:

The current term of office for some of the Directors of the North Texas Municipal Water District (NTMWD) Board will end in May. Please accept this as your official notification that Dr. Joe Farmer's current term as an NTMWD Board Director will expire on May 31, 2022. The City Council has the option to either reappoint Dr. Farmer or appoint a new Director to serve the term from June 1, 2022, to May 31, 2024.

Dr. Farmer was appointed by the City of Allen in 1998, and we appreciate the service he has provided to the NTMWD. He has been a leader on the Board serving as President, Vice President, and Secretary and currently serves on the Personnel and Solid Waste Committees as well as on the John Bunker Sands Wetland Center Board of Directors.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in and owns taxable property in the city from which he is appointed. No member of a governing body of a city, and no employee of a city, shall be appointed as a Director." Under other state law, no other public official that receives compensation could be appointed. A list of roles and responsibilities of an NTMWD Board member is enclosed for reference.

Please notify my office in writing once the City Council has appointed a Director for the new term. Should you have any questions or need additional information, please do not hesitate to contact my office.

Sincerely,

JENNAFER P. COVINGTON
Executive Director

JPC/sks

Enclosure

cc: Dr. Joe Farmer
Ms. Shelley George, City Secretary



NTMWD BOARD OF DIRECTORS ROLES AND RESPONSIBILITIES

The North Texas Municipal Water District (NTMWD) Board of Directors serves as the governing body of NTMWD. The Board of Directors guides the NTMWD towards a sustainable future by adopting sound governance and financial management policies and ensuring adequate resources to meet the region's needs. The Board has a responsibility to provide guidance to management and staff and ensure operations run smoothly and in accordance with the law. Some specific responsibilities of the Board of Directors include:

- Establish and support the NTMWD mission and purpose
- Select and evaluate the Executive Director/General Manager
- Set policies and ensure effective planning
- Ensure adequate financial resources
- Monitor and strengthen essential programs and services
- Protect assets and provide proper financial oversight
- Ensure legal and ethical integrity
- Enhance the organization's public standing

The Board of Directors meets monthly – generally on the 4th Thursday of each month. This schedule may be adjusted due to holidays. Some Directors will meet mid-month as well depending on their Committee assignment.

The Board of Directors also meets in Special Workshops semi-annually for long-term planning as well as on an as-needed basis for other purposes.

Each Board member serves on at least two standing Committees, such as:

- Water
- Wastewater
- Solid Waste
- Finance
- Personnel
- Real Estate

Directors may also serve on the Legislative Committee, Special Purposes Committees as needed, and the Chairman of each Committee serves on the Policy Committee.

MAR 24 2022

City Secretary's Office

March 24, 2022

Mayor Ken Fulk
City of Allen
305 Century Pkwy.
Allen, TX 75013-8042

Dear Mayor Fulk:

My term on the NTMWD of Directors expires May 31, 2022. My service on the NTMWB Board is challenging, enjoyable, and I trust meaningful to the Citizens of Allen and other communities. As a member of the Board, I have served on several committees and held several officer positions. Currently, I am serving on the Personnel and Solid Waste Committees. Also, I am on the John Bunker Sands Wetland Center Board as Emeritus Director.

Please accept this communique as my statement of interest and request to continue service on the Board. I will be happy to respond to any questions or concerns you or the Allen Council might have regarding this matter. In addition, my periodic meetings with Mr. Ellwanger and staff members regarding NTMWD and City of Allen matters are informative and meaningful.

Thank you for your consideration. Please contact me via phone ([REDACTED]
[REDACTED] or e-mail [REDACTED] at your discretion.

Sincerely,



Joe Farmer

cc: Eric Ellwanger, City Manager
Jennafer P. Covington,
Executive Director, NTMWD
cc Shelley George, City Secretary

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
--

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Consider All Matters Incident and Related to the Issuance and Sale of City of Allen, Texas, General Obligation Bonds, Series 2022, Including the Adoption of an Ordinance Authorizing the Issuance of Such Bonds, Establishing Parameters for the Sale and Issuance of Such Bonds and Delegating Certain Matters to Authorized Officials of the City.
STAFF RESOURCE:	Pete Phillis, Chief Financial Officer Ryan Patterson, Financial Services Manager
STRATEGIC PLANNING GOAL:	Financially Sound and Transparent City Government.

BACKGROUND

Attached is a Parameters Ordinance prepared by Norton Rose Fulbright US LLP, the city's bond counsel, that authorizes the sale and issuance of "City of Allen, Texas, General Obligation Bonds, Series 2022."

These bonds are being issued for the said purpose of providing funds for the construction, acquisition and improvements of projects that were authorized in the 2016 bond election. Specifically, the bonds are being sold for Fire Station number six in the amount of \$8,145,000, Phase II of the Library in the amount of \$13,614,000, Street projects in an amount of \$762,000, and land acquisition in the amount of \$3,000,000 by the City's Park and Recreation department for a total issuance amount of \$25,521,000. The transaction will be structured within parameters established by this Ordinance. The Parameters Ordinance allows the City to issue bonds for an amount not to exceed \$25,521,000, at a true interest cost that is not to exceed 5.00%, and are to be repaid within a period of 20 years or less. This approved action authorizes the issuance of the bonds, the form of the bonds and the delivery of the bonds to the purchaser of the bonds. The bonds are obligations of the City and are payable from a levy of ad valorem taxes on property within the City of Allen, Texas.

The sale will be finalized upon the final approval of the Pricing Officer(s). The Pricing Officer(s) listed in the Ordinance are the City's Chief Financial Officer and the Mayor of the City. The plan is to price the bonds on or before the third week of July which will allow the City will close the transaction or sale of the bonds on or before August 16. The closing documents such as the Bond Purchase Agreement, and Paying Agent/Registrar Agreement will be finally executed by an authorized Pricing Officer.

BUDGETARY IMPACT

The bond sale has been planned so that the City's total annual debt payments will remain fairly consistent with previous years payments so as to not increase the tax rate of the city. The debt will be structured to mature in twenty years or less depending on market conditions at the time of the sale.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt the ordinance authorizing the issuance of "City of Allen,

Texas, General Obligation Bonds, Series 2022;" establishing the parameters for the sale and issuance of such bonds; and delegating certain matters to authorized officials of the City.

MOTION

I make a motion to adopt Ordinance No. _____ authorizing the issuance of "City of Allen, Texas, General Obligation Bonds, Series 2022;" establishing the parameters for the sale and issuance of such bonds; and delegating certain matters to authorized officials of the City.

ATTACHMENT(S)

[Ordinance](#)

[Exhibit A - Payee Agent/Registrar Agreement](#)

ORDINANCE NO. ____

AN ORDINANCE authorizing the issuance of "CITY OF ALLEN, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2022"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; and resolving other matters incident and related to the issuance, sale, payment, and delivery of said Bonds, including establishing parameters therefor and delegating matters relating to the sale and issuance of the Bonds to authorized City officials

WHEREAS, the City Council of the City of Allen, Texas (the "City"), hereby finds and determines that general obligation bonds approved and authorized to be issued at an election held May 7, 2016, be authorized to be issued at this time; a summary of the general obligation bonds authorized at said election, the principal amounts authorized, amounts previously issued, amounts being issued pursuant to this ordinance and amounts remaining to be issued will be set forth in the Pricing Certificate (hereinafter referenced); and

WHEREAS, the City Council hereby reserves and retains the right to issue the balance of unissued bonds approved at the May 12, 2007, and May 7, 2016, elections (as reflected in the Pricing Certificate) in one or more installments when, in the judgment of the City Council, funds are needed to accomplish the purposes for which such bonds were voted; and

WHEREAS, the City shall by this Ordinance, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of Bonds to be issued and negotiate the terms of sale thereof; and

WHEREAS, the City Council hereby finds and determines that it is a public purpose and in the best interests of the City to authorize the issuance of the Bonds in one or more series and the terms of such bonds to be included in one or more pricing certificates (each a "Pricing Certificate") to be executed by the Pricing Officer (hereafter designated), all in accordance with the provisions of Texas Government Code, Chapter 1371, as amended; now, therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, TEXAS:

SECTION 1: Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation bonds of the City shall be and are hereby authorized to be issued in one or more series in the aggregate principal amount set forth in the applicable Pricing Certificate to be designated and bear the title "CITY OF ALLEN, TEXAS GENERAL OBLIGATION BONDS, SERIES 2022" (herein referred to as the "Bonds"), for the purposes of providing funds (1) in the amounts specified in the Pricing Certificate for permanent public improvements and public purposes, to wit: (i) acquiring, constructing, improving and equipping park and recreational facilities, including the acquisition of land therefor, (ii) constructing, renovating, improving and expanding municipal library facilities, (iii) acquiring, constructing, renovating, improving, expanding and equipping public safety facilities and the acquisition of land therefor, including fire stations and a police training facility, and (iv) acquiring, constructing, improving and maintaining streets, thoroughfares, bridges, alleyways and sidewalks within the City, including related storm drainage improvements, traffic signalization and signage, streetscaping and median improvements, and utility relocations and the acquisition of land and rights of way therefor; and (2) to pay the costs and expenses of issuance, all as provided in the applicable Pricing Certificate and in accordance with the authority conferred by and in

conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1331 and 1371, as amended. The Bonds shall be dated (the "Bond Date") as provided in the applicable Pricing Certificate.

SECTION 2: Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and the Bonds (other than the Initial Bond(s) referenced in Section 8 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years and in amounts (the "Stated Maturities") and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the applicable Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the applicable Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer (a) As authorized by Texas Government Code, Chapter 1371, as amended, each of the Mayor and Chief Financial Officer (either one of them, a "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including determining whether the Bonds shall be issued in one or more series, determining the aggregate principal amount of each series of Bonds, the aggregate principal amount to be issued from each proposition, the date of each series of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds of each series will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the record date, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, the designation of a paying agent/registrar, the terms of any bond insurance applicable to the Bonds, the designation of one or more funds for the payment of the Bonds, and all other matters relating to the issuance, sale, and delivery of the Bonds, including any modification of the Rule 15c2-12 continuing disclosure undertaking contained in Section 30 hereof, all of which shall be specified in the applicable Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Bonds shall not exceed \$25,521,000;
- (ii) the true interest cost rate for the Bonds shall not exceed 5%; and
- (iii) the maximum maturity date for the Bonds shall not exceed August 15, 2042.

The execution of the applicable Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchasers (hereinafter defined).

(b) The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The Pricing Officer may exercise such delegation on more than one occasion during such time period.

SECTION 4: Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar for the Bonds shall be as provided in the applicable Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices as provided in the applicable Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the applicable Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the

address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bond(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bond(s) authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 4 and 5 hereof relating to the payment and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representation, by and between the City and DTC, and the Letter of Representation from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar, and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7: Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor or Mayor Pro Tem under the City's seal reproduced or impressed thereon and countersigned by the City Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, Texas Government Code, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8: Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the aggregate principal amount of the Bonds with principal installments to become due and payable as provided in the applicable Pricing Certificate and numbered T-1, or (ii) as multiple fully registered bonds, being one bond for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas, and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the applicable Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. Each Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond(s) shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Bonds.

REGISTERED
NO. R-_____

PRINCIPAL AMOUNT
\$_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF ALLEN, TEXAS
GENERAL OBLIGATION BOND
SERIES 2022

Bond Date: _____ Interest Rate: _____ Stated Maturity: _____ CUSIP No.: _____

Registered Owner:

Principal Amount: _____ DOLLARS

The City of Allen (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of Collin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____ and _____ in each year, commencing _____, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purpose of providing funds for (1) permanent public improvements and public purposes, to wit: \$_____ for acquiring, constructing, improving and equipping park and recreational facilities, including the acquisition of land therefor; \$_____ for constructing, renovating, improving and expanding municipal library facilities; \$_____ for acquiring, constructing, renovating, improving, expanding and equipping public safety facilities and the acquisition of land therefor, including fire stations and a police training facility; and \$_____ for acquiring, constructing, improving and maintaining streets, thoroughfares, bridges, alleyways and sidewalks within the City, including related storm drainage improvements, traffic signalization and signage, streetscaping and median improvements, and utility relocations and the acquisition of land and rights of way therefor; and (2) to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapters 1331 and 1371, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due		Term Bonds due	
<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Bonds maturing on and after _____, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor;

provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for redemption. If a conditional notice of redemption is given and such prerequisites to the redemption or sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity or redemption, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF ALLEN, TEXAS

COUNTERSIGNED:

Mayor

City Secretary

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond(s) only.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____)
_____ the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____

attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face
of the within Bond in every particular.

(f) The Initial Bond(s) shall be in the form set forth therefor in paragraph (b) of this
Section, except the form of a single registered Initial Bond shall be modified as follows:

Heading and paragraph one shall be amended to read as follows:

NO. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF ALLEN, TEXAS
GENERAL OBLIGATION BOND
SERIES 2022

Bond Date: _____

Registered Owner:

Principal Amount:

The City of Allen (hereinafter referred to as the "City"), a body corporate and political
subdivision in the County of Collin, State of Texas, for value received, acknowledges itself
indebted to and hereby promises to pay to the registered owner named above, or the registered
assigns thereof, the Principal Amount hereinabove stated on _____ in the
years and in principal installments in accordance with the following schedule:

Stated
Maturity

Principal
Installment

Interest
Rate(s)

(Information to be inserted from Pricing Certificate).

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal installments hereof from the _____ at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on _____, and each _____ and _____ thereafter, until maturity or prior redemption. Principal installments of this Bond are payable in the year of maturity or on a redemption date to the registered owner hereof by _____ (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in _____ (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10: Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations prescribed by law, sufficient to pay the Debt Service Requirements of the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the City and shall be deposited in one or more special funds as specified in the applicable Pricing Certificate by the Pricing Officer (the "Interest and Sinking Fund") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

Provided, however, in regard to the payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current

funds which, together with the accrued interest, if any, received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11: Mutilated – Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the City and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the applicable Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities shall mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the

principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. In the event of a defeasance of the Bonds, the City shall deliver a certificate from its financial advisor, the Paying Agent/Registrar, an independent certified public accountant, or another qualified third party concerning the sufficiency of the deposit of cash and/or Government Securities to pay, when due, the principal of, redemption premium (if any), and interest due on any defeased Bonds. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall, upon the request of the City, be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise provided in the applicable Pricing Certificate, the term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable law that may be used to defease obligations such as the Bonds.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds

immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13: Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the applicable Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 30 hereof. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the applicable Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the applicable Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:

(1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"*Code*" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Gross Proceeds*" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Investment*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Nonpurpose Investment*" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"*Rebate Amount*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Regulations*" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"*Yield*" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed (or refinanced) directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed, or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f)

of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the Holders thereof for federal income tax purposes, the City shall pay to the United States from an appropriate fund, or if permitted by applicable Texas statute, regulation, or opinion of the Attorney General of the State of Texas, the Interest and Sinking Fund, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place, and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer, and City Secretary of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption, or similar or other appropriate certificate, form, or document.

SECTION 15: Sale of Bonds – Official Statement. The Bonds authorized by this Ordinance may be sold by the City to the purchaser(s) (herein referred to as the "Purchasers") by (i) negotiated sale, in accordance with one or more bond purchase agreements (each, a "Purchase Contract"), (ii) private placement, in accordance with an agreement to purchase or other agreement, or (iii) competitive bidding, in accordance with the successful bid submitted therefor, as determined by the Pricing Officer, in accordance with Section 3 hereof. The Pricing

Officer is hereby authorized and directed to execute the Purchase Contract, agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable, for and on behalf of the City and as the act and deed of this City Council.

The Pricing Officer is hereby authorized and directed to execute said Purchase Contract for and on behalf of the City and as the act and deed of this City Council.

With regard to such terms and provisions of said Purchase Contract as a result of a negotiated sale, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of the public offering of the Bonds by the Purchasers;
3. The details of an Official Statement (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the City's Rule 15c2-12 compliance;
4. A security deposit for the Bonds;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Bonds;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the City under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the City;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor and City Secretary of the City are further authorized and directed to deliver for and on behalf of the City copies of one or more Preliminary Official Statements and Official Statements, prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement in the form and content as approved by the Pricing Officer shall be deemed to be approved by the City Council of the City and constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16: Control and Custody of Bonds. The Mayor shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and

records, including the definitive Bonds and the Initial Bond(s), pending the investigation and approval of the Initial Bond(s) by the Attorney General of the State of Texas, and the registration of the Initial Bond(s) to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer, and City Secretary of the City, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents and certifications relating to the City and the issuance of the Bonds, including a certification as to facts, estimates, circumstances, and reasonable expectations pertaining to the use, expenditure, and investment of the proceeds of the Bonds, as may be necessary for the issuance of the Bonds, the approval of the Attorney General, the registration by the Comptroller of Public Accounts, and the delivery of the Bonds to the Purchasers and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 17: Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance, amounts to pay municipal bond insurance premium, if any, any accrued interest received from the Purchasers of the Bonds, and premium in the amount, if any, specified in the applicable Pricing Certificate) shall be deposited in a construction fund to be maintained at a City depository. Pending expenditure for authorized projects and purposes, such proceeds of sale deposited to the construction fund may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, including guaranteed investment contracts permitted in Texas Government Code, Section 2256.015, et seq., and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Interest and Sinking Fund as shall be determined by the City Council. Any excess bond proceeds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Interest and Sinking Fund. Accrued interest and premium in the amount, if any, specified in the applicable Pricing Certificate received from the sale of the Bonds shall be deposited to the credit of the Interest and Sinking Fund. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by the City Council of the City.

SECTION 18: Notices to Holders-Waiver. Wherever this Ordinance or a Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or a Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 19: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

SECTION 20: Reimbursement. The City reasonably expects to reimburse capital expenditures made from its own funds with respect to the projects described in Section 1 hereof with proceeds of the Bonds and this Ordinance shall constitute a declaration of official intent under Treas. Reg. § 1.150-2. The maximum principal amounts of obligations to be issued for the projects is set forth in Section 3 hereof.

SECTION 21: Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP ("Bond Counsel"), Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The City Council confirms the prior engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 22: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 23: Benefits of Ordinance. Nothing in this Ordinance or a Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or a Pricing Certificate, this Ordinance and all of its provisions and the applicable Pricing Certificate being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 24: Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or a Pricing Certificate, are hereby repealed to the extent of such conflict, and the provisions of this Ordinance and the applicable Pricing Certificate shall be and remain controlling as to the matters contained herein and therein.

SECTION 25: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 26: Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 27: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 28: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 29: Incorporation of Findings and Determinations. The findings and determinations of the City Council of the City contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 30: Continuing Disclosure Undertaking. The Pricing Officer is hereby authorized to determine whether a continuing disclosure undertaking is required in connection with the issuance of the Bonds. To the extent it is determined that an undertaking under the Rule is required, this Section 30 shall apply.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year of the City beginning in the year stated in the applicable Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the applicable Pricing Certificate, and (2) if not provided as part such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in the applicable Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the Official Statement, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must

be provided. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the City shall file unaudited financial statements within such twelve-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the

termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in the immediately preceding subsections (c)15 and (c)16 and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly

provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) hereof an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 31: Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 32: Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer, and City Secretary, are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and

provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, Assistant Chief Financial Officer, City Secretary or Bond Counsel to the City are each hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance, including each applicable Pricing Certificate: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 33: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 34: Effective Date. This Ordinance shall take effect and be in full force immediately from and after its adoption on the date hereof in accordance with the provisions of Texas Government Code, Section 1201.028, as amended.

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DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ALLEN,
COLLIN COUNTY, TEXAS, ON THIS THE 12th DAY OF APRIL, 2022.

CITY OF ALLEN, TEXAS

KENNETH M. FULK
Mayor

ATTEST:

SHELLEY B. GEORGE
TRMC, City Secretary

(City Seal)

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____ (this "Agreement"), by and between _____, _____, Texas, a banking corporation duly organized and existing under the laws of the _____ and authorized to do business in the State of Texas, or its successors (the "Bank") and the City of Allen, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of Allen, Texas, General Obligation Bonds, Series 2022", (the "Securities"), dated _____, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended or Section 2274.002(a)(2) of the Texas Government Code. The Issuer covenants to provide notice to the Bank upon any change in the Issuer's Fiscal Year within ten (10) business days of the governing body of the Issuer's decision to change the Fiscal Year of the Issuer.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

“Acceleration Date” on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

“Authorizing Document” means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

“Bank Office” means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

“Holder” and “Security Holder” each means the Person in whose name a Security is registered in the Security Register.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

“Predecessor Securities” of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

“Redemption Date”, when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

“Responsible Officer”, when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated

officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Security Register” means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

“Stated Maturity” means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms “Bank,” “Issuer,” and “Securities (Security)” have the meanings assigned to them in the recital paragraphs of this Agreement.

The term “Paying Agent/Registrar” refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Current Interest Bond when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Current Interest Bonds (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder’s risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the “Security Register”) for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the

payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. The Bank represents and warrants that it will at all times have immediate access to the Security Register by electronic or other means and will be capable at all times of producing a hard copy of the Security Register for use by the Issuer. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the

Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, Issuer's financial advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for “Depository Trust Company” services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the “Operational Arrangements”, which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan and Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

By: _____

Title: _____

Address: _____

CITY OF ALLEN, TEXAS

By: _____
Pricing Officer

Address: 305 Century Parkway
Allen, Texas 75013

ANNEX A
FEE SCHEDULE

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of District F of Planned Development No. 108, with a Base Zoning of Office, Located at the Southwest Corner of the Intersection of Exchange Parkway and Raintree Circle. [Jackrabbit]
STAFF RESOURCE:	Marc Kurbansade, Community Development Director
BOARD/COMMISSION ACTION:	The request has been reviewed by the Technical Review Committee. On March 15, 2022, the Planning and Zoning Commission recommended approval of the request.
PREVIOUS COUNCIL ACTION:	Planned Development No. 54 - Approved May, 1993 Planned Development No. 108 - Approved October, 2011 Planned Development No. 108 - Approved April, 2021 Planned Development No. 108 - Approved November, 2021
STRATEGIC PLANNING GOAL:	Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

The subject property is located at the southwest corner of the intersection of Exchange Parkway and Raintree Circle. The zoning designations of the surrounding properties are as follows:

- North - Planned Development No. 108 (PD-108) with a base zoning designation of Mixed Use (MIX)
- South - PD-108 with a base zoning designation of Office (O)
- East - Planned Development No. 54 (PD-54) with a base zoning designation of Commercial Corridor (CC)
- West - PD-54 with a base zoning designation of Industrial Technology (IT)

The subject property is currently zoned PD-108 with a base zoning designation of O. The original PD-108 was adopted in October 2011 and included eight districts (District A-H), of which the subject property is located in District F. Within the original PD-108, the stated Purpose of District F is as follows: "District F is comprised of the remaining parcels of an area that has primarily been developed out as medical office. The development pattern and general land use type in place is intended to extend into these remaining individual parcels."

In April 2021, a Planned Development Amendment was approved to permit a convenience store with fuel sales and a medical office building on this property. The southern portion of the lot (1.35 acres+/-) was to be occupied by a medical office use, and the remaining northern portion (1.18 acres +/-) was to be occupied by a convenience store with fuel sales use. This horizontally integrated mixed-use development, due to its medical office component, was viewed by staff to meet the Purpose of District F as previously stated.

In November 2021, a Planned Development amendment was approved to remove the previously approved medical office building from the Concept Plan, thus having a convenience store with fuel sales as the sole use on the entire tract. The existing detention pond, with minor modifications was proposed to remain.

The current request is to replace the previously approved convenience store with fuel sales with a restaurant (drive-in or thru). This request includes a drive-through restaurant without dining facilities. While the Allen Land Development Code (ALDC) allows a restaurant with a drive-through, it does require indoor or outdoor dining facilities. For this reason, the applicant is requesting a Planned Development Amendment to amend the development regulations. Additionally, the existing detention pond will continue to remain in the same general location, with minor modifications.

The development regulations include a Landscape Plan (Exhibit "C") and Building Elevations (Exhibit "D"). The primary purpose of the Landscape Plan is to depict the proposed plantings in excess of ALDC requirements surrounding the perimeter of the surface detention pond. Secondly, the Landscape Plan depicts the proposed plantings that are incorporated into the Hike and Bike Trail along Exchange Parkway and the pedestrian sidewalk along Raintree Circle. The Building Elevations provide a general range of architectural features incorporated into the final design of the proposed primary building.

It is staff's position that the prior decision by City Council in November 2021 constitutes a change in policy direction from the original PD-108 approved in October 2011. Therefore, staff will be recommending approval of this request.

The request has been reviewed by the Technical Review Committee.

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to Amend the Development Regulations of District F of Planned Development No. 108, with a base zoning of Office, located at the Southwest corner of the intersection of Exchange Parkway and Raintree Circle.

ATTACHMENT(S)

[Ordinance](#)

[Property Notification Map](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS, AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE REGULATIONS RELATING TO THE USE AND DEVELOPMENT OF LOT 7, BLOCK G, BRAY CENTRAL ONE, LOCATED IN DISTRICT F OF PLANNED DEVELOPMENT “PD” NO. 108 OFFICE “O” AND ADOPTING A ZONING EXHIBIT, CONCEPT PLAN, LANDSCAPE PLAN, AND BUILDING ELEVATIONS; REPEALING ORDINANCE NO. 3879-11-21 PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR 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, the City Council has concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be further amended as follows.

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, Texas, as amended, shall be further amended by amending as set forth in Section 2 of this Ordinance the regulations relating to the use and development of Lot 7, Block G, Bray Central One, an addition to City of Allen, Collin County, Texas, according to the plat thereof recorded in Cabinet Q, Slide 111, Plat Records, Collin County, Texas (“the Property”) described in “Exhibit A,” attached hereto and incorporated herein by reference presently located in District F of Planned Development “PD” No. 108 Office “O.”

SECTION 2. The Property shall be developed and used only in accordance with the applicable provisions of the Allen Land Development Code, as amended (“ALDC”), and District F of PD 108 as set forth in Ordinance No. 3044-10-11, as amended (collectively “the PD 108 Ordinance”), except to the extent modified by the Development Regulations set forth 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. LANDSCAPE PLAN:** The Property shall be developed in general conformance with the Landscape Plan attached hereto as Exhibit “C” and incorporated herein by reference (the “Landscape Plan”).
- C. BUILDING ELEVATIONS:** The Property shall be developed in general conformance with the architectural style set forth on the Building Elevations attached hereto as Exhibit “D” and incorporated herein by reference (the “Building Elevations”).
- D. PERMITTED USES:** In addition to the uses permitted within District F of PD108, Block G, Lot 7, as identified on the Concept Plan, may be developed and used for a “Restaurant (drive-in or drive-through)” use. For purposes of this Section, “Restaurant (with a drive-in or drive-through)” means an establishment

serving food and/or beverages prepared on-site and served to customers at a walk-up or drive-through carry-out window(s) and/or to the customer remaining in the customer's vehicle parked on the premises, which establishment may or may not have an on-premise dining area.

SECTION 3. Ordinance No. 3879-11-21 is hereby repealed.

SECTION 4. 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 5. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance, or of the Allen Land Development Code, 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, as amended hereby, which shall remain in full force and effect.

SECTION 6. 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 7. 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, 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 8. This Ordinance shall take effect immediately from and after its passage and publication of the caption 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 12TH DAY OF APRIL 2022.

APPROVED:

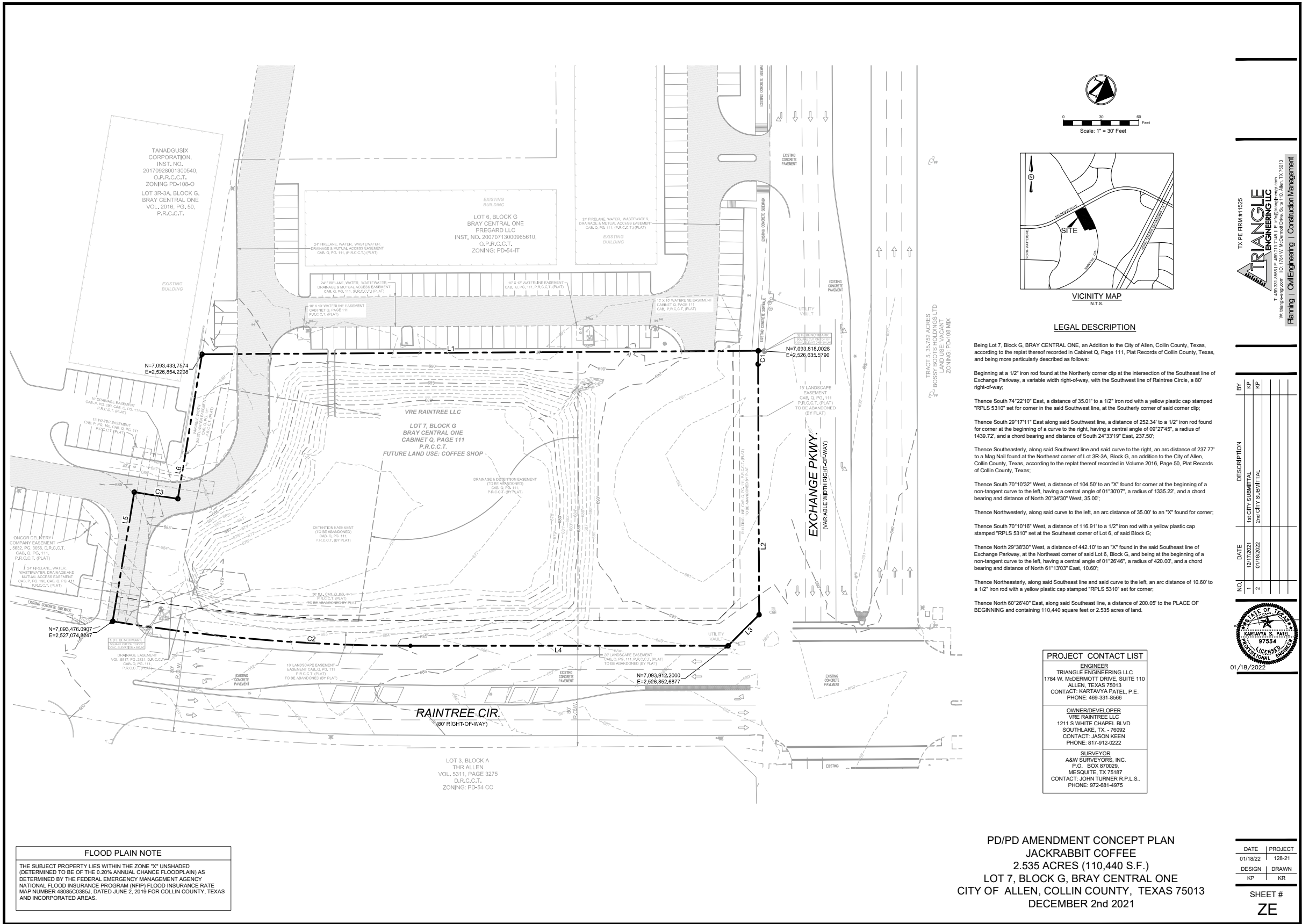
Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

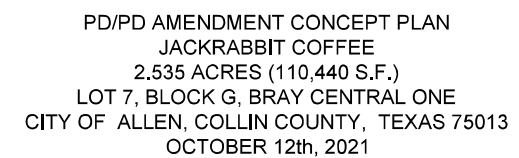
ATTEST:

Peter G. Smith, CITY ATTORNEY
(kb12/25/2022:128019)


Shelley B. George, TRMC, CITY SECRETARY







NO.	DATE	DESCRIPTION	BY
1	12/17/2021	1st CITY SUBMITTAL	KP
2	01/19/2022	2nd CITY SUBMITTAL	KP

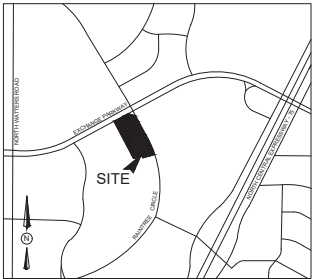


01/18/2022

DATE	PROJECT
01/18/22	128-2
DESIGN	DRAWN
KP	KR

SHEET #
CP-2

LANDSCAPE ARCHITECT
STUDIO GREEN SPOT, INC.
1784 W. McDERMOTT DR.
SUITE 110
ALLEN, TEXAS 75013
(469) 369-4448
CHRIS@STUDIOGREENSPOT.COM



VICINITY MAP
N.T.S.

LANDSCAPE NOTES

- CONTRACTOR SHALL VERIFY ALL EXISTING AND PROPOSED SITE ELEMENTS AND NOTIFY ARCHITECT OF ANY DISCREPANCIES. SURVEY DATA OF EXISTING CONDITIONS WAS SUPPLIED BY OTHERS.
- CONTRACTOR SHALL LOCATE ALL EXISTING UNDERGROUND UTILITIES AND NOTIFY ARCHITECT OF ANY CONFLICTS. CONTRACTOR SHALL EXERCISE CAUTION WHEN WORKING IN THE VICINITY OF UNDERGROUND UTILITIES.
- CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LANDSCAPE AND IRRIGATION PERMITS.
- CONTRACTOR TO PROVIDE A MINIMUM 2% SLOPE AWAY FROM ALL STRUCTURES.
- ALL PLANTING BEDS AND LAWN AREAS TO BE SEPARATED BY STEEL EDGING. NO STEEL TO BE INSTALLED ADJACENT TO SIDEWALKS OR CURBS.
- ALL LANDSCAPE AREAS TO BE 100% IRRIGATED WITH AN UNDERGROUND AUTOMATIC IRRIGATION SYSTEM AND SHALL INCLUDE RAIN AND FREEZE SENSORS.
- ALL LAWN AREAS TO BE SOLID SOD BERMUDAGRASS, UNLESS OTHERWISE NOTED ON THE DRAWINGS.

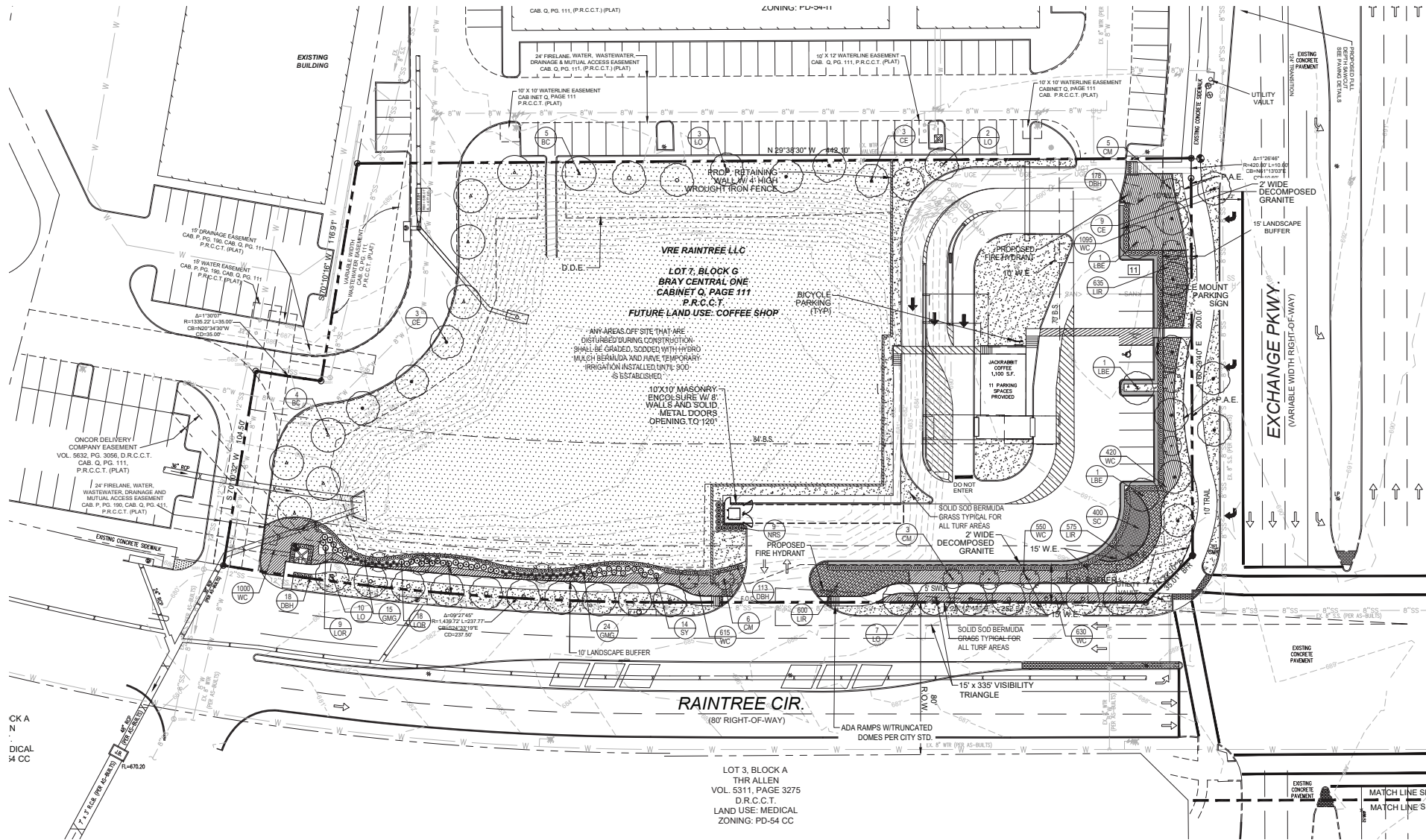
GENERAL LAWN NOTES

- FINE GRADE AREAS TO ACHIEVE FINAL CONTOURS INDICATED ON CIVIL PLANS.
- ADJUST CONTOURS TO ACHIEVE POSITIVE DRAINAGE AWAY FROM BUILDINGS. PROVIDE UNIFORM ROUNDING AT TOP AND BOTTOM OF SLOPES AND OTHER BREAKS IN GRADE. CORRECT IRREGULARITIES AND AREAS WHERE WATER MAY STAND.
- ALL LAWN AREAS TO RECEIVE SOLID SOD SHALL BE LEFT IN A MAXIMUM OF 1" BELOW FINAL FINISH GRADE. CONTRACTOR TO COORDINATE OPERATIONS WITH ON-SITE CONSTRUCTION MANAGER.
- IMPORTED TOPSOIL SHALL BE NATURAL, FRIABLE SOIL FROM THE REGION, KNOWN AS BOTTOM AND SOIL, FREE FROM LUMPS, CLAY, TONIC SUBSTANCES, ROOTS, DEBRIS, VEGETATION, STONES, CONTAINING NO SALT AND BLACK TO BROWN IN COLOR.
- ALL LAWN AREAS TO BE FINE GRADED, IRRIGATION TRENCHES COMPLETELY SETTLED, AND FINISH GRADE APPROVED BY THE OWNER'S CONSTRUCTION MANAGER OR ARCHITECT PRIOR TO INSTALLATION.
- ALL ROCKS 3/4" DIAMETER AND LARGER, DIRT CLODS, STICKS, CONCRETE SPOILS, ETC. SHALL BE REMOVED PRIOR TO PLACING TOPSOIL AND ANY LAWN INSTALLATION.
- CONTRACTOR SHALL PROVIDE (1") ONE INCH OF IMPORTED TOPSOIL ON ALL AREAS TO RECEIVE LAWN.

SOLID SOD NOTES

- FINE GRADE AREAS TO ACHIEVE FINAL CONTOURS INDICATED. LEAVE AREAS TO RECEIVE TOPSOIL 3" BELOW FINAL DESIRED GRADE IN PLANTING AREAS AND 1" BELOW FINAL GRADE IN TURF AREAS.
- ADJUST CONTOURS TO ACHIEVE POSITIVE DRAINAGE AWAY FROM BUILDINGS. PROVIDE UNIFORM ROUNDING AT TOP AND BOTTOM OF SLOPES AND OTHER BREAKS IN GRADE. CORRECT IRREGULARITIES AND AREAS WHERE WATER MAY STAND.
- ALL LAWN AREAS TO RECEIVE SOLID SOD SHALL BE LEFT IN A MAXIMUM OF 1" BELOW FINAL FINISH GRADE. CONTRACTOR TO COORDINATE OPERATIONS WITH ON-SITE CONSTRUCTION MANAGER.
- CONTRACTOR TO COORDINATE WITH ON-SITE CONSTRUCTION MANAGER FOR AVAILABILITY OF EXISTING TOPSOIL.
- PLANT SOD BY HAND TO COVER INDICATED AREA COMPLETELY. INSURE EDGES OF SOD ARE TOUCHING. TOP DRESS JOINTS BY HAND WITH TOPSOIL TO FILL VOIDS.
- ROLL GRASS AREAS TO ACHIEVE A SMOOTH, EVEN SURFACE, FREE FROM UNNATURAL UNDUATIONS.
- WATER SOD THOROUGHLY AS SOD OPERATION UTILITIES.
- CONTRACTOR SHALL MAINTAIN ALL LAWN AREAS UNTIL FINAL ACCEPTANCE. THIS SHALL INCLUDE, BUT NOT LIMITED TO: MOWING, WATERING, WEEDING, CULTIVATING, CLEANING AND REPLACING DEAD OR BARE AREAS TO KEEP PLANTS IN A VIGOROUS, HEALTHY CONDITION.
- CONTRACTOR SHALL GUARANTEE ESTABLISHMENT OF AN ACCEPTABLE TURF AREA AND SHALL PROVIDE REPLACEMENT FROM LOCAL SUPPLY IF NECESSARY.
- SOD INSTALLED DURING DORMANT PERIOD SHALL NOT ME OVER-SEED WITH RYE GRASS PER CITY OF ALLEN STANDARDS

01 CONCEPT LANDSCAPE PLAN
SCALE: 1"=30'-0"



LANDSCAPE TABULATIONS

TOTAL SITE AREA (110,440 s.f.)

Requirements: 15% of total site area to be landscaped

Required	Provided
16,566 s.f. (15%)	17,516 s.f. (16%)

STREET FRONTAGE - Raintree Circle (490 l.f.)
Landscape buffer (7,076 s.f.)

Requirements: For lots greater than 100 feet of street frontage, one (1) shade tree per 30 l.f. of street frontage and one (1) ornamental tree for every two (2) shade trees is also required. Landscape buffer can not be more than 50% turf.

Required	Provided
(17) trees	(17) trees
(9) ornamental trees	(9) ornamental trees
3,538 s.f.- 50% max. turf	3,010 s.f.- 45% turf proposed and concrete sidewalk

STREET FRONTAGE - Exchange Parkway (245.7 l.f.)
Landscape buffer (3,398 s.f.)

Requirements: For lots greater than 100 feet of street frontage, one (1) shade tree per 30 l.f. of street frontage and one (1) ornamental tree for every two (2) shade trees is also required. Landscape buffer can not be more than 50% turf.

Required	Provided
(9) trees	(9) trees
(5) ornamental trees	(5) ornamental trees
1,699 s.f.- 50% max. turf	1,420 s.f.- 42% turf proposed

PARKING LOT (11 spaces)

Requirements: One (1) shade tree and one (1) ornamental tree for every 30 parking spaces. No parking space shall be more than 50 feet from any tree. A headlight screen shall be provided by means of shrubs or berm.

Required	Provided
(1) trees, 3" cal.	(3) trees, 3" cal.
(1) ornamental trees	(1) ornamental trees
24" ht. evergreen screen	24" ht. evergreen screen

CORNER LOT
Requirements: Enhanced planting bed area at corner.

Required	Provided
900 s.f.	1,000 sf

THERE ARE NO EXISTING TREES ON SITE

PLANT MATERIAL SCHEDULE

TREES					
TYPE	QTY	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
BC	9	Bald Cypress	<i>Taxodium distichum</i>	4" cal.	container, 14" ht., 6" spread, 5' clear straight trunk
CE	15	Cedar Elm	<i>Ulmus crassifolia</i>	4" cal.	container, 14" ht., 6" spread, 5' clear trunk
CM	14	Crepe Myrtle	<i>Lagerstroemia indica</i>	3" cal.	container, 8" ht., 4" spread min., 3 or 5 trunks
LBE	3	Lacabark Elm	<i>Ulmus parvifolia</i> 'Elmer II'	4" cal.	container, 14" ht., 6" spread, 5' clear straight trunk
LO	22	Live Oak	<i>Quercus virginiana</i>	4" cal.	container, 14" ht., 6" spread, 5' clear straight trunk
SHRUBS					
TYPE	QTY	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
DBH	309	Dwarf Burford Holly	<i>Ilex cornuta</i> 'burfordii' 'hans'	5 gal.	container grown, 24" ht., 24" spread
GMG	39	Pink Muhly Grass	<i>Muhlenbergia capillaris</i>	5 gal.	container full, well rooted
LOR	27	Loropetalum 'Ruby'	<i>Loropetalum chinensis</i> 'Ruby'	5 gal.	container, 24" ht., 20" spread
NRS	9	Nellie R. Stevens	<i>Ilex x Nellie R. Stevens</i>	7 gal.	container, 36" ht., 30" spread
SY	14	Softleaf yucca	<i>Sakia Greggii</i>	5 gal.	container full, well rooted
GROUNDCOVERS					
TYPE	QTY	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
LIR	1810	Liriope	<i>Liriope muscari</i>	4" pots	container full, well rooted, 12" o.c.
SC	400	Seasonal Color	<i>Eustoma fortunei</i> 'Coloratus'	4" pots	selection by owner, 12" o.c.
WC	4310	Purple Wintercreeper	<i>Cynodon dactylon</i> '419'	4" pots	container, 3-12" runners min., 12" o.c.
		'419' Bermudagrass			Solid Sod refer to notes

NOTE: Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. All plant material shall meet or exceed remarks as indicated. All trees to have straight trunks and be matching within varieties.

JACKRABBIT COFFEE CONCEPT
PLAN

905 EXCHANGE PARKWAY
CITY OF ALLEN, COLLIN COUNTY, TEXAS

ISSUE:

FOR APPROVAL 12.02.2021
CITY COMMENTS 01.17.2022

DATE:

01.17.2022

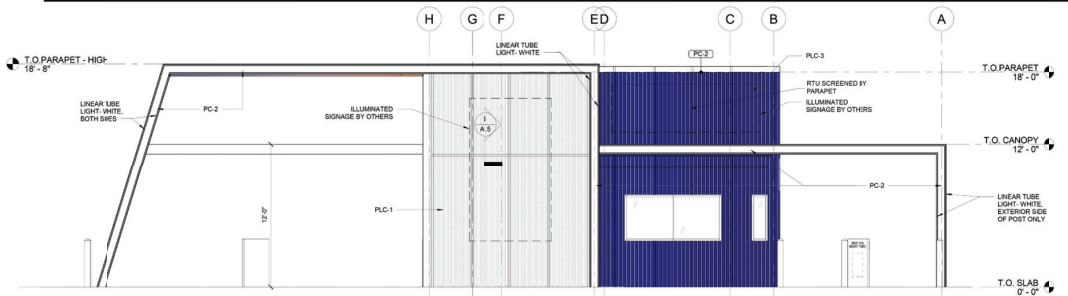
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CONCEPT LANDSCAPE PLAN

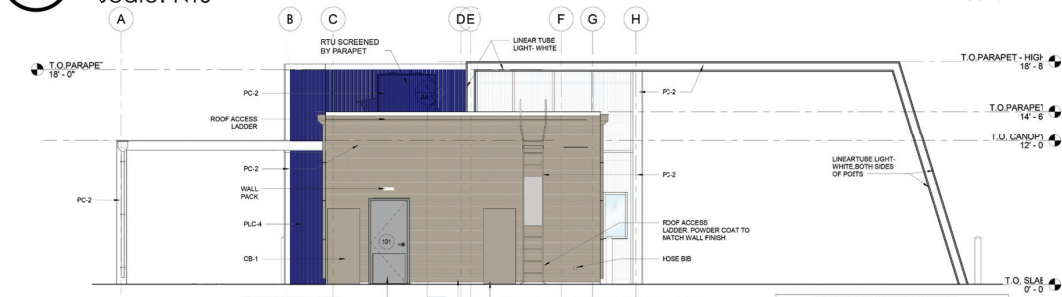
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L.1

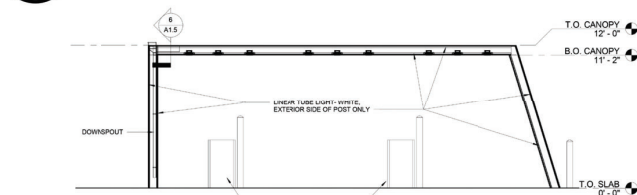
ELEVATIONS
BUILDING + MATERIALS



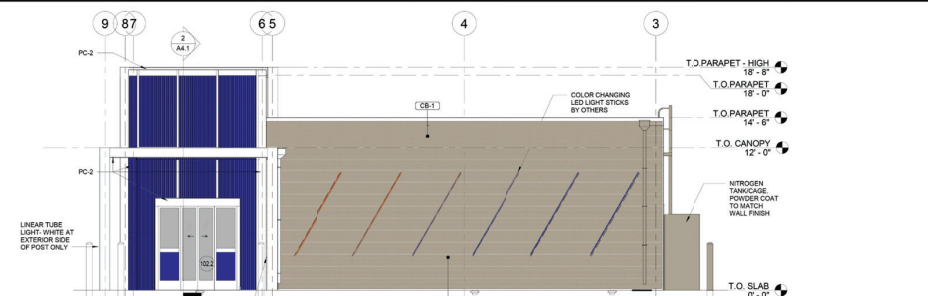
1 FRONT ELEVATION - EAST
Scale: NTS



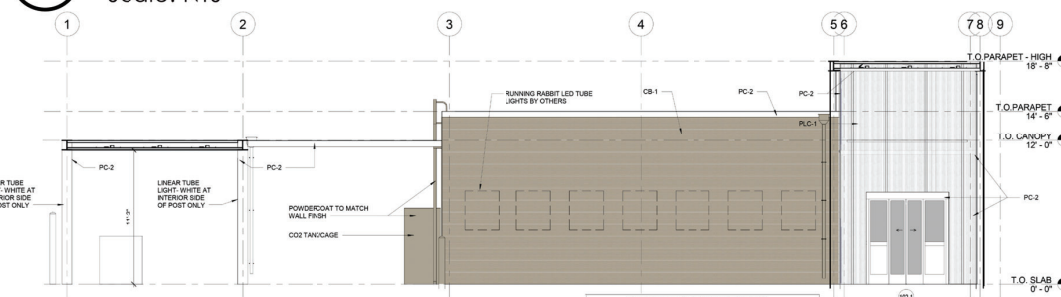
3 BACK ELEVATION - WEST
Scale: NTS



5 MENU CANOPY ELEVATION
Scale: NTS



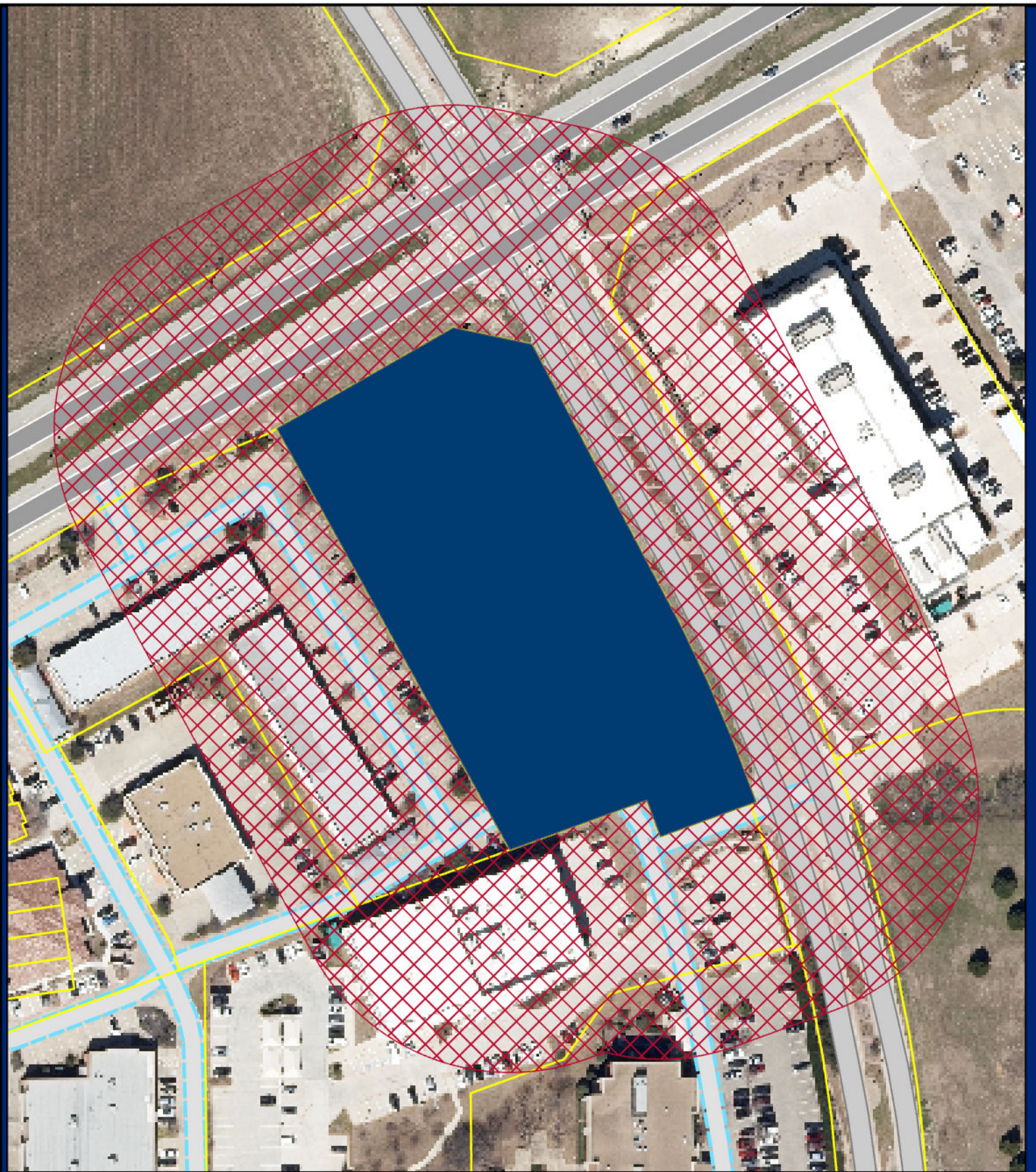
2 SIDE ELEVATION - SOUTH
Scale: NTS



4 SIDE ELEVATION - NORTH
Scale: NTS






Project Information		Revision Log	
PROJECT #:	SCALE:	DATE:	CHECKED BY:
DATE:	1/24/2022	DATE:	1/24/2022
DRAWN BY:	CRYL	CHECKED BY:	
SHEET: 1/24/2022			
SHEET:			

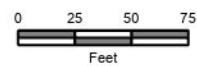


Public Notification Map

Jackrabbit
905 W. Exchange Pkwy.

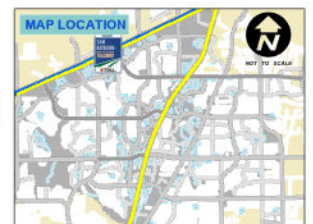
Legend

-  Collin CAD Parcels
-  200' Buffer
-  Subject Property



Community Development - Planning
Date Saved: 2/28/2022

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.



CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION
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AGENDA DATE:	April 12, 2022
AGENDA CAPTION:	Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations of Tract 1 of Planned Development No. 58, with a Base Zoning of Shopping Center, Located at 1300 N. Central Expressway.
STAFF RESOURCE:	Marc Kurbansade, Director of Community Development
BOARD/COMMISSION ACTION:	The request has been reviewed by the Technical Review Committee. On March 15, 2022, the Planning and Zoning Commission recommended approval of the request.
PREVIOUS COUNCIL ACTION:	Planned Development No. 58 - Approved March, 1996 Planned Development No. 58 - Approved June, 2007
STRATEGIC PLANNING GOAL:	Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

The subject property is generally located on the east side of the US Highway 75 Northbound Frontage Road approximately 565 feet north of the intersection of Exchange Parkway and the US Highway 75 Northbound Frontage Road. More specifically, the subject property is located in Lot 1, Block A of the Cornerstone / Allen Addition.

The zoning designations of the surrounding properties are as follows:

- North - Community Facilities (CF)
- South - Planned Development No. 58 (PD-58) with a base zoning designation of Shopping Center (SC)
- East - PD-58 with base zoning designations of SC and CF
- West (across US75) - Planned Development No. 54 with a base zoning designation of Corridor Commercial

The subject property is approximately 5.6247 acres and retains a zoning designation of PD-58 with a base zoning designation of SC. The site is currently developed with an existing structure that is approximately 70,200 square feet in floor area. No construction modifications to the current site are being proposed.

The purpose of this request is twofold:

1. Amend the Development Regulations to permit an "Electronic Manufacturing and Assembly" use.
2. Amend the Development Regulations to permit an Office-Showroom/Warehouse use, provided that the storage and warehouse uses are limited to a maximum of 75% of the gross floor area.

STAFF RECOMMENDATION

Staff recommends approval.

MOTION

I make a motion to adopt Ordinance No. _____ to Amend the Development Regulations of Planned Development No. 58 with a Base Zoning of Shopping Center.

ATTACHMENT(S)

[Ordinance](#)

[Property Notification Map](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, RELATING TO THE USE AND DEVELOPMENT OF LOT 1, BLOCK A, CORNERSTONE/ALLEN ADDITION, LOCATED WITHIN TRACT 1 OF PLANNED DEVELOPMENT “PD” NO. 58 WITH A BASE ZONING DISTRICT OF SHOPPING CENTER “SC” AND ADOPTING A ZONING EXHIBIT; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR 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, the City Council has concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be further amended as follows.

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, Texas, as amended, shall be further amended by amending, as set forth in Section 2 of this Ordinance, the regulations relating to the use and development of Lot 1, Block A, Cornerstone/Allen, an addition to City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume M, Page 316, Plat Records, Collin County, Texas (“the Property”) located in District 1 of Planned Development “PD” No. 58 Shopping Center “SC.”

SECTION 2. The Property shall be developed and used only in accordance with the applicable provisions of the Allen Land Development Code, as amended (“ALDC”), and Tract 1 of PD 58 as set forth in Ordinance No. 2636-6-07 and Ordinance No. 1409-3-96, as such regulations have been amended; provided, however, in addition to the uses permitted by the PD 58 Ordinance applicable to Tract 1, the Property may also be developed as an “Electronic Manufacturing and Assembly” use and/or an “Office-Showroom/Warehouse use.” For purposes of this Ordinance, “Office-Showroom/Warehouse” means a building with (a) not more than 75 percent of its total floor area devoted to storage and warehousing use that is not accessible to the general public, and (b) the remaining floor area being used for retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

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 the Allen Land Development Code, 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, 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, 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 of the caption 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 12TH DAY OF APRIL 2022.

APPROVED:

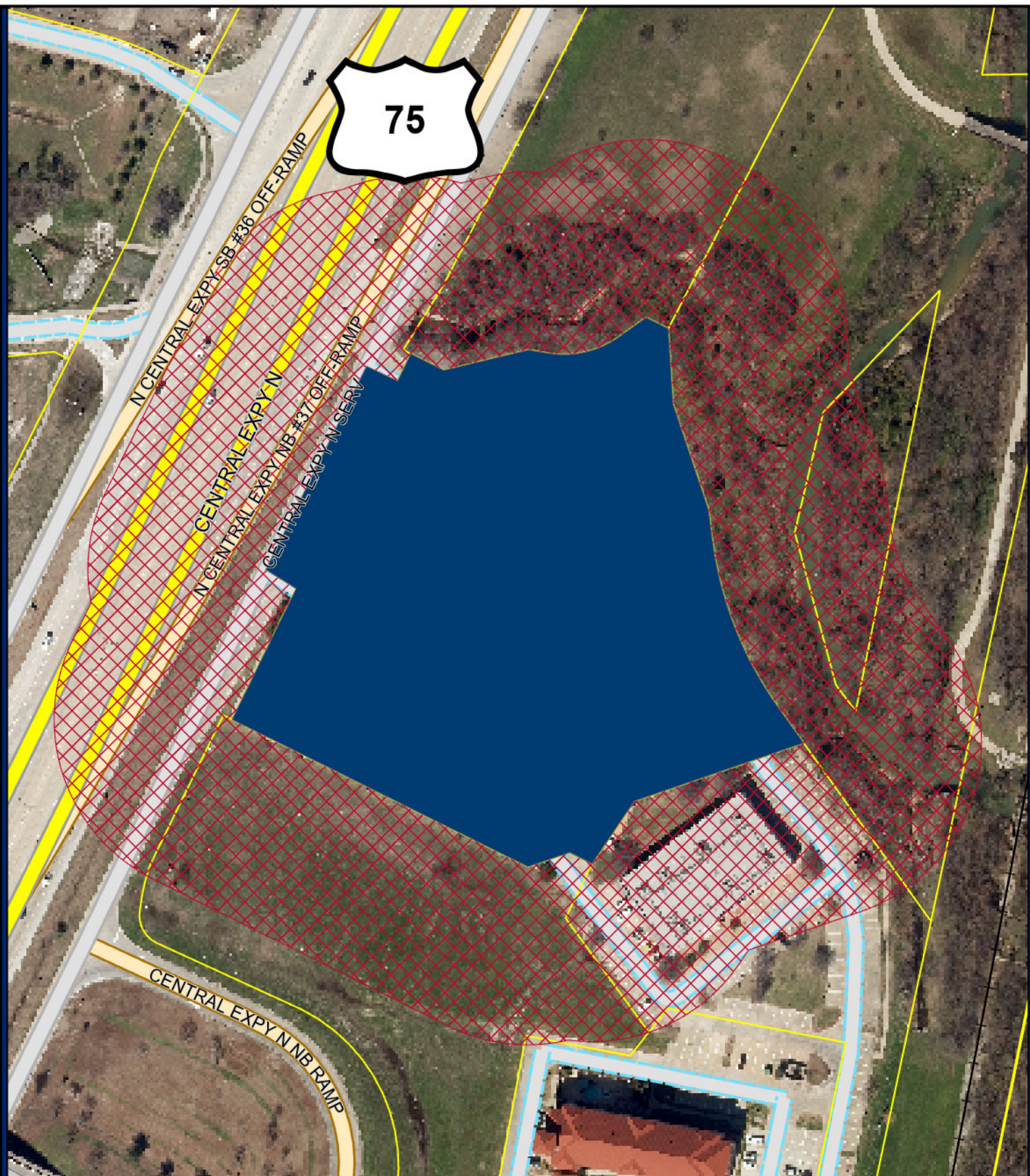
Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(kbl:3/2/2022:128115)




Shelley B. George, TRMC, CITY SECRETARY

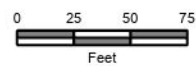


Public Notification Map

1300 N. Central Expy.

Legend

-  Subject Property
-  Collin CAD Parcels
-  200' Buffer



Community Development - Planning
Date Saved: 2/28/2022

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