



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
TUESDAY, APRIL 26, 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 Heritage Guild Proclaiming April 2022 as "Ebenezer Allen Month."
- Presentation of a Proclamation to The Turning Point Proclaiming April 2022 as "Start by Believing Month."
- Presentation of a Proclamation to the Office of the City Secretary Proclaiming May 1-7, 2022, as "Municipal Clerks Week."
- Presentation of a Proclamation to the City of Allen Building and Permitting Division Proclaiming May 2022 as "Building Safety Month."

3.3 Recognition of the Accounting Division for Receipt of the GFOA Awards for Outstanding Achievement in Popular Annual Financial Reporting and Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year Ended September 30, 2020.

3.4 Presentation of Reuse-A-Shoe Contest Winners by Keep Allen Beautiful.

3.5 Presentation of the Planning and Zoning Commission's Annual Report by Chair Dan Metevier.

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 April 12, 2022, Regular City Council Meeting.
- 4.2 Adopt an Ordinance Approving and Enacting Supplement No. 18 to the Code of Ordinances Providing for Certain Text Amendments to Sections of the Code, as Previously Amended by Ordinances Adopted Since November 24, 2020.
- 4.3 Adopt an Ordinance Approving and Enacting Supplement No. 19 to the Allen Land Development Code Providing for Certain Text Amendments to Sections of the Code, as Previously Amended by Ordinances Adopted Since November 10, 2020.
- 4.4 Adopt a Resolution Nominating Stephen Terrell as a Candidate to Fill a Vacancy on the Collin Central Appraisal District Board of Directors with a Term Expiration of December 31, 2023.
- 4.5 Award Bid and Authorize the City Manager to Execute an Agreement with Ace Pipe Cleaning, Ltd., for the Manhole Rehabilitation Project in the Amount of \$851,314.
- 4.6 Authorize the City Manager to Execute a Purchase and Sale Agreement with the North Texas Municipal Water District for the Purchase of 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition [Exchange Parkway at Junction Drive].
- 4.7 Authorize the City Manager to Execute a Purchase and Sale Agreement with the Allen Economic Development Corporation for 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition [Exchange Parkway and Junction Drive].

5. Regular Agenda.

6. Other Business.

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

6.1 Calendar.

- 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 22, 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 26, 2022

AGENDA CAPTION: Recognition of the Accounting Division for Receipt of the GFOA Awards for Outstanding Achievement in Popular Annual Financial Reporting and Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year Ended September 30, 2020.

STAFF RESOURCE: Pete Phillis, Chief Financial Officer
Ryan Patterson, Financial Services Manager

STRATEGIC PLANNING GOAL: Financially Sound and Transparent City Government.

BACKGROUND

The Government Financial Officers Association (GFOA) has awarded the City of Allen the award for Outstanding Achievement for the Popular Annual Financial Report (PAFR) and the Certificate of Achievement for Excellence of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2020. These two awards demonstrate the City's commitment to transparency and full disclosure.

The information presented in the PAFR is derived from the annual comprehensive financial report in a short, condensed and simple manner. In order to be eligible for the award, a government must also submit its annual comprehensive financial report to GFOA's Certificate of Achievement for Excellence in Financial Reporting Program and receive the Certificate for the current fiscal year. A panel of independent reviewers evaluated the report based on reader appeal, understandability, distribution methods, creativity, quality, and other elements.

The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. This is the twenty-second consecutive year that the City has received the award for excellence in financial reporting.

ATTACHMENT(S)

[PAFR Award FY2020](#)
[ACFR Award FY2020](#)



Government Finance Officers Association

**Award for
Outstanding
Achievement in
Popular Annual
Financial Reporting**

Presented to

City of Allen

Texas

For its Annual Financial Report
for the Fiscal Year Ended

September 30, 2020

Christopher P. Morrill

Executive Director/CEO



Government Finance Officers Association

Certificate of
Achievement
for Excellence
in Financial
Reporting

Presented to

**City of Allen
Texas**

For its Annual Comprehensive
Financial Report
For the Fiscal Year Ended

September 30, 2020

Christopher P. Morill

Executive Director/CEO

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Presentation of Reuse-A-Shoe Contest Winners by Keep Allen Beautiful.

STAFF RESOURCE: Andrea Smith, Education Specialist

STRATEGIC PLANNING GOAL: Engaged and Connected Allen Community.

BACKGROUND

Responsible solid waste management subscribes to the hierarchy of Reduce, Reuse, and Recycle. To involve the students of Allen Independent School District (AISD) in an event representing these concepts, Keep Allen Beautiful (KAB) invited the schools of AISD to collect gently used shoes for reuse during a three-week contest to see who could collect the most pairs of shoes for donation to Soles 4 Souls. KAB has partnered with various organizations over the years for this much-anticipated contest.

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Approve Minutes of the April 12, 2022, Regular City Council Meeting.

STAFF RESOURCE: Shelley B. George, City Secretary

STRATEGIC PLANNING GOAL: Engaged and Connected Allen Community.

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

Workshop Session

1. Call to Order and Announce a Quorum is Present

With a quorum of the Allen City Council present, the Workshop Session of the Allen City Council was called to order by Mayor Fulk at 6:00 p.m. on Tuesday, April 12, 2022, in the Basement Meeting Rooms of Allen City Hall, 305 Century Parkway, Allen, Texas.

2. Items of Interest

2.1 Introduction of Animal Shelter Advisory Committee Co-Chair Jessica Lockhart.

2.2 Introduction of Keep Allen Beautiful Board Vice-Chair Steve Chisholm.

2.3 Update Regarding Fire Station No. 6

2.4 Committee Updates from City Council Liaisons.

2.5 Questions on Current Agenda.

3. Adjourn to Regular Meeting

With no further discussion, Mayor Fulk adjourned the Workshop Session of the Allen City Council at 6:53 p.m. on Tuesday, April 12, 2022.

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, April 12, 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.

Ravikiran Kantamneni, 1300 N. Custer Road, Allen, Texas, invited the Council and residents to attend Darshana: A Glimpse into the Hindu Civilization on April 24, 2022, at 2 p.m. at the Heritage Montessori School.

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 Recognizing April as the "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 Co-Chair Jessica Lockhart.

4. Consent Agenda

MOTION: Upon a motion made by Councilmember Clemenchich and a second by Councilmember Shafer 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 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 Ridgeview & U.S. Hwy. 75 Interchange Project.**

RESOLUTION NO. 3901-4-22(R): 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.

- 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.**

The motion carried.

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.**

Although this item was not a Public Hearing, Mayor Fulk invited anyone wishing to speak for

or against this item to do so at this time.

The following individuals spoke in support of the item:
Vatsa Ramanathan, 1407 Farmington Drive, Allen, Texas;
Kirsten Fair, 1431 Luckenbach Drive, Allen, Texas;
Bob Brown, 1124 Shady Brook, Allen, Texas;
Trent Armstrong, 1233 Covina Court, Allen, Texas;
Campbell Green, 3615 Spring Run Lane, Melissa, Texas;
David Bishop, 17 Bishop Gate, Allen, Texas; and,
Alyce McKenzie, 908 Twin Creeks Drive, Allen, Texas.

The following individuals did not speak, but wished their support be entered into the record:
Eileen Tollett, 404 Watson, Allen, Texas;
Joe Farmer, 915 Pebblebrook Drive, Allen, Texas;
Ernie Pero, 527 Mefford Lane, Allen, Texas;
James Kerr, 406 Watson, Allen, Texas;
Dennis Dewet, 529 Bullingham Lane, Allen, Texas;
Patti Dewet, 529 Bullingham Lane, Allen, Texas;
Bonita Bishop, 17 Bishop Gate, Allen, Texas;
Reed Wooten, 1008 Blanco Drive, Allen, Texas;
Laura Wooten, 1008 Blanco Drive, Allen, Texas;
Jim Waldbauer, 1014 Hopkins Drive, Allen, Texas;
Adyna Akins, 1229 Covina Court, Allen, Texas;
Gary Harvey, 1229 Covina Court, Allen, Texas;
Jennifer Grilliette, 1578 Lost Creek Drive, Allen, Texas;
Craig Grilliette, 1578 Lost Creek Drive, Allen, Texas;
Nasima Chowdhury, 428 Spring Air Drive, Allen, Texas;
Shahmeen Khan, 1618 Tulane Drive, Allen, Texas;
Cindy Heller, 301 Cactus Court, Allen, Texas;
Anne French, 523 Seaport Drive, Allen, Texas; and,
Jeff Kacines, 1108 Winnsboro Court, Allen, Texas.

With no one else speaking, Mayor Fulk returned the discussion to the Council.

ORDINANCE NO. 3902-4-22: 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.

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 adopt Ordinance No. 3902-4-22, as previously captioned, 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. The motion carried.

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]

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.

David Hicks, 401 Woodlake Drive, Allen, Texas, spoke in support of the item.
Kevin Patel, 1782 W. McDermott Drive, Allen, Texas, spoke in support of the item.

With no one else speaking, Mayor Fulk closed the public hearing.

ORDINANCE NO. 3903-4-22: 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.

MOTION: Upon a motion made by Councilmember Shafer and a second by Councilmember Cornette, the Council voted seven (7) for and none (0) opposed to approve Ordinance No. 3903-4-22, as previously captioned, 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. The motion carried.

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.

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. 3904-4-22: 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.

MOTION: Upon a motion made by Councilmember Cornette and a second by Councilmember Clemencich, the Council voted seven (7) for and none (0) opposed to approve Ordinance No. 3904-4-22, as previously captioned, to amend the Development Regulations of Planned Development No. 58 with a Base Zoning of Shopping Center. The motion carried.

6. Other Business

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

- Mayor Pro Tem Brooks invited the public to attend the Downtown Scenario Feedback Sessions being held at Allen City council on April 21 at 7 p.m., April 23 at 10 a.m. and online on April 25 at 7 p.m.
- Councilmember Cornette wished everyone a Happy Easter.
- Council wished happy birthday to Shelley George and Rocio Gonzalez.
- Mayor Pro Tem Brooks congratulated Lieutenant Jason Erter, Sergeant Matthew Koehrsen and Corporal Nolan Murray on their recent promotions with the Allen Police Department.
- Mayor Fulk shared the recent success of the Children's Advocacy Center of Collin County Gala which raised over \$1,000,000 to support its mission.
- Mayor Fulk recognized the Allen Masonic Lodge for its work on Saturday to package 28,000 meals for Ukraine refugees.
- Councilmember Cornette recognized Allen's namesake, Ebenezer Allen's birthday was April 8.

7. Executive Session

The Executive Session was not held.

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

8. Adjournment

Mayor Fulk adjourned the Regular Meeting of the Allen City Council at 8:51 p.m. on Tuesday, April 12, 2022.

These minutes were approved on the 26th day of April 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Adopt an Ordinance Approving and Enacting Supplement No. 18 to the Code of Ordinances Providing for Certain Text Amendments to Sections of the Code, as Previously Amended by Ordinances Adopted Since November 24, 2020.

STAFF RESOURCE: Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: Supplement No. 17 was adopted by the Council on November 24, 2020.

STRATEGIC PLANNING GOAL: Financially Sound and Transparent City Government.

BACKGROUND

On October 12, 2004, the City Council adopted a republication of the Code of Ordinances for the City of Allen by adopting Ordinance No. 2341-10-04. Since then, the City Council has periodically adopted updates to the Code of Ordinances with the most recent update being Supplement No. 17.

The purpose of codification is to consolidate the text of City of Allen ordinances into a logical and sequential Code of Ordinances. With the adoption of Supplement No. 18, Ordinance No. 3789-11-20 through Ordinance No. 3882-12-21 are now codified into the text of the City of Allen Code of Ordinances.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt the proposed Ordinance updating the text of the Code of Ordinances for the City of Allen.

MOTION

I make a motion to adopt Ordinance No. _____ approving and enacting Supplement No. 18 to the Code of Ordinances of the City of Allen.

ATTACHMENT(S)

[Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING SUPPLEMENT NO. 18 TO THE CODE OF ORDINANCES; PROVIDING FOR THE PRINTING THEREOF, AUTHENTICATION BY THE MAYOR AND ATTESTATION BY THE CITY SECRETARY; PROVIDING A REPEAL OF CERTAIN ORDINANCES; PROVIDING EXCEPTIONS TO REPEAL; PROVIDING A PENALTY FOR SUCH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, adopted a republication of the Code of Ordinances for the City of Allen by Ordinance No. 2341-10-04, on October 12, 2004; and,

WHEREAS, the City Council has enacted additional Ordinances amending the Code of Ordinances; and,

WHEREAS, it is necessary to supplement the Code of Ordinances of the City of Allen, Texas, to include those amendments within the body of the Code.

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

SECTION 1. The City Council hereby adopts the printed Code form of the ordinances contained in Supplement No. 18 to the Code of Ordinances of the City of Allen, Texas, as prepared by the codifier.

SECTION 2. Said Code, as supplemented, shall be admitted in evidence without further proof, and the City Secretary shall record this Supplement adopted as amendments to said Code in the Ordinance records of the City, and thereafter such Code, as amended and supplemented, shall serve as a record of the Ordinances so codified, and it shall not be necessary in establishing the content of any particular Ordinance so codified to go beyond said record.

SECTION 3. It is the intention of the City Council to make this Supplement and the amendments incorporated within it part of the Code of Ordinances when printed or reprinted in page form, distributed to and incorporated within the original Code of Ordinance books distributed by the City Secretary. A copy of such Code, as supplemented hereby, shall be available for all persons desiring to examine the same in the office of the City Secretary during regular business hours. Ordinances passed subsequent to the enactment of this Supplement shall be added to the body of the Code of Ordinances and incorporated within it by reference so that reference to the Code of Ordinances of the City of Allen shall be understood and intended to include such additions and amendments.

SECTION 4. Whenever in the Code of Ordinances an act is prohibited or is made or declared to be unlawful, or an offense, or a misdemeanor, or whenever in such Code the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of such provision of the Code by any person, firm or corporation shall be deemed to be a misdemeanor and, upon conviction in the Municipal Court of the City of Allen, such person, firm or corporation shall be punished by a penalty of fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense, except where a different penalty has been established by state law for such offense, in which case the penalty shall be that fixed by state law, and for any offense which is a violation of any provision that governs fire safety, zoning, public health and sanitation or dumping refuse, the penalty shall be a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 5. This Ordinance and the Supplement adopted hereby shall become effective upon passage as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 26TH DAY OF APRIL 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Adopt an Ordinance Approving and Enacting Supplement No. 19 to the Allen Land Development Code Providing for Certain Text Amendments to Sections of the Code, as Previously Amended by Ordinances Adopted Since November 10, 2020.

STAFF RESOURCE: Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: Supplement No. 18 was adopted by the Council on November 24, 2020.

STRATEGIC PLANNING GOAL: Financially Sound and Transparent City Government.

BACKGROUND

On July 24, 2007, the City Council adopted a re-codified the Allen Land Development Code by adopting Ordinance No. 2639-7-07. Since then, the City Council has periodically adopted updates to the Land Development Code with the most recent update being Supplement No. 18.

The purpose of codification is to consolidate the text of City of Allen ordinances into a logical and sequential Allen Land Development Code. With the adoption of Supplement No. 19, Ordinance No. 3786-11-20 through Ordinance No. 3886-1-22 are now codified into the text of the City of Allen Code of Ordinances.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt the proposed text of Ordinance updating text of previously adopted Ordinances into the Allen Land Development Code.

MOTION

I make a motion to adopt Ordinance No. _____ approving and enacting Supplement No. 19 to the Allen Land Development Code of the City of Allen.

ATTACHMENT(S)

[Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING SUPPLEMENT NO. 19 TO THE ALLEN LAND DEVELOPMENT CODE; PROVIDING FOR THE PRINTING THEREOF, AUTHENTICATION BY THE MAYOR AND ATTESTATION BY THE CITY SECRETARY; PROVIDING A REPEAL OF CERTAIN ORDINANCES; PROVIDING EXCEPTIONS TO REPEAL; PROVIDING A PENALTY FOR SUCH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, adopted a republication of the Land Development Code of the City of Allen by Ordinance No. 2639-7-07 on July 24, 2007; and,

WHEREAS, the City Council has enacted additional Ordinances amending the Land Development Code; and,

WHEREAS, it is necessary to supplement the Land Development Code of the City of Allen, Texas, to include those amendments within the body of the Code.

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

SECTION 1. The City Council hereby adopts the printed Code form of the ordinances contained in Supplement No. 19 to the Allen Land Development Code of the City of Allen, Texas, as prepared by the codifier.

SECTION 2. Said Code, as supplemented, shall be admitted in evidence without further proof, and the City Secretary shall record this Supplement adopted as amendments to said Allen Land Development Code in the Ordinance records of the City, and thereafter such Code, as amended and supplemented, shall serve as a record of the Ordinances so codified, and it shall not be necessary in establishing the content of any particular Ordinance so codified to go beyond said record.

SECTION 3. It is the intention of the City Council to make this Supplement and the amendments incorporated within it part of the Land Development Code when printed or reprinted in page form, distributed to and incorporated within the original Land Development Code books distributed by the City Secretary. A copy of such Code, as supplemented hereby, shall be available for all persons desiring to examine the same in the office of the City Secretary during regular business hours. Ordinances passed subsequent to the enactment of this Supplement shall be added to the body of the Land Development Code and incorporated within it by reference so that reference to the Land Development Code of the City of Allen shall be understood and intended to include such additions and amendments.

SECTION 4. Whenever in the Land Development Code an act is prohibited or is made or declared to be unlawful, or an offense, or a misdemeanor, or whenever in such Code the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of such provision of the Code by any person, firm or corporation shall be deemed to be a misdemeanor and, upon conviction in the Municipal Court of the City of Allen, such person, firm or corporation shall be punished by a penalty of fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense, except where a different penalty has been established by state law for such offense, in which case the penalty shall be that fixed by state law, and for any offense which is a violation of any provision that governs fire safety, zoning, public health and sanitation or dumping refuse, the penalty shall be a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 5. This Ordinance and the Supplement adopted hereby shall become effective upon passage as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 26TH DAY OF APRIL 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Adopt a Resolution Nominating Stephen Terrell as a Candidate to Fill a Vacancy on the Collin Central Appraisal District Board of Directors with a Term Expiration of December 31, 2023.

STAFF RESOURCE: Eric Ellwanger, City Manager

STRATEGIC PLANNING GOAL: Engaged and Connected Allen Community.

ATTACHMENT(S)

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, PLACING IN NOMINATION THE NAME OF STEPHEN TERRELL FOR MEMBERSHIP ON THE BOARD OF DIRECTORS OF THE COLLIN CENTRAL APPRAISAL DISTRICT IN ACCORDANCE WITH SECTION 6.03(L) OF THE TEXAS PROPERTY TAX CODE; DIRECTING THE CITY SECRETARY TO NOTIFY INTERESTED PARTIES OF SAID ACTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Allen received notice of a vacancy on the Collin Central Appraisal District Board of Directors and that the Board is accepting nominations from each taxing unit that is entitled to vote; and,

WHEREAS, said nominations must be made in an open meeting and delivered to the Chief Appraiser before May 23, 2022; and,

WHEREAS, the City Council desires to nominate Stephen Terrell, 206 N. Greenville Avenue #800, Allen, Texas 75002 for election by the Board of Directors.

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

SECTION 1. The City Council places in nomination Stephen Terrell.

SECTION 2. The City Council directs the City Secretary to forward a certified copy of this Resolution to the Collin Central Appraisal District and notify all other appropriate parties of this action.

SECTION 3. This Resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 26TH DAY OF APRIL 2022.

APPROVED:

Kenneth M. Fulk, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

AGENDA DATE: April 26, 2022

AGENDA CAPTION: Award Bid and Authorize the City Manager to Execute an Agreement with Ace Pipe Cleaning, Ltd., for the Manhole Rehabilitation Project in the Amount of \$851,314.

STAFF RESOURCE: Chris Flanigan, Director of Engineering
Steve Massey, Director of Community Services

STRATEGIC PLANNING GOAL: Financially Sound and Transparent City Government.

BACKGROUND

Deterioration of manhole structures along certain sewer mains has been taking place due to hydrogen sulfide gas build-up in the sewer line system. The presence of gas left unchecked or unresolved, dissolves the concrete surface over time, exposing the metal reinforcement within the structure and compromising structural integrity. Fortunately, this phenomenon is not widespread in our community, but certain conditions form in areas of the system that lead to this damage both in our city network of sewer lines, as well as regional lines maintained by the North Texas Municipal Water District. In the City of Allen, this seems to have occurred in both the Watters Creek shopping area as well as the Village at Allen shopping center.

It is imperative that these structures are rehabilitated now to prevent a structural failure (potential collapse) in the active sewer main. Pursuant to detailed analysis and conclusive recommendations from a professional engineer, the most cost-effective and appropriate solution has been derived from several options available in this industry.

At the Village at Allen, the damage is most severe. Consequently, the proposed solution includes the installation of rigid plastic (PVC) and fiberglass inserts, assembled inside the structure, thereby preserving structural integrity and corrosion resistance, without having to dig out and replace the manholes entirely. This essentially rebuilds the structure with inert materials (like plastic and resin), which can withstand the corrosive environment. The sewer line extends from the Town of Fairview through the Village at Allen retail center and past Cabela's in the City of Allen. Since the pipeline originates in the Town of Fairview, and both communities contribute sewage to the line, an Interlocal Agreement from 2001 establishes shared maintenance expense responsibility, commensurate with the division of flow within the pipe. The Agreement requires the Town of Fairview to provide funding equivalent to their fraction of usage, which today is 55%.

In the Watters Creek shopping area, where the damage is apparent, but not as extreme as in the Village at Allen, an epoxy coating will be applied to the manholes to assure proper function and reliability. Between the two locations, a total of 41 manhole structures are being rehabilitated. Coupling these two solutions within the same scope and contract, even at different locations of the city and using different technologies, yields economy-of-scale and cost savings. Unlike the Village at Allen retail location, the expenses associated with the Watters Creek location are borne entirely by the City of Allen.

On February 7, 2022, one (1) responsive bid was received.

Bid 2022-12-21

Contractor	Calendar Days	Bid Amount
Ace Pipe Cleaning, Ltd.	117	\$ 851,313.50

BUDGETARY IMPACT

Water and Sewer Capital Funds will be used to fund this expense, originating from annual enterprise fund transfers that take place specifically for significant capital upgrades, major repairs, planned replacements, and other compulsory work. The City of Allen will bear all project costs and seek reimbursement from the Town of Fairview

This expense is not published in the current Capital Improvement Program document, given the work is contained within a single fiscal year.

**WA2106– Manhole Rehabilitation
Project Award Itemization**

Bid Amount	\$ 851,314
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**WA2106 – Manhole Rehabilitation
Project Funding Source**

Funding Source	Proposed
Unallocated Water & Sewer CIP*	\$ 851,314
TOTAL	\$ 851,314

*Within this amount, the Town of Fairview reimbursement is \$355,016.

STAFF RECOMMENDATION

Staff recommends that the City Council award bid and authorize the City Manager to execute an agreement with Ace Pipe Cleaning, Ltd., for the Manhole Rehabilitation Project in the amount of \$851,314.

MOTION

I make a motion to award bid and authorize the City Manager to execute an agreement with Ace Pipe Cleaning, Ltd., for the Manhole Rehabilitation Project in the amount of \$851,314.

ATTACHMENT(S)

- [Standard Form of Agreement](#)
- [Bid Proposal](#)
- [Location Map](#)

**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 Ace Pipe Cleaning, Inc. of the City of Kansas City, County of Jackson and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.
Missouri

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:

Manhole Rehabilitation Project 2022-12-21

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 One Hundred Seventeen (117) 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

Ace Pipe Cleaning, Inc.

Party of the Second Part (CONTRACTOR)

By Theresa Calvert
Theresa Calvert, Vice President

Attest Bruce VanTine
Bruce VanTine, Secretary/Treasurer

**MANHOLE REHABILITATION
 BID# 2022-12-21 CIP# WA 2106**

ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
Watters Creek (29 Manholes)					
1	1	LS	Allowance for Mobilization/Demobilization and Site Preparation for the sum of ___Twenty Eight Thousand Five Hundred_____Dollars & Zero_____Cents per Lump Sum	\$28,500.00	\$28,500.00
2	10	VF	Epoxy Coating with 250 mils thickness, Chimney on 48" Manhole for the sum of ___Four Hundred Ninety_____Dollars & ___Zero_____Cents per Vertical Foot	\$490.00	\$4,900.00
3	280	VF	Epoxy Coating with 250 mils thickness, Manholes measuring 48" Diameter for the sum of ___Four Hundred Ninety_____Dollars & ___Zero_____Cents per Vertical Foot	\$490.00	\$137,200.00
4	3	EA	Repair Frame Seal, including all incidentals, complete in place for the sum of ___Two Thousand_____Dollars & ___Zero_____Cents per Each	\$2,000.00	\$6,000.00
5	4	SY	Remove and Dispose of Concrete Pavement, including all incidentals for the sum of ___One Hundred Fifty_____Dollars & ___Zero_____Cents per Square Yards	\$150.00	\$600.00
6	4	SY	Replace Concrete Pavement (6-inch), including all incidentals for the sum of ___Four Hundred Fifteen_____Dollars & ___Zero_____Cents per Square Yards	\$415.00	\$1,660.00
7	9	EA	Rehabilitate Bench and Trough, including all incidentals, for the sum of ___Nine Hundred Fifty_____Dollars & ___Zero_____Cents per Each	\$950.00	\$8,550.00
8	11	EA	Chemical Grout lower 18" of Manhole for the sum of ___One Thousand Eight Hundred_____Dollars & ___Zero_____Cents per Each	\$1,800.00	\$19,800.00
9	6	EA	Chemical Grout Joints for the sum of ___One Thousand Eight Hundred_____Dollars & ___Zero_____Cents per Each	\$1,800.00	\$10,800.00
10	40	HR	Leak Stopping of groundwater in manhole if needed, includes up to 4 gallons of hydro active urethan grout for the sum of ___Two Hundred Twenty Five_____Dollars & ___Zero_____Cents per Hour	\$225.00	\$9,000.00
11	1	EA	Furnish and Install Missing Bolts (Per Cover) for the sum of ___Five Hundred_____Dollars & ___Zero_____Cents per Each	\$500.00	\$500.00
12	15	DAY	Vacuum Truck as needed for for the sum of ___One Thousand Eight Hundred_____Dollars & ___Zero_____Cents per Day	\$1,800.00	\$27,000.00
13	1	LS	Temporary Traffic Control (City of Allen) development, desgin and implementation for the sum of ___Ten Thousand_____Dollars & ___Zero_____Cents per Lump Sum	\$10,000.00	\$10,000.00
SUBTOTAL				\$264,510.00	

Calendar Days

55

**MANHOLE REHABILITATION
 BID# 2022-12-21 CIP# WA 2106**

ITEM NO.	EST QNTY	UNIT	DESCRIPTION AND PRICE IN WORDS	UNIT PRICE IN FIGURES	EXTENDED AMOUNT
Cabela's (12 Manholes)					
14	1	LS	Allowance for Mobilization/Demobilization and Site Preparation for the sum of _Thirty Seven Thousand Five Hundred_____Dollars & _Zero_____Cents per Lump Sum	\$37,500.00	\$37,500.00
15	274	VF	Furnish and install Manhole Insert, including all incidentals, complete in place for the sum of _One Thousand Four Hundred Eighty Nine_____Dollars & _Twenty Five_____Cents per Vertical Foot	\$1,489.25	\$408,054.50
16	6	EA	Remove and Replace Manhole Cover and Frame (Existing 24-inch), Non-Paved, and Replace with 32-inch Composite Manhole Cover and Frame, complete in place for the sum of _Three Thousand Thirty Four_____Dollars & _Zero_____Cents per Each	\$3,034.00	\$18,204.00
17	6	EA	Remove and Replace Manhole Cover and Frame (Existing 24-inch), Paved, and Replace with 32-inch Composite Manhole Cover and Frame, including concrete pavement repair, complete in place for the sum of _Four Thousand Four Hundred Ten_____Dollars & _Zero_____Cents per Each	\$4,410.00	\$26,460.00
18	67	SY	Remove and Dispose of Concrete Pavement, including all incidentals for the sum of _One Hundred Fifty_____Dollars & _Zero_____Cents per Square Yards	\$150.00	\$10,050.00
19	67	SY	Replace Concrete Pavement (6-inch thick), including all incidentals for the sum of _Four Hundred Fifteen_____Dollars & _Zero_____Cents per Square Yards	\$415.00	\$27,805.00
20	48	SF	Remove and Dispose of Concrete Sidewalk, including all incidentals for the sum of _Thirty Four_____Dollars & _Zero_____Cents per Square Feet	\$34.00	\$1,632.00
21	48	SF	Replace Concrete Sidewalk (4-inch), including all incidentals for the sum of _Twenty Six_____Dollars & _Zero_____Cents per Square Feet	\$26.00	\$1,248.00
22	20	HR	Leak Stopping of groundwater in manhole if needed, includes up to 4 gallons of hydro active urethan grout for the sum of _One Hundred Twenty_____Dollars & _Zero_____Cents per Hour	\$120.00	\$2,400.00
23	1	LS	Bypass Pumping development, design and implementation for the sum of _Forty One Thousand Four Hundred Fifty_____Dollars & _Zero_____Cents per Lump Sum	\$41,450.00	\$41,450.00
24	1	LS	Trench Safety System development, design and implentation for the sum of _Nine Hundred Seventy Five_____Dollars & _Zero_____Cents per Lump Sum	\$975.00	\$975.00
25	150	SY	Seeding, Topsoil, Preparation, Watering and Maintenance of all Disturbed areas for the sum of _Thirty Nine_____Dollars & _Zero_____Cents per Square Yards	\$39.00	\$5,850.00
26	1	LS	Storm Water Pollution Prevention Plan (Less than or equal to 1-acre) and Implementation and Control for the sum of _Five Thousand One Hundred Seventy Five_____Dollars & _Zero_____Cents per Lump Sum	\$5,175.00	\$5,175.00

SUBTOTAL \$586,803.50

Calendar Days 62

GRAND TOTAL \$851,313.50

Total Calendar Days 117

Manhole Rehabilitation Location Maps

CIP # WA2106



Watters Creek Location

Village at Allen Location



CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

- AGENDA DATE:** April 26, 2022
- AGENDA CAPTION:** Authorize the City Manager to Execute a Purchase and Sale Agreement with the North Texas Municipal Water District for the Purchase of 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition [Exchange Parkway at Junction Drive].
- STAFF RESOURCE:** Daniel Bowman, Executive Director, Allen Economic Development Corporation
- STRATEGIC PLANNING GOAL:** Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

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

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

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

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

Step 1: NTWMD sells the eastern 1.0 acre of the NTWMD property to the City for an appraised price

of \$14.35 per square foot (approximately \$625,000). The purchase price and City closing costs will be funded through the purchase funds received from the sale of the property by AEDC in Step 2.

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

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

All three transactions will close on the same day in virtually simultaneously closings. This agenda item seeks approval of the purchase and sale agreement relating to Step 1 in the series of real estate transactions. A second, companion item being considered on this agenda seeks approval of the agreement described in Step 2, above, to sell the NTMWD property to the AEDC. That second purchase and sale agreement also requires the AEDC to re-sell the NTMWD property to Dr. Rodgers in exchange for the 305 W. Main property being conveyed to AEDC pursuant to the purchase sale agreement pursuant to a restriction agreement that requires Dr. Rodgers to develop the property she acquires with a 6,000 square foot medical and professional office building.

In November 2021, the AEDC Board of Directors authorized the AEDC Executive Director to negotiate and execute the agreements described in Step 2 to purchase the NTMWD property from the City and in Step 3 to purchase the eastern 1.0± acres out of the NTMWD property for a purchase price of \$14.35 per square foot, and to convey the property to Dr. Rodgers in exchange for conveyance to AEDC of the property located at 305 W. Main.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute the Purchase and Sale Agreement with North Texas Municipal Water District to purchase 1.0± acres out of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition.

MOTION

I make a motion to authorize the City Manager to execute the Purchase and Sale Agreement with North Texas Municipal Water District to purchase 1.0± acres out of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition.

ATTACHMENT(S)

[Purchase and Sale Agreement](#)

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“Agreement”) to buy and sell real property is entered between Seller and Purchaser as identified below and is effective on the date (“Effective Date”) of the last of the signatures by Seller and Purchaser as parties to this Agreement, acknowledgement by Title Company of receipt of the Agreement.

Purchaser: City of Allen
305 Century Parkway
Allen, Texas 75013
Attn: Eric Ellwanger, City Manager
Telephone: (214) 509-4110
E-mail: ellwanger@cityofallen.org

Purchaser’s Attorney: Peter. G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hagar & Smith, LLP
500 N. Akard,
Dallas, Texas 75201
Telephone: (214) 965-9900
Facsimile: (214) 965-0010
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Seller: North Texas Municipal Water District
Administration Building
501 E. Brown Street
Wylie, Texas 75098
Attn: Jenna Covington, P.E., Executive Director and
General Manager
Telephone: (972) 442-5405
E-mail: jcovington@ntmwd.com

Seller’s Attorney: Lewis L. Isaacks
Saunders, Walsh & Beard
6850 TPC Drive, Suite 210
McKinney, Texas 75070
Telephone: (214) 919-3555
Email: lewis@saunderswalsh.com

Title Company: Republic Title of Texas, Inc.
Attn: Tammie Cooper, Vice-President
2626 Howell Street, Suite 1000
Dallas, Texas 75204

Telephone: (214) 855-8886
Facsimile: (972) 516-2507
E-Mail: tcooper@republictitle.com

AEDC: Allen Economic Development Corporation, a Texas non-profit corporation
Attn: Dan S. Bowman, Executive Director/CEO
900 West Bethany Drive, Suite 280
Allen, Texas 75013

Telephone: (972) 727-0252
E-mail: dbowman@allenedc.com

AEDC Contract: That certain Purchase and Sale Agreement of approximate date herewith between Purchaser and AEDC providing for the sale of the Property by Purchaser to AEDC.

Property: A tract of land located in the City of Allen, Collin County, Texas, being the eastern 1.0± acres out of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition, an Addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2019, Page 261, Plat Records, Collin County, Texas; and including, all and singular, all improvements and fixtures situated thereon, and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys, or rights-of-way (such land, improvements, fixtures, rights and appurtenances being collectively herein referred to as the “Property”).

Inspection Period: The period commencing on the Effective Date and ending on the 180th day after the Effective Date, as extended as provided herein.

Closing Date: Not later than thirty (30) days after the end of the Inspection Period or such earlier date as the parties may agree.

Purchase Price: **Six Hundred Twenty-Five Thousand and No/100 Dollars (\$625,000.00)** in cash to be paid at closing; provided, however, the Purchase Price shall increase or decrease by \$14.35 per gross square foot based on the final square footage of the area of the Property conveyed to Purchaser at Closing based on the Survey and/or the Replat (as defined herein).

Developer: Tanya Rodgers and/or assigns
7140 Mossvine Drive
Dallas, Texas 75254-8032

Telephone: () _____
E-mail: drrodgers@skinspecialistsoa.com

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Sale and Purchase.** Seller agrees to sell, and Purchaser agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.
2. **Title and Survey.**
 - (a) Not later than twenty (20) days after the Effective Date, Seller shall, at Seller’s expense, deliver or caused to be delivered to Purchaser:

(i) a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company issued to Purchaser in the amount of the Purchase Price, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment that are available to the Title Company;

(iii) any environmental or geotechnical studies or reports that Seller may have in its possession as of the Effective Date with respect to the Property;

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years;

(v) the most recent survey and plat of the Property that Seller has in its possession. Seller shall not be required to obtain a new survey of the Property at Seller's expense;

(vi) notices or other documents regarding any uncured violation of applicable laws, rules, regulations, codes or ordinances regarding the Property, or relating to any actual or claimed existence, release or disposal of any toxic or hazardous substance or waste in, upon or affecting the Property, or relating to any pending or threatened litigation affecting the Property;

(vii) copies of any leases, rental agreements, licenses, or other similar agreements granting the any person or entity other than Seller the right to possession of the Property; and

(viii) any other documents or information in Seller's possession relating to the Property which may be reasonably requested by Purchaser.

(b) Not later than sixty (60) calendar days after the Effective Date, Purchaser shall, at no expense to Seller, obtain a survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor setting forth the proposed boundaries of the Property generally consistent with the boundaries depicted on Exhibit "A" hereto. Not later than the fifteenth (15th) day after receipt of the Survey, Seller shall either accept or object in writing to the proposed boundaries of the Property shown on the Survey. If Seller fails to object to the boundaries of the Property within said fifteen (15) day period, the boundaries shown on the Survey shall for purposes of this Agreement constitute the boundaries of the Property unless otherwise altered by written agreement of the parties prior to Closing.

(c) The Survey shall be staked on the ground, and the Survey plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Property. If different than the platted description of the Property because of save and except portions of the platted lot, then, the legal description contained in said Survey shall be used by the parties as the legal description contained in the Special Warranty Deed. Otherwise, if there are no save and exception portions of the platted lot, then the platted lot legal description will be used in the Special Warranty Deed.

(d) Purchaser shall, not later than ten (10) days after Purchaser's receipt of the last of the Survey and Title Commitment, notify Seller and Title Company of any objections to the Survey or Title

Commitment related to the Property. If there are objections by Purchaser, Seller shall in good faith attempt to satisfy them prior to Closing, but Seller shall not be required to incur any cost to do so. If Seller delivers written notice to Purchaser not later than the tenth (10th) calendar day after Seller's receipt of Purchaser's objections that Seller is unable to satisfy such objections, Purchaser may either (i) waive such objections and accept title as Seller is able to convey or terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period or (ii) elect to extend the Closing Date, not to exceed an additional sixty (60) days, in order to provide Seller additional time to cure the objections. If Purchaser elects to extend the Closing Date, and Seller fails to cure the objection with such period, Purchaser may either waive the objection and proceed to Closing or terminate this Agreement without further liability to either Seller.

3. **Inspection Period.**

(a) During the Inspection Period, Purchaser, AEDC, Developer, and their respective agents, contractors, representatives, consultants or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary. If for any reason Purchaser determines not to purchase the Property, Purchaser may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither Party shall have any further claim against the other under this Agreement. If Purchaser does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 3; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Purchaser, AEDC, and/or Developer may enter the Property to conduct its inspection but shall be solely responsible for any damages caused thereby. **Purchaser shall repair, or cause to be repaired, any damage to the Property caused by Purchaser, AEDC, Developer, and/or their respective agents, contractors, representatives, consultants or employees.**

(c) During the Inspection Period, Purchaser, AEDC, and/or Developer may review and conduct any studies relating to engineering and environmental matters associated with the Property; provided, however, no invasive testing (such as a Phase II ESA) shall be permitted without Seller's prior written consent, given in Seller's sole and absolute discretion. Notwithstanding the foregoing to the contrary, if a Phase I Environmental Site Assessment (a "**Phase I ESA**") is performed on behalf of Purchaser, AEDC, and/or Developer by a reputable and licensed environmental engineer or professional engineering firm (as applicable, "**Environmental Consultant**"), and, in the reasonable opinion of said Environmental Consultant, the findings of such Phase I ESA discloses materials and/or conditions affecting the Property such that the performance of a Phase II Environmental Site Assessment (a "**Phase II ESA**") is recommended in order to fully assess same, then Seller agrees to not unreasonably withhold its consent to the performance of a Phase II ESA at the Property on conditions, in locations and with a scope approved in advance in writing by Seller. Upon completion of any Phase I ESA and/or Phase II ESA, Purchaser shall promptly provide a copy of same to Seller. No Phase II ESA shall commence prior to the delivery of the Phase I ESA to Seller.

(d) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing for a period of six (6) months.

3. **Closing.** The closing of the sale of Property shall occur on the Closing Date at the Title Company, or at such other time as may be agreeable to the parties.

4. **Closing Deliverables.**

(a) At the closing, Seller shall deliver to the Title Company:

(i) a special warranty deed, substantially in the form set forth in Exhibit “C,” attached hereto, conveying a fee simple interest in the Property to Purchaser, free and clear of any and all encumbrances, except the Permitted Exceptions;

(ii) such documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner’s policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the Property, free of parties in possession.

(b) At the closing, Purchaser shall deliver to Seller through Title Company:

(i) the Purchase Price; and

(ii) such other documents as may be reasonably required by the Title Company.

With respect to the issuance of the title policy, Seller agrees to execute such documents as required by the Title Company to allow the cost of the Owner’s Title Policy and any related endorsements that are required to be issued pursuant to the AEDC Sales Contract regarding the Property are passed through to the sale of the Property by Purchaser to AEDC, it being the intent of Seller and Purchaser that only one title policy be issued in favor of Developer following the concurrent closing of this transaction and the transaction between Corporation and Developer.

6. **Taxes.** Seller shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys’ fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs, which amounts may be paid out of the Purchase Price notwithstanding anything in this Agreement to the contrary. Seller represents, and Purchaser understands and acknowledges, that the Property is presently exempt from the assessment of ad valorem taxes, which status may change upon conveyance of the Property to Purchaser. Seller shall not be responsible for payment of property taxes assessed against the Property for periods after the date of Closing, if any become due and payable.

7. **Closing Costs.**

(a) Seller hereby agrees to pay and be responsible for the following closing costs, which amounts may be deducted from the Purchase Price notwithstanding anything in this Agreement to the contrary:

(i) one-half of Title Company’s escrow fees;

(ii) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;

(iii) Seller’s attorney’s fees, if any; and

(iv) such other incidental costs and fees customarily paid by sellers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

- (b) Purchaser hereby agrees to pay and be responsible for the following costs of closing:
- (i) all fees and premiums for the Basic Owner's Title Policy and any endorsements to the Basic Owner's Title Policy desired by Purchaser;
 - (ii) one-half of the Title Company's escrow fees;
 - (iii) recording fees for the special warranty deed;
 - (iv) all costs and expenses incurred by or on behalf of the Purchaser, including Purchaser's attorneys' fees; and
 - (v) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

8. **Permitted Exceptions.** The zoning, the lien for current taxes, and any exceptions to title to which no objection is made by Purchaser pursuant to Section 2(c) shall be deemed to be Permitted Exceptions. In no case shall any exception noted on Schedule C of the Title Commitment be deemed a Permitted Exception with respect to the Property, and, notwithstanding Section 2(c), above, shall be cured prior to Closing. Notwithstanding anything to the contrary herein, as a condition of Closing, Seller must resolve at Seller's sole cost the items that are listed on Schedule C of the Title Commitment which are by their nature Seller's responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Agreement, and use due diligence to cure the Title Objections that Seller has agreed to cure.

9. **Conditions of Closing.** Closing on the sale of the Property shall be conditioned upon and subject to the following:

- (a) Purchaser closing on the sale of the Property to AEDC pursuant to the AEDC Sales Contract on or before the Closing Date;
- (b) A replat of the Property and Seller's remaining property creating two defined, platted lots as determined in accordance with this Section 9(b) and the applicable provisions of the Allen Land Development Code, as amended (the "ALDC"), must be approved. Purchaser understands and acknowledges that, as of the Effective Date, the Property constitutes a portion of a single platted lot owned by Seller. Seller agrees to reasonably cooperate and participate with Purchaser, AEDC, and/or Developer in the prosecution of any plat application for the replat that includes the Property so that the Property is identified as one separate and distinct lot as determined by the Parties. The application for replatting the Property shall be made in the name of Seller, Purchaser, AEDC, and/or Developer as required under governing law, prosecuted at no expense to Seller, and filed with Purchaser on or before the ninetieth (90th) day after the Effective Date. Unless Seller agrees in writing to extend the date by which the application for the replatting of the Property and Seller's remainder property is required to be filed with Purchaser, Seller may terminate this Agreement if the application for replatting of the Property and Seller's remainder property is not filed with the City on or before the ninetieth (90th) day after the Effective Date, in which case this Agreement shall terminate.
- (c) If a replat of the Property and the Seller's remaining property as provided in Paragraph (b), above, has not been approved on or before the Closing Date, the Closing Date shall be automatically extended for a period of thirty (30) days. If said replat has still not been

approved by the end of said additional thirty (30) day period, Seller may either (i) extend the Closing Date for an additional thirty (30) day period or (ii) terminate this Agreement as Seller's sole remedy.

- (d) For purposes of this Section 9, the application for replat of the Property and Seller's remainder property shall be deemed to be physically "filed" when the initial application form and application fee have been delivered to Purchaser's Department of Community Development which the parties acknowledge and agree is prior to, and not the same as, the "official submission date" as defined in ALDC Section 8.03.1.2.
- (e) The replat of the Property shall not be recorded in the Collin County Plat Records until the Closing Date.

10. **Representations and Covenants.** Seller represents and covenants that: (a) it has authority to enter into this Agreement; and (b) no other person has any interests in or claim against the Property (other than as reflected by the Title Commitment), and it will not hereafter encumber the Property. Purchaser represents that it has authority to enter into this Agreement. The only representations made by any party concerning the Property and this Agreement are as set out in this Section 10.

11. **Property Sold As Is.**

(a) Purchaser hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by Purchaser that the Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the special warranty deed).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the special warranty deed, Seller hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property, including without limitation (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses which Purchaser may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to the Property, (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to the Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the potential for

further development of the Property, or (xiv) the merchantability of the Property or fitness of the Property for any particular purpose (Purchaser affirming that Purchaser has not relied on Seller's skill or judgment to select or furnish the Property for any particular purpose, and that Seller makes no warranty that the Property is fit for any particular purpose).

(c) Purchaser agrees that prior to the expiration of the Inspection Period it will have opportunity to examine and investigate the Property and that, in purchasing the Property, Purchaser is relying solely upon its independent examination, study, inspection and knowledge of the Property. Purchaser is relying solely upon its own examination, study, inspection, knowledge of the Property and its determination of the value of the Property and uses to which the Property may be put, except for representations and warranties specifically set forth hereto and, except for the special warranties of title set forth in the Special Warranty Deed, Purchaser is not relying on any information, representation, or warranty provided or to be provided by Seller.

(d) The provisions of this Section 11 shall survive the termination of this Agreement and the Closing.

12. **Remedies.** If Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement if Purchaser fails to cure such default on or before ten (10) days after Seller provides notice to Purchaser of said default. If Seller defaults, Purchaser's sole remedy is to terminate this Agreement if Seller fails to cure such default on or before ten (10) days after Purchaser provides notice to Seller of said default.

13. **Notices.** Notices must be in writing to and given at the addresses stated above. Notice given by delivery service or fax shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon receipt. In addition, copies of notices shall be to the party's attorney as shown above.

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the Property.

(b) **Modifications.** This Agreement may only be modified by a written document signed by both parties.

(c) **Assignment.** Purchaser may not assign its rights under this Agreement to any entity without the express written consent of Seller.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Effective Date.** The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

(i) authorized representatives of the parties have signed this Agreement; and

(ii) a fully signed copy of this Agreement have been delivered to the Title Company;

(iii) this Agreement has been approved, ratified, or otherwise authorized by the City Council of the City of Allen, Texas, in a public meeting held pursuant to the Texas Open Meetings Act; and

(iv) this Agreement has been approved, ratified, or otherwise authorized by the Board of Directors of the North Texas Municipal Water District, in a public meeting held pursuant to the Texas Open Meetings Act.

(f) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(g) **Brokers.** Seller and Purchaser represent and warrant that they have not worked with any broker relative to this transaction and that no brokerage commission is due and payable upon the Closing.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) **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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(j) **Law Governing.** This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(k) **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 Closing shall survive.

Signatures on Following Pages

SIGNED AND AGREED this ____ day of _____ 2022.

PURCHASER: CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

Attest:

By: _____
Shelley George, City Secretary

Approved as To Form:

By: _____
Peter G. Smith, City Attorney

SIGNED AND AGREED this ____ day of _____ 2022.

SELLER: NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Name: _____
Title: _____

RECEIPT OF CONTRACT

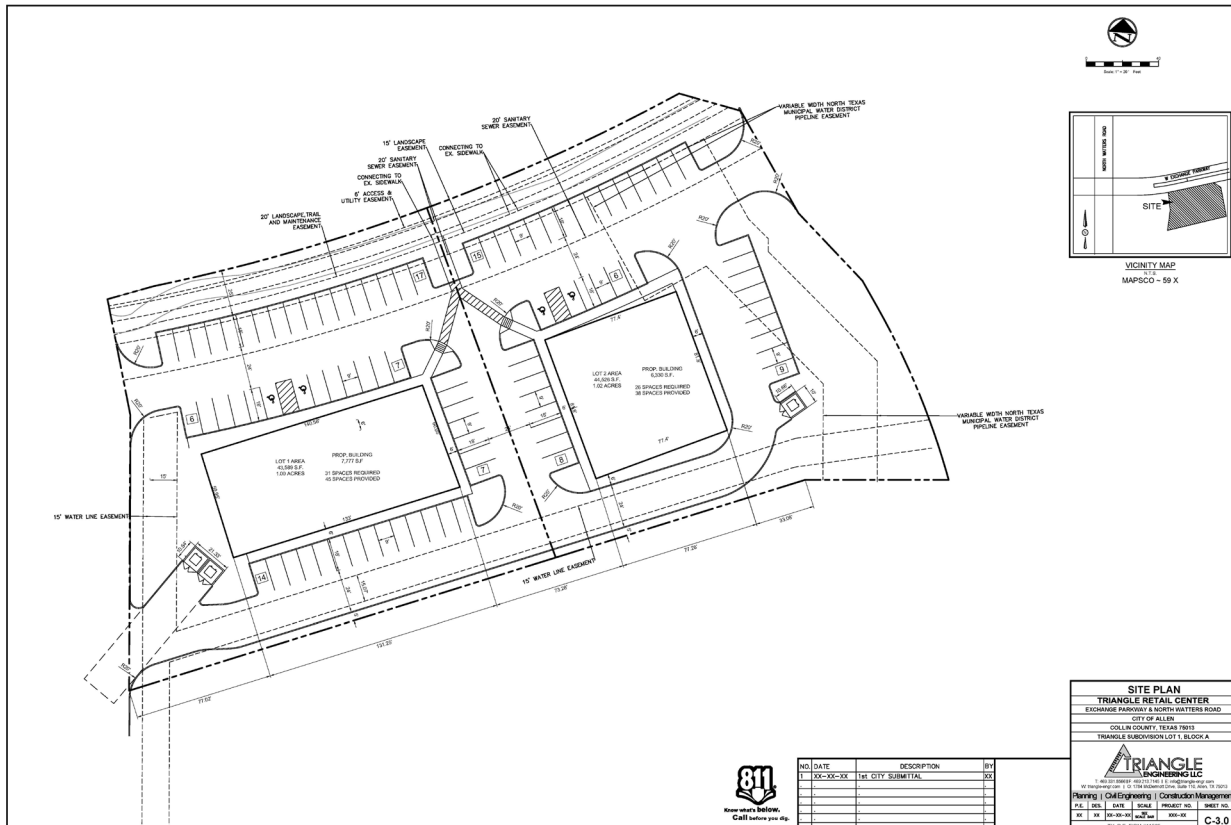
Title Company acknowledges receipt of a copy of this Agreement executed by both Seller and Purchaser on the ____ day of _____, 2022.

Republic Title of Texas, Inc.

By: _____
Name: _____
Title: _____

Exhibit "A"

Depiction of Boundaries of the Property



SITE PLAN			
TRIANGLE RETAIL CENTER			
EXCHANGE PARKWAY & NORTH WATERS ROAD			
CITY OF ALLEN			
COLLIN COUNTY, TEXAS 75015			
TRIANGLE SUBDIVISION LOT 1, BLOCK A			
TRIANGLE ENGINEERING LLC			
<small>10000 W. STATE ST. SUITE 1000, DALLAS, TEXAS 75243</small>			
<small>PHOTOS: (DMS/Engineering) CONSULTING/Engineering</small>			
PL	DEL	DATE	SCALE
XX	XX	XX-XX-XX	AS SHOWN
PROJECT NO.			SHEET NO.
XXX-XX			C-3.0
<small>10-10-2022</small>			



NO.	DATE	DESCRIPTION	BY
1	XX-XX-XX	1st CITY SUBMITTAL	XX

CITY COUNCIL REGULAR MEETING AGENDA COMMUNICATION

- AGENDA DATE:** April 26, 2022
- AGENDA CAPTION:** Authorize the City Manager to Execute a Purchase and Sale Agreement with the Allen Economic Development Corporation for 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition [Exchange Parkway and Junction Drive].
- STAFF RESOURCE:** Daniel Bowman, Executive Director, Allen Economic Development Corporation
- STRATEGIC PLANNING GOAL:** Vibrant Community with Lively Destinations and Successful Commercial Centers.

BACKGROUND

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

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

The North Texas Municipal Water District (NTMWD) owns a 2± acre platted lot adjacent to its ground storage facility located on Exchange Parkway at Junction Drive which is presently undeveloped and constitutes surplus property. The NTMWD Board of Directors has expressed an interest in selling the property to a third party for development. The AEDC staff approached NTMWD staff about its interest in replatting and selling a portion of the NTMWD property. However, NTMWD staff was advised by its attorney that the sale of the NTMWD property would need to be to a governmental entity, which AEDC is not.

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

Step 1: NTWMD sells the eastern 1.0 acre of the NTWMD property to the City for an appraised price

of \$14.35 per square foot (approximately \$625,000). The purchase price and City closing costs will be funded through the purchase funds received from the sale of the property by AEDC in Step 2.

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

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

All three transactions will close on the same day in virtually simultaneously closings. This agenda item seeks approval of the purchase and sale agreement relating to Step 2 in the series of real estate transactions. The purchase and sale agreement being considered in relation to this agenda item also requires the AEDC to sell the NTMWD property to Dr. Rodgers in exchange for the 305 W. Main property being conveyed to AEDC pursuant to the purchase sale agreement. That purchase and sale agreement also includes a restriction agreement that requires Dr. Rodgers to develop the property she acquires with a 6000 square foot medical and professional office building.

In November 2021, the AEDC Board of Directors authorized the AEDC Executive Director to negotiate and sign the agreement described in Step 3 to purchase the eastern 1.0± acres out of the NTMWD property for a purchase price of \$14.35 per square foot, and to convey the property to Dr. Rodgers in exchange for conveyance to AEDC of the property located at 305 W. Main.

STAFF RECOMMENDATION

Staff recommends the City Manager to Execute a Purchase and Sale Agreement with the Allen Economic Development Corporation for 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition.

MOTION

I make a motion to authorize the City Manager to Execute a Purchase and Sale Agreement with the Allen Economic Development Corporation for 1.0± acres of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition.

ATTACHMENT(S)

[Purchase and Sale Agreement](#)

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“**Agreement**”) to buy and sell real property is entered between City and AEDC as identified below and is effective on the date (“**Effective Date**”) of the last of the signatures by City and AEDC as parties to this Agreement, acknowledgement by Title Company of receipt of this Agreement.

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

Telephone: (214) 509-4110
E-mail: cellwanger@cityofallen.org

City’s Attorney: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N Akard, Suite 1800
Dallas, Texas 75201

Phone: (214) 965-9900
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

AEDC: Allen Economic Development Corporation,
a Texas Type A economic development corporation
Attn: Dan S. Bowman, Executive Director/CEO
900 West Bethany Drive, Suite 280
Allen, Texas 75013

Telephone: (972) 727-0252
E-mail: dbowman@allenedc.com

AEDC’s Attorney: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N Akard, Suite 1800
Dallas, Texas 75201

Phone: (214) 965-9900
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Developer: Tanya Rodgers and/or assigns
7140 Mossvine Drive
Dallas, Texas 75254-8032

Telephone: () _____
E-mail: drrogers@skinspecialistsoa.com

Title Company: Republic Title of Texas, Inc.
Attn: Tammie Cooper, Vice President
2626 Howell Street, 10th Floor
Dallas, Texas 75204

Phone: (214) 855-8886
Fax: (214). 516-2507
E-Mail: tcooper@republictitle.com

Property: A tract of land located in the City of Allen, Collin County, Texas, being the eastern 1.0± acres out of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition, an Addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2019, Page 261, Plat Records, Collin County, Texas; and including, all and singular, all improvements and fixtures situated thereon, and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys, or rights-of-way (such land, improvements, fixtures, rights and appurtenances being collectively herein referred to as the “**Property**”).

Developer’s Sales Contract: That certain *Purchase Agreement* by and between AEDC and Developer relating to the sale by AEDC of the Property to Developer substantially in the form attached hereto as **Attachment 1** and incorporated herein by reference.

Restriction Agreement: That certain Restriction Agreement by and between City and Developer set forth as Exhibit “A” in the Developer’s Sales Contract.

Inspection Period: The period commencing on the Effective Date and ending on the termination of the Inspection Period as defined in the Developer’s Sales Contract.

Closing Date: Concurrent with AEDC’s closing on the sale of the Property pursuant to the Developer’s Sales Contract.

Purchase Price: **Six Hundred Twenty-Five Thousand and No/100 Dollars (\$625,000.00)** in cash to be paid at closing; provided, however, the Purchase Price shall increase or decrease by \$14.35 per gross square foot based on the final square footage of the area of the Property conveyed to City at Closing of the NTMWD Agreement.

NTMWD Purchase Agreement: That certain Purchase and Sale Agreement of approximate herewith between City and the North Texas Municipal Water District (“**NTMWD**”) wherein City has agreed to purchase the Property from NTMWD.

WHEREAS, City has entered, or intends to enter, into the NTMWD Purchase Agreement for purposes of purchasing the Property from NTMWD; and

WHEREAS, upon City obtaining title to the Property, AEDC desires to purchase the Property from City for resale or reconveyance to Developer pursuant to the Developer’s Sales Contract for development in accordance with the Restriction Agreement; and

WHEREAS, Tex. Loc. Gov’t Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, AEDC is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov’t Code §272.001; and

WHEREAS, the Purchase Price is not less than the fair market value of the Property as determined by an appraisal obtained by NTMWD.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase.** City agrees to sell and convey the Property to AEDC for the Purchase Price.

2. **Title, Survey, and Inspection Reports.** City and AEDC understand and acknowledge that AEDC will contract with Developer pursuant to the Developer’s Sales Contract to sell and convey the Property to Developer. In order to save City, AEDC, and Developer the cost of multiple surveys and title policies and to expedite both transactions, City and AEDC agree:

(a) City agrees, and will obtain agreement from NTMWD pursuant to the NTMWD Purchase Agreement, to reasonably cooperate with AEDC’s obligations as Seller set forth in Section 2 of the Developer’s Sales Contract with respect to curing title objections and, pursuant thereto, AEDC shall immediately forward to City any and all notices received by AEDC pursuant to Section 2(c) of the Developer’s Sales Contract;

(b) The transaction described in this Agreement and the transaction described in the Developer’s Sales Contract shall be treated by the Title Company as a pass-through transaction such that Title Company shall issue only one owner’s title policy to Developer as the ultimate purchaser and owner of the Property pursuant to Section 5 of the Developer’s Sales Contract; and

(c) City and AEDC will accept, review, and rely upon the survey, environmental studies, and other inspection reports of the Property obtained by Developer pursuant to the Developer's Sales Contract as if they were obtained by AEDC pursuant to this Agreement.

3. **Inspection Period.** Pursuant to the NTMWD Purchase Agreement, City agrees to obtain the right for AEDC and/or Developer and their respective agents, employees, and contractors to enter upon the Property during the Inspection Period and conduct such inspections, tests and studies as they may deem reasonable and necessary in accordance with and subject to Section 3(a) of the Developer's Sales Contract, including, but not limited to, Developer's agreement to indemnify, defend, and hold NTMWD and City harmless as set forth in said Section 3(b). If for any reason Developer determines not to purchase the Property from AEDC and terminates the Developer's Sales Contract in accordance with Section 3(a) of the Developer's Sales Contract, AEDC shall notify City and Title Company of such termination, in which case this Agreement shall terminate. In such event, neither party shall have any further claim against the other party under this Agreement. If AEDC does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 3; and AEDC shall have waived its right to terminate this Agreement within the Inspection Period.

4. **Closing.**

(a) Except as extended as provided herein, the closing of the sale of the Property (the "Closing") shall occur on the Closing Date at the Title Company.

(b) At the Closing, City shall deliver to the Title Company:

(i) A special warranty deed (the "Deed"), in form and substance reasonably acceptable to City, AEDC, and Developer conveying good and indefeasible title to the Property to AEDC, free and clear of any and all encumbrances subject only to the Permitted Exceptions;

(ii) Such documents as may be reasonably required by Title Company in order for Title Company to issue a Title Policy in favor of Developer as the insured owner pursuant to Section 5 of the Developer's Sales Contract;

(iii) Evidence of City's authority to close this transaction as may be required by the Title Company; and

(iv) Settlement statement, and such other documents as Title Company may reasonably require.

(b) At the closing, AEDC shall deliver to City through Title Company:

(i) The Purchase Price in cash or immediately available funds, inclusive of the Earnest Money previously paid by Developer and placed in Escrow pursuant to the Developer's Sales Contract but less AEDC's Closing cost

deducted from the Purchase Price in accordance with the Developer's Sales Contract;

(ii) The Restriction Agreement signed by City and Developer; and

(iii) Such other documents that the Title Company may reasonably require of AEDC.

With respect to the issuance of the title policy, City and AEDC agree to execute such documents as required by the Title Company to allow the cost of the Owner's Title Policy and any related endorsements that are required to be issued pursuant to the Developer's Sales Contract regarding the Property are passed through to the sale of the Property by AEDC to Developer, it being the intent of City and AEDC that only one title policy be issued in favor of Developer following the concurrent closing of this transaction and the transaction between AEDC and Developer.

5. **Taxes.** AEDC understands and acknowledges that the Property is presently exempt from the assessment of ad valorem taxes, which status may change upon conveyance of the Property to AEDC or Developer. City shall not be responsible for payment of property taxes assessed against the Property for periods after the date of Closing, if any become due and payable. Taxes for the current year will be prorated through the Closing Date; provided however, City shall be responsible only for payment of property taxes assessed against the Property for the current year attributable to periods prior to Closing in which the Property was not owned by City.

6. **Closing Costs.** AEDC hereby agrees to pay and be responsible for all closing costs related to the sale of the Property to AEDC pursuant to this Agreement and AEDC's closing costs as Seller pursuant to Section 7 of the Developer's Sales Contract.

7. **Permitted Exceptions.** Those matters constituting Permitted Exceptions pursuant to the Developer's Sales Contract shall constitute Permitted Exceptions pursuant to this Agreement. In addition, the Restriction Agreement shall be deemed to be a Permitted Exception.

8. **Property Sold As Is.**

(a) AEDC hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by AEDC that the Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the special warranty deed).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the special warranty deed, City hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property, including without

limitation (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses which AEDC or Developer may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to the Property, (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to the Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the potential for further development of the Property, or (xiv) the merchantability of the Property or fitness of the Property for any particular purpose (AEDC affirming that AEDC has not relied on City's skill or judgment to select or furnish the Property for any particular purpose, and that City makes no warranty that the Property is fit for any particular purpose).

(c) AEDC agrees that prior to the expiration of the Inspection Period it will have had the opportunity to examine and investigate the Property and that, in purchasing the Property, AEDC will rely solely upon its independent examination, study, inspection and knowledge of the Property, and AEDC is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the special warranty deed, knowledge of the Property and AEDC's determination of the value of the Property and uses to which the Property may be put, and not on any information provided or to be provided by City.

(d) The provisions of this Section 8 shall survive the termination of this Agreement and the Closing.

9. **Compliance with Tex. Loc. Govt. Code §272.001.** AEDC understands and acknowledges that City is selling the Property to AEDC in AEDC's capacity as an independent foundation pursuant to Tex. Loc. Gov't Code §272.001 without conducting an auction or soliciting competitive bids, but subject to the requirement that the Property be developed in accordance with the Restriction Agreement. AEDC agrees that the resale of the Property to Developer shall be subject to the Restriction Agreement, which Developer must sign at Closing and which shall be recorded along with the Deed.

10. **Conditions of Closing.** Closing on this Agreement is expressly conditioned on and subject to the following:

(a) The closing of the sale of the Property by NTMWD to City pursuant to the NTMWD Purchase Agreement prior to or concurrently with the Closing of this Agreement;

(b) The closing of the sale of the Property by AEDC to Developer concurrently with the Closing of this Agreement pursuant to the Developer Sales Contract; and

(c) Developer and City signing, acknowledging and delivering to Title Company for recording at Closing the Restriction Agreement.

11. **Additional Consideration.** As additional consideration for this Agreement, at Closing, AEDC agrees to reimburse City the amount of all closing costs and other expenses to be incurred by City in association with the conveyance of the Property to City pursuant to the NTMWD Purchase Agreement.

12. **Remedies.** If a party hereto defaults, the non-defaulting party's sole remedy shall be to terminate this Agreement by providing written notice to the defaulting party.

13. **Additional Reservations.** City shall have the right to reserve at Closing for itself and the public such easements and rights-of-way shown on the final plat of the Property, which shall constitute Permitted Exceptions at Closing to the extent they affect the Property.

14. **Notices.** Notices must be in writing to and given at the addresses stated above. Notice given by delivery service or fax shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon receipt. In addition, copies of notices shall be sent to (a) the attorney for the party to whom the notice is being sent and (b) to Developer and Developer's attorneys as shown above.

15. **Miscellaneous.**

(a) ***Entire Agreement.*** This Agreement contains the entire agreement between City and AEDC, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

(b) ***Modifications and Waiver.*** This Agreement may be amended only by an instrument in writing signed by both City and AEDC. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both City and AEDC. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party. AEDC shall be authorized to consent to an assignment of the Developer's Sales Contract without consent of City, but only if the assignee of the Developer's Sales Contract assumes all obligations of Developer under the Developer's Sales Contract.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Effective Date.** The Effective Date of this Agreement shall be the later of (i) the date on which the authorized representatives of the parties have signed this Agreement, (ii) the effective date of the NTMWD Purchase Agreement, and (iii) the effective date of the Developer's Sale Contract.

(f) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or holiday, then the end of such period shall be extended to the next business day.

(g) **Headings.** Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

(h) **Brokers.** City and AEDC represent that no broker is involved in this Agreement and that there is no brokerage fee or commission will be paid to any third-party pursuant to this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(j) **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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(k) **Law Governing.** This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from 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.

(l) **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 Closing shall survive.

(signature page to follow)

SIGNED AND AGREED this ____ day of _____ 2022.

PURCHASER: CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

Attest:

By: _____
Shelley George, TRMC, City Secretary

Approved as To Form:

By: _____
Peter G. Smith, City Attorney

SIGNED AND AGREED this the ____ day of _____, 2022.

Allen Economic Development Corporation

By: _____
Daniel S. Bowman
Executive Director/CEO

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both AEDC and City on the ____ day of _____, 2022.

Republic Title of Texas, Inc.

By: _____

Name: _____

Title: _____

Attachment I
Form of Developer Sales Contract

PURCHASE AND SALE AGREEMENT

This **Purchase and Sale Agreement** (“**Agreement**”) to buy and sell real property is entered between Seller and Purchaser as identified below and is effective on the date set forth in Section 16(e) (“**Effective Date**”). Seller and Purchaser are referred to herein collectively as “the Parties” and sometimes separately as “Party.”

AEDC: Allen Economic Development Corporation, a Texas non-profit corporation

AEDC’s Address: Attn: Dan S. Bowman, Executive Director/CEO
900 West Bethany Drive, Suite 280
Allen, Texas 75013

Telephone: (972) 727-0252
E-mail: dbowman@allenedc.com

AEDC’s Attorney: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

Phone: (214) 965-9900
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

AEDC’s Broker: None

Rodgers: Tanya Rodgers and/or assigns

Rodgers’s Address: 7140 Mossvine Drive
Dallas, Texas 75254-8032

Telephone: () _____
E-mail: drrogers@skinspecialistsoa.com

Rodgers’s Attorney: None

Rodgers’s Broker/Agent: None

AEDC’s Property: A tract of land located in the City of Allen, Collin County, Texas, and owned by NTMWD as of the Effective Date, being the eastern 1.0± acres out of Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition, an Addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2019, Page 261, Plat Records, Collin County,

Texas generally depicted on Exhibit “A” attached hereto and incorporated herein by reference; and including, all and singular, all improvements and fixtures situated thereon, and all rights and appurtenances pertaining thereto, including any right, title and interest of AEDC in and to adjacent streets, alleys, or rights-of-way (such land, improvements, fixtures, rights and appurtenances being collectively herein referred to as the “**AEDC’s Property**”)

Rodgers’ Property: A tract of land located in the City of Allen, Collin County, Texas, described as Lot1R, Block A, First Christian Church Addition, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2011, Page 8, Map Records, Collin County, Texas, and including, all and singular, all improvements and fixtures situated thereon, and all rights and appurtenances pertaining thereto, including any right, title and interest of AEDC in and to adjacent streets, alleys, or rights-of-way (such land, improvements, fixtures, rights and appurtenances being collectively herein referred to as the “**Rodgers’ Property**”)

Properties: Collectively, Rodgers’ Property and AEDC’s Property.

City: City of Allen, a Texas home rule municipality

City’s Address: 305 Century Parkway
Allen, Texas 75013
Attn: Eric Ellwanger, City Manager

Telephone: (214) 509-4110
E-mail: cellwanger@cityofallen.org

City’s Attorney: Peter G. Smith
Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

Phone: (214) 965-9900
Fax: (214) 965-0100
E-mail: psmith@njdhs.com
klaughlin@njdhs.com

Restriction Agreement: That certain Restriction Agreement by and between City and Rodgers attached hereto as Exhibit “B”, subject, however, to such modifications as may be reasonably requested by any lender providing financing with respect to the Property, provided such modifications do not require the AEDC to subordinate its rights under the Restriction Agreement to such lender.

City Purchase Contract: That certain *Purchase and Sale Agreement* dated and effective _____, 2022, by and between City and AEDC relating to the sale by City of AEDC’s Property to AEDC.

Title Company: Republic Title of Texas, Inc.
Attn: Tammie Cooper, Vice President
2626 Howell Street, 10th Floor
Dallas, Texas 75204

Phone: (214) 855-8886
Fax: (214). 516-2507
E-Mail: tcooper@republictitle.com

Inspection Period: The period commencing on the Effective Date and ending on the 180th day after the Effective Date, as extended as provided herein.

Earnest Money: None

Option Fee: None

Closing Date: The thirtieth (30th) day after the expiration of the Inspection Period, or such earlier date as agreed by the Parties.

Purchase Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

NTMWD Purchase Agreement: That certain Purchase and Sale Agreement of approximate between City and the North Texas Municipal Water District ("NTMWD") wherein City has agreed to purchase AEDC's Property from NTMWD.

NTMWD Property: Lot 2, Block A, of the North System Exchange Parkway Ground Storage Addition, an Addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2019, Page 261, Plat Records, Collin County, Texas

NOW, THEREFORE, in consideration of the sum of the payment of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AEDC and Purchaser agree as follows:

1. **Sale and Purchase.** AEDC agrees to sell and convey AEDC's Property to Purchaser in consideration of (a) Rodgers' concurrent sale and conveyance of Rodgers' Property to AEDC and (b) Rodgers' execution of the Restriction Agreement.

2. **Title and Survey, and Environmental Reports.**

(a) Not later than twenty (20) days after the Effective Date, AEDC shall, at no expense to Rodgers, deliver to Rodgers:

(i) a current commitment for an Owner's Policy of Title Insurance for AEDC's Property from the Title Company, setting forth the state of title to AEDC's Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening AEDC's Property, together with all exceptions or conditions to such title (the "AEDC Title Commitment");

(ii) copies of all documents referenced in the AEDC's Title Commitment; and

(iii) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years on AEDC's Property.

(iv) any environmental or geotechnical studies or reports that AEDC may have in its possession or that is available to AEDC as of the Effective Date with respect to AEDC's Property;

(v) the most recent survey and plat of AEDC's Property that AEDC has in its possession or that may be available to AEDC. AEDC shall not be required to obtain a new survey of AEDC's Property at AEDC's expense;

(vi) notices or other documents regarding any uncured violation of applicable laws, rules, regulations, codes or ordinances regarding AEDC's Property, or relating to any actual or claimed existence, release or disposal of any toxic or hazardous substance or waste in, upon or affecting the Property, or relating to any pending or threatened litigation affecting AEDC's Property; and

(vii) any other documents or information in AEDC's possession relating to AEDC's Property which may be reasonably requested by Purchaser.

(b) Not later than twenty (20) calendar days after the Effective Date, Rodgers will, at no expense to AEDC, obtain:

(i) a current commitment for an Owner's Policy of Title Insurance for Rodgers' Property from the Title Company, setting forth the state of title of Rodgers' Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening Rodgers' Property, together with all exceptions or conditions to such title (the "**Rodgers Title Commitment**") and together with the AEDC's Title Commitment being the "**Title Commitments**").

(ii) copies of all documents referenced in the Rodgers' Title Commitment; and

(iii) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years on Rodgers' Property;

(iv) any environmental or geotechnical studies or reports that Rodgers may have in Rodgers' possession or that is available to Rodgers as of the Effective Date with respect to Rodgers' Property;

(v) the most recent survey and plat of Rodgers' Property that Rodgers has in Rodgers' possession or that may be available to Rodgers. Rodgers shall not be required to obtain a new survey of Rodgers' Property at Rodgers' expense;

(vi) notices or other documents regarding any uncured violation of applicable laws, rules, regulations, codes or ordinances regarding Rodgers' Property, or relating to any actual or claimed existence, release or disposal of any toxic or hazardous substance or waste in, upon or affecting the Rodgers' Property, or relating to any pending or threatened litigation affecting the Rodgers' Property; and

(vii) any other documents or information in Rodgers' possession relating to Rodgers' Property which may be reasonably requested by AEDC.

(c) Not later than thirty (30) calendar days after the Effective Date, Rodgers may, at Rodgers' option and expense, obtain a survey (the "**AEDC Property Survey**") of AEDC's Property prepared by a duly licensed Texas Registered Public Land Surveyor setting forth the proposed boundaries of AEDC's Property generally consistent with the boundaries depicted on Exhibit "A" hereto. Not later than thirty (30) days after receipt of the Survey, AEDC shall either accept or object in writing to the proposed boundaries of AEDC's Property shown on the AEDC Property Survey. If AEDC fails to object to the boundaries of AEDC's Property within said fifteen (15) day period, the boundaries shown on the Survey shall for purposes of this Agreement constitute the boundaries of AEDC's Property unless otherwise altered by written agreement of the parties prior to Closing. The AEDC Property Survey shall be staked on the ground, and the AEDC Property Survey plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to AEDC's Property, if any, and shall contain the surveyor's certification that there are no encroachments on AEDC's Property other than what are listed on the AEDC Title Commitment and shall set forth a metes and bounds description of AEDC's Property. Notwithstanding the foregoing to the contrary, the boundaries of AEDC's Property shall be finally established and deemed approved by the parties as shown on the approved replat of the NTMWD Property, part of which shall be AEDC's Property as defined herein, setting forth AEDC's Property as a separate platted lot.

(d) Not later than ten (10) days after Rodgers' receipt of the last of (i) the AEDC's Title Commitment, (ii) legible copies, to the extent available, of all instruments referred to in the AEDC's Title Commitment, and (iii) the AEDC Property Survey, (or after the expiration of the period for obtaining the AEDC Property Survey, if not obtained), Rodgers shall provide written objections to the aforementioned items. If there are objections by Rodgers, AEDC shall in good faith attempt to satisfy them prior to Closing, but AEDC shall not be required to incur any cost to do so. If AEDC delivers written notice to Rodgers not later than the fifth (5th) calendar day after AEDC's receipt of Rodgers' objections that AEDC is unable to satisfy such objections, Rodgers may either (i) waive such objections and accept title as AEDC is able to convey or terminate this Agreement by written notice to AEDC and the Title Company prior to the expiration of the Inspection Period or (ii) elect to extend the Closing Date, not to exceed an additional sixty (60) days, in order to provide AEDC additional time to cure the objections. If Rodgers elects to extend the Closing Date pursuant to (ii) in the previous sentence, and AEDC fails to cure the objection with such period, Rodgers may either waive the objection and proceed to Closing or terminate this Agreement without further liability to either Party.

(e) Not later than thirty (30) calendar days after the Effective Date, AEDC may, at AEDC's option and expense, obtain a survey (the "**Rodgers Property Survey**") of Rodgers' Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Rodgers Property Survey shall be staked on the ground shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Rodgers' Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Rodgers' Property other than what are listed on the Rodgers' Title Commitment and shall set forth a metes and bounds description of Rodgers' Property. If different than the platted description of the Rodgers' Property because of save and except portions of the platted lot, then, the legal description contained in said Rodgers Property Survey shall be used by the parties as the legal description contained in the Rodgers Property Deed. Otherwise, if there are no save and exception portions of the platted lot, then the platted lot legal description will be used in the Rodgers Property Deed.

(f) Not later than ten (10) days after AEDC's receipt of the last of (i) the Rodgers' Title Commitment, (ii) legible copies, to the extent available, of all instruments referred to in the Rodgers'

Title Commitment, and (iii) the Rodgers Property Survey, (or after the expiration of the period for obtaining the Rodgers Property Survey, if not obtained), AEDC shall provide written objections to the aforementioned items. If there are objections by AEDC, Rodgers shall in good faith attempt to satisfy them prior to Closing, but Rodgers shall not be required to incur any cost to do so. If Rodgers delivers written notice to AEDC not later than the fifth (5th) calendar day after Rodgers' receipt of AEDC objections that Rodgers is unable to satisfy such objections, AEDC may either (i) waive such objections and accept title as Rodgers is able to convey or terminate this Agreement by written notice to Rodgers and the Title Company prior to the expiration of the Inspection Period or (ii) elect to extend the Closing Date, not to exceed an additional sixty (60) days, in order to provide Rodgers additional time to cure the objections. If AEDC elects to extend the Closing Date pursuant to (ii) in the previous sentence, and Rodgers fails to cure the objection with such period, AEDC may either waive the objection and proceed to Closing or terminate this Agreement without further liability to either Party.

3. **Inspection Period: Rodgers.**

(a) During the Inspection Period, Rodgers, and Rodgers' agents, contractors, representatives, consultants or employees shall have the right to enter upon AEDC's Property during regular business hours upon reasonable notice to AEDC and NTMWD and conduct such inspections, tests and studies as Rodgers may deem necessary. If for any reason Rodgers determines not to purchase AEDC's Property, Rodgers may terminate this Agreement by notifying AEDC and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither Party shall have any further claim against the other under this Agreement. If Rodgers does not timely terminate this Agreement under this Section 3, Rodgers shall have no further right to do so under this Section 3; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Rodgers may enter AEDC's Property to conduct its inspection but shall be solely responsible for any damages caused thereby. **Rodgers shall repair any damage to AEDC's Property caused by Rodgers and/or Rodgers' agents, contractors, representatives, consultants or employees, and shall indemnify and defend City, AEDC, and NTMWD, and hold City, AEDC, and NTMWD harmless from and against any and all claims, liabilities or damages to AEDC's Property or against City, AEDC, and/or NTMWD caused by the intentional or negligent acts or omissions of Rodgers and/or Rodgers' authorized agents, contractors, representatives, consultants or employees during the Inspection Period or as a result of any inspection of AEDC's Property by such parties; provided, that no indemnity shall be required for Rodgers' discovery of any violations of any applicable law, statute, rule, regulation, code or ordinance during such inspection, or discovery of any preexisting conditions present at AEDC's Property.**

(c) During the Inspection Period, Rodgers may review and conduct any studies relating to engineering and environmental matters associated with AEDC's Property; provided, however, no invasive testing (such as a Phase II ESA) shall be permitted without AEDC's and NTMWD's prior written consent, given in AEDC's and/or NTMWD's sole and absolute discretion. Notwithstanding the foregoing to the contrary, if a Phase I Environmental Site Assessment (a "**Phase I ESA**") is performed on behalf of Rodgers by a reputable and licensed environmental engineer or professional engineering firm (as applicable, "**Rodgers' Environmental Engineer**"), and, in the reasonable opinion of Rodgers' Environmental Engineer and/or Rodgers' lender, the findings of such Phase I ESA discloses materials and/or conditions affecting AEDC's Property such that the performance of a Phase II Environmental Site Assessment (a "**Phase II ESA**") is recommended in order to fully assess same, then AEDC agrees to not unreasonably withhold its consent to the performance of a Phase II ESA at AEDC's Property on conditions, in locations and with a scope approved in advance in writing by AEDC. Upon completion of any Phase I ESA and/or Phase II ESA, Rodgers shall promptly provide a copy of same to AEDC and

NTMWD. No Phase II ESA shall commence prior to the delivery of the Phase I ESA to AEDC and NTMWD.

(d) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing for a period of six (6) months.

4. **Inspection Period: AEDC.**

(a) During the Inspection Period, AEDC, and AEDC's agents, contractors, representatives, consultants or employees shall have the right to enter upon Rodgers' Property during regular business hours upon reasonable notice to Rodgers and conduct such inspections, tests and studies as AEDC may deem necessary. If for any reason AEDC determines not to purchase Rodgers' Property, AEDC may terminate this Agreement by notifying Rodgers and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither Party shall have any further claim against the other under this Agreement. If AEDC does not timely terminate this Agreement under this Section 3, AEDC shall have no further right to do so under this Section 3; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) AEDC may enter Rodgers' Property to conduct its inspection but shall be solely responsible for any damages caused thereby. **AEDC shall repair any damage to Rodgers' Property caused by AEDC and/or AEDC's agents, contractors, representatives, consultants or employees, and shall hold Rodgers harmless from and against any and all claims, liabilities or damages to Rodgers' Property or against Rodgers caused by the intentional or negligent acts or omissions of AEDC and/or AEDC's authorized agents, contractors, representatives, consultants or employees during the Inspection Period or as a result of any inspection of Rodgers' Property by such parties; provided, that no indemnity shall be required for AEDC's discovery of any violations of any applicable law, statute, rule, regulation, code or ordinance during such inspection, or discovery of any preexisting conditions present at Rodgers' Property.**

(c) During the Inspection Period, AEDC may review and conduct any studies relating to engineering and environmental matters associated with Rodgers' Property; provided, however, no invasive testing (such as a Phase II ESA) shall be permitted without Rodgers' prior written consent, given in Rodgers' sole and absolute discretion. Notwithstanding the foregoing to the contrary, if a Phase I Environmental Site Assessment (a "**Phase I ESA**") is performed on behalf of AEDC by a reputable and licensed environmental engineer or professional engineering firm (as applicable, "**AEDC's Environmental Engineer**"), and, in the reasonable opinion of AEDC's Environmental, the findings of such Phase I ESA discloses materials and/or conditions affecting Rodgers' Property such that the performance of a Phase II Environmental Site Assessment (a "**Phase II ESA**") is recommended in order to fully assess same, then Rodgers agrees to not unreasonably withhold its consent to the performance of a Phase II ESA on Rodgers' Property on conditions, in locations and with a scope approved in advance in writing by Rodgers. Upon completion of any Phase I ESA and/or Phase II ESA, AEDC shall promptly provide a copy of same to Rodgers. No Phase II ESA shall commence prior to the delivery of the Phase I ESA to Rodgers.

(d) The provisions of this Section 4 shall expressly survive any termination of this Agreement or the Closing for a period of six (6) months.

5. **Closing Date.** The closing of the sale of the Property (the "**Closing**") shall occur on the Closing Date through escrow arrangements with the Title Company, or at such other time as may be agreeable to the Parties.

6. **Closing Deliverables.**

(a) At the Closing, AEDC shall deliver to Purchaser through the Title Company:

(i) a special warranty deed (the “**AEDC Deed**”) in form and substance reasonably acceptable to AEDC and Rodgers, conveying good and indefeasible title to AEDC’s Property to Rodgers, free and clear of any and all encumbrances except the Permitted Exceptions;

(ii) the documents required to be executed by AEDC as a condition of closing as set forth in Section 9, below;

(iii) possession of AEDC’s Property, free of parties in possession; and

(iv) such documents as may be reasonably required by the Title Company in order to cause the Title Company to issue a Texas Owner’s Policy of Title Insurance (or equivalent) in the amount of the purchase price paid by AEDC to purchase AEDC’s Property from the City, insuring such title to Rodgers, at AEDC’s expense (the “**Rodgers Title Policy**”), as well as such other documents as may be required by the Title Company to close the contemplated transaction.

(b) At the Closing, Rodgers shall deliver to AEDC through the Title Company:

(i) a special warranty deed (the “**Rodgers Deed**”) in form and substance reasonably acceptable to AEDC and Rodgers, conveying good and indefeasible title to Rodgers’ Property to AEDC, free and clear of any and all encumbrances except the Permitted Exceptions;

(ii) the documents required to be executed by Rodgers as a condition of closing as set forth in Section 9, below; and

(iii) possession of Rodgers’ Property, free of parties in possession; and

(iv) such documents as may be reasonably required by the Title Company in order to cause the Title Company to issue a Texas Owner’s Policy of Title Insurance (or equivalent) in the amount of the current appraised fair market value of Rodgers’ Property as determined by the Collin Central Appraisal District, insuring such title to AEDC, at Rodgers’ expense (the “**AEDC Title Policy**”), as well as such other documents as may be required by the Title Company to close the contemplated transaction.

With respect to the issuance of the title policy, the parties agree to execute such documents as required by the Title Company to allow the cost of the Owner’s Title Policy and any related endorsements that are required to be issued pursuant to the NTMWD Purchase Agreement and/or the City Purchase Contract regarding AEDC’s Property are passed through to the sale of AEDC’s Property by AEDC to Rodgers, it being the intent of Rodgers and AEDC that only one title policy be issued in favor of Rodgers following the concurrent closing of this transaction and the transaction between NTMWD and City and between City and AEDC.

7. **Taxes.**

(a) Rodgers understands and acknowledges that AEDC’s Property is presently exempt from the assessment of ad valorem taxes, which status will change upon conveyance of AEDC’s Property to Rodgers. AEDC shall not be responsible for payment of property taxes assessed against AEDC’s Property for periods after the Closing Date, if any become due and payable.

(b) Rodgers shall pay:

(1) at or before Closing, all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs assessed against the Rodgers' Property' and

(2) to AEDC, at Closing, an amount equal to the ad valorem taxes assessed against Rodgers' Property and paid by Rodgers for the calendar year prior to the year in which Closing occurs multiplied by a fraction the denominator of which is 365 and the numerator of which is the number of calendar days of the year in which Closing occurs that have elapsed as of the Closing Date.

AEDC shall be responsible for the payment of ad valorem taxes assessed against the Rodgers' Property for the year in which Closing occurs when they become due and payable. The parties agree that Rodgers' sole obligation with respect to the payment of ad valorem taxes assessed against the Rodgers' Property for the year in which Closing occurs shall be the payment to AEDC at Closing the amount determined in accordance with Section 7(b)(2) notwithstanding the actual amount of ad valorem taxes assessed against Rodgers' Property for the year in which Closing occurs being different than the amount on which the payment made pursuant to this Section 7(b)(2) was calculated, it being agreed that no recalculation or adjustment of the amount previously paid shall occur.

8. **Closing Costs.**

(a) AEDC agrees to pay and be responsible for the following closing costs:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to AEDC's Property;

(ii) one-half (1/2) of the Title Company's escrow fees;

(iii) the basic premium for the Owner's Policy of Title Insurance for AEDC's Property;

(iv) all premiums and fees for optional endorsements, deletions and amendments to the Basic Owner's Title Policy for Rodgers' Property, if any

(v) all costs and expenses incurred by or on behalf of AEDC, including AEDC's attorney's fees;

(vi) the recording fee for the Rodgers Deed; and

(vii) such other incidental costs and fees customarily paid by sellers of real property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) Rodgers agrees to pay and be responsible for the following closing costs:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to Rodgers' Property;

(ii) one-half (1/2) of the Title Company's escrow fees;

(iii) the basic premium for the Owner's Policy of Title Insurance for Rodgers' Property;

(iv) all premiums and fees for optional endorsements, deletions and amendments to the Basic Owner's Title Policy for AEDC's Property, if any

(v) all costs and expenses incurred by or on behalf of Rodgers, including Rodgers' attorneys' fees;

(vi) Recording fees for the AEDC Deed, the Restriction Agreement, the Replat (if not previously paid to the City) and any other documents that are required to be recorded granting any liens or security interests in AEDC's Property and/or any improvements constructed thereon; and

(vii) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

9. **Conditions to Closing.** Closing on the sale of the Properties shall be conditioned upon and subject to the following:

(a) Rodgers and City having duly executed the Restriction Agreement in recordable form;

(b) On or before the end of the Inspection Period, the zoning of AEDC's Property being amended, if necessary, such that Rodgers may develop and use AEDC's Property for the Required Use as defined in the Restriction Agreement. If AEDC's Property is not zoned for such use as of the Effective Date, AEDC agrees that Rodgers shall have the right to file an application with City to seek an amendment to the zoning regulations affecting AEDC's Property (the "**Zoning Regulations**") to allow AEDC's Property to be used for the Required Use. The application for rezoning AEDC's Property shall be made in Rodgers' name, prosecuted at Rodger's expense, and filed with City on or before the last day of the Inspection Period. Nothing in this Agreement and, specifically, this Section 9(b), shall be construed as warranting that City will grant any amendment to the Zoning Regulations or otherwise waive its legislative discretion to amend the Zoning Regulations in any manner; provided, however, if City denies an application to amend the Zoning Regulations in a manner that allows AEDC's Property to be used for the Required Use, Rodgers shall have the right, as Rodgers' sole and exclusive remedy, to terminate this Agreement and, thereafter, neither Party shall have any further claim against the other under this Agreement;

(c) On or before the Closing Date, a replat of the NTMWD Property being approved by City creating two or more defined, platted lots as determined in accordance with this Section 9(c) and the applicable provisions of the Allen Land Development Code, as amended (the "**ALDC**"), being approved. Rodgers understands and acknowledges that, as of the Effective Date, AEDC's Property constitutes a portion of a single platted lot owned by NTMWD (i.e., the NTMWD Property). Pursuant to the NTMWD Purchase Agreement, NTMWD has agreed to reasonably cooperate and participate with AEDC and Rodgers in the prosecution of any plat application for the replat of the NTMWD Property that includes AEDC's Property so that AEDC's Property is identified as one or more separate and distinct lots as determined by City and NTMWD. The application for replatting the NTMWD Property shall be made in Rodgers' name unless governing law requires the application be made in the name of NTMWD, City, and/or AEDC, prosecuted at Rodgers' expense, and filed with City on or before the seventy-fifth (75th) day after the Effective Date. Unless AEDC agrees in writing to extend the date by which the application for replatting the NTMWD Property is required to be filed with City, AEDC may terminate this

Agreement if Rodgers fails to file with City the application for replatting of the NTMWD Property on or before the seventy-fifth (75th) day after the Effective Date;

(d) Each of the representations and warranties made by the parties to this Agreement being true and complete in all material respects on the Closing Date as if made on and as of such date;

(e) AEDC will not have failed to materially perform or comply with any of AEDC's agreements, covenants or obligations in the manner and within the periods provided herein;

(f) Rodgers will not have failed to materially perform or comply with any of Rodgers' agreements, covenants or obligations in the manner and within the periods provided herein;

(g) The Title Company will have irrevocably committed to issue the AEDC Title Policy and the Rodgers Title Policy;

(h) On the Closing Date, there will be no third party injunction, writ, preliminary restraining order or any order of any nature issued or threatened by a court of competent jurisdiction directing that the transaction contemplated by this Agreement not be consummated, as herein provided;

(i) AEDC closing on the purchase of AEDC's Property from City pursuant to the City Purchase Contract; and

(j) City closing on the purchase of AEDC's Property from NTMWD pursuant to the NTMWD Purchase Agreement.

If the conditions set forth in Paragraphs (b) and/or (c), above, have not been satisfied on or before the scheduled expiration of Closing Date, the Closing shall be automatically extended for a period of thirty (30) days. If the conditions set forth in Paragraphs (b) and/or (c) have still not been approved by the end of said thirty (30) day period, AEDC may either (i) extend the Closing Date for an additional thirty (30) day period or (ii) terminate this Agreement as AEDC's sole remedy. Rodgers understands and acknowledges that the NTMWD Purchase Agreement contains a provision that requires the approval of the replat of the NTMWD Property substantially similar to this provision in this Section 9, including the right to terminate the NTMWD Purchase Agreement as provided in this paragraph. Rodgers agrees that if NTMWD elects to terminate the NTMWD Purchase Agreement for failure of the replat of the NTMWD Property to be timely approved, this Agreement shall also terminate.

10. **Permitted Exceptions.**

(a) Rodgers acknowledges and agrees AEDC's Property will be conveyed by AEDC to Rodgers at Closing subject to the Restriction Agreement and that the AEDC Deed shall contain reference to same. The (i) lien for current taxes not yet due and payable, (ii) the Restriction Agreement, and (iii) other appropriate matters appearing on Schedule B of the Title Commitment that were not cured and to which Rodgers failed to object or otherwise waived objection, shall be deemed to be Permitted Exceptions to conveyance of AEDC's Property to Rodgers. Notwithstanding anything to the contrary herein, as a condition of Closing, AEDC must resolve at AEDC's sole cost the items that are listed on Schedule C of the AEDC Title Commitment which are by their nature AEDC's responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under AEDC after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that AEDC has agreed to cure.

(b) The (i) lien for current taxes not yet due and payable and (ii) other appropriate matters appearing on Schedule B of the Title Commitment that were not cured and to which AEDC failed to object or otherwise waived objection, shall be deemed to be Permitted Exceptions to conveyance of Rodgers' Property to AEDC. Notwithstanding anything to the contrary herein, as a condition of Closing, Rodgers must resolve at Rodgers' sole cost the items that are listed on Schedule C of the Rodgers Title Commitment which are by their nature Rodgers' responsibility, remove all liquidated liens, remove all exceptions that arise by, through, or under Rodgers after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that Rodgers has agreed to cure.

(c) Rodgers understands, acknowledges, and agrees that all rights-of-ways and easements dedicated to City on behalf of the public and which may affect AEDC's Property and which were originally dedicated to City by separate instrument or dedicated by plat prior to the Effective Date, including, but not limited to, any rights-of-way or easements that existed prior to City acquiring title to AEDC's Property pursuant to the closing of the NTMWD Purchase Agreement, may be reserved by City prior to or at Closing for City, its successors and assigns, and the public, which reservations shall constitute Permitted Exceptions at Closing to the extent they affect AEDC's Property.

11. **Representations and Covenants.**

(a) AEDC represents and covenants that: (1) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of AEDC, enforceable against AEDC in accordance with its terms; (2) no other person has any interests in or claims against AEDC's Property (other than as reflected by the AEDC Title Commitment); (3) AEDC has no knowledge of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to AEDC's Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting AEDC's Property, nor of any pending or threatened litigation affecting AEDC's Property; and (4) AEDC will not hereafter encumber AEDC's Property, or take any other action with respect to AEDC's Property which AEDC knows will materially adversely affect the development, lease or other transactions contemplated by this Agreement.

(b) Rodgers represents and covenants that: (1) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Rodgers, enforceable against Rodgers in accordance with its terms; (2) no other person has any interests in or claims against Rodgers' Property (other than as reflected by the Rodgers Title Commitment); (3) Rodgers has no knowledge of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to Rodgers' Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting Rodgers' Property, nor of any pending or threatened litigation affecting Rodgers' Property; and (4) Rodgers will not hereafter encumber Rodgers' Property, or take any other action with respect to Rodgers' Property which Rodgers knows will materially adversely affect the development, lease or other transactions contemplated by this Agreement.

(c) The only representations made by any Party concerning the Properties and this Agreement are as set out in this Section 11. The representations set forth in this Section 11 shall survive Closing.

12. **AEDC's Property Sold As Is.**

(a) Rodgers hereby acknowledges and agrees that the sale of AEDC's Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by Rodgers that AEDC's Property was accepted without representation or

warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the AEDC Deed).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the AEDC Deed, AEDC hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to AEDC's Property, including without limitation (i) the nature and condition of AEDC's Property and the suitability thereof for any and all activities and uses which Rodgers may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to AEDC's Property, (iii) the compliance of AEDC's Property or its operation with any laws, ordinances or regulations of any government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about AEDC's Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which AEDC's Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which AEDC's Property or any portion thereof may be subject, (ix) the availability of any utilities to AEDC's Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to AEDC's Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to AEDC's Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of AEDC's Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to AEDC's Property or any part thereof, (xiii) the potential for further development of AEDC's Property, or (xiv) the merchantability of AEDC's Property or fitness of AEDC's Property for any particular purpose (Rodgers affirming that Rodgers has not relied on AEDC's skill or judgment to select or furnish AEDC's Property for any particular purpose, and that AEDC makes no warranty that AEDC's Property is fit for any particular purpose).

(c) Rodgers agrees that, prior to the expiration of the Inspection Period, it will have the opportunity to examine and investigate AEDC's Property and that, in purchasing AEDC's Property, Rodgers will rely solely upon its independent examination, study, inspection and knowledge of AEDC's Property, and Rodgers is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the AEDC Deed, knowledge of AEDC Property and Rodgers' determination of the value of AEDC's Property and uses to which AEDC's Property may be put, and not on any information provided or to be provided by AEDC.

(d) The provisions of this Section 12 shall survive the termination of this Agreement and the Closing.

13. **Rodgers' Property Sold As Is.**

(a) AEDC hereby acknowledges and agrees that the sale of Rodgers' Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by AEDC that Rodgers' Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the Rodgers Deed).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the Rodgers Deed, AEDC hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to Rodgers' Property, including without limitation (i) the nature and condition of Rodgers' Property and the suitability thereof for any and all activities and uses which AEDC may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to Rodgers' Property, (iii) the compliance of Rodgers' Property or its operation with any laws, ordinances or regulations of any government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about Rodgers' Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which Rodgers' Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which Rodgers' Property or any portion thereof may be subject, (ix) the availability of any utilities to Rodgers' Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to Rodgers' Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to Rodgers' Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of Rodgers' Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to Rodgers' Property or any part thereof, (xiii) the potential for further development of Rodgers' Property, or (xiv) the merchantability of Rodgers' Property or fitness of Rodgers' Property for any particular purpose (AEDC affirming that AEDC has not relied on Rodgers' skill or judgment to select or furnish Rodgers' Property for any particular purpose, and that AEDC makes no warranty that Rodgers' Property is fit for any particular purpose).

(c) AEDC agrees that, prior to the expiration of the Inspection Period, it will have the opportunity to examine and investigate Rodgers' Property and that, in purchasing Rodgers' Property, AEDC will rely solely upon its independent examination, study, inspection and knowledge of Rodgers' Property, and AEDC is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the Rodgers Deed, knowledge of AEDC Property and AEDC's determination of the value of Rodgers' Property and uses to which Rodgers' Property may be put, and not on any information provided or to be provided by AEDC.

(d) The provisions of this Section 13 shall survive the termination of this Agreement and the Closing.

14. **Remedies.** If Rodgers defaults, AEDC's sole remedies shall be to terminate this Agreement, thereby releasing both of the Parties from this Agreement. If AEDC defaults, Rodgers' sole remedies shall be to terminate this Agreement, thereby releasing both of the Parties from this Agreement. No termination shall occur pursuant to a default until the non-defaulting Party has provided written notice of default not less than ten (10) days prior to the proposed date of termination and the defaulting Party has failed to cure the default; provided, however, if all of the Parties have fully performed and all conditions to Closing have been satisfied other than the signing of documents and Closing on the sale of the Properties and one party fails to perform such necessary acts to deliver funds and execute documents required for Closing on the date of Closing, then this Agreement shall terminate one (1) business day after demand is made to the non-performing party and the party continues to fail to close on the transaction.

15. **Notices.** Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon earlier of actual receipt or three (3) days after placing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed. In addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

16. **Sale Subject to Provisions of Tex. Loc. Govt. Code §272.001.** Rodgers acknowledges having been advised that pursuant to the City Purchase Contract, City has contracted with AEDC as an independent foundation to sell AEDC's Property without requiring an auction or solicitation of competitive bids subject to City's requirement that AEDC's Property be developed by Rodgers in accordance with the Restriction Agreement.

17. **Miscellaneous.** This Agreement is subject to the following additional provisions and conditions:

(a) *Entireties.* This Agreement contains the entire agreement of the Parties relating to the purchase and sale of the Properties.

(b) *Modifications.* This Agreement may only be modified by a written document signed by both Parties.

(c) *Assignment.* Rodgers may not assign its rights under this Agreement without the written consent of AEDC, which may be withheld at AEDC's sole discretion; provided, however, Rodgers may assign all of Rodgers' rights, title, and interest in this Agreement to an affiliate without the written consent of AEDC if (i) such assignment is made in a writing in which the affiliate agrees to assume all of Rodgers' rights and obligations under this Agreement and (ii) written notice of such assignment is delivered to AEDC and the Title Company not later than 15 days prior to the Closing Date. Upon any assignment of the Agreement by Rodgers, Rodgers will remain liable for all of Rodgers' obligations hereunder, but such assignee will succeed to all of the rights and obligations of Rodgers hereunder and will, for the purposes hereof, be substituted as for Rodgers hereunder. For purposes of this paragraph (c), "**affiliate**" means any entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Rodgers, or any entity the ownership of which is substantially the same as Rodgers' ownership.

(d) *Time is of the Essence.* Time is of the essence with respect to the performance by the Parties of their respective obligations hereunder.

(e) *Effective Date.* The Effective Date of this Agreement shall be the latter of (i) last date on which the authorized representatives of all Parties have signed this Agreement, and the Title Company has acknowledged in writing its receipt of this Agreement as so signed, (ii) the effective date of the NTMWD Purchase Agreement, and (iii) the effective date of the City Purchase Contract.

(f) *Deadlines and Other Dates.* All deadlines in this Agreement expire at 5:00 p.m. Central Time on the day of such deadline. If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, federal holiday, or a day on which AEDC's main offices are not open for regular business, then the end of such period shall be extended to the next day that is not one of the foregoing described days.

(g) *Brokers.* The Parties represent and warrant they worked with no real estate broker or agent relative to this transaction and that no brokerage commission is due and payable upon the Closing.

To the extent allowed by law, each Party shall indemnify the other from any claim for brokers' commissions relative to the sale of the Property and alleged to be due by, through or under the indemnifying Party.

(h) *Counterparts.* This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) *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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(j) *Law Governing.* This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from 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 in any such action.

(k) *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.

(l) *Headings.* Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

(Signatures on Following Page)

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

**Allen Economic Development Corporation, a Texas
Type A economic development corporation**

[EXHIBIT ONLY – DO NOT SIGN]

By: _____
Daniel S. Bowman, Executive Director/CEO

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

[EXHIBIT ONLY – DO NOT SIGN]

Tanya Rodgers

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both Seller and Purchaser on the ___ day of _____, 2022.

By: _____

Name: _____

Title: _____

Exhibit "A" Depiction of Boundaries of the AEDC Property

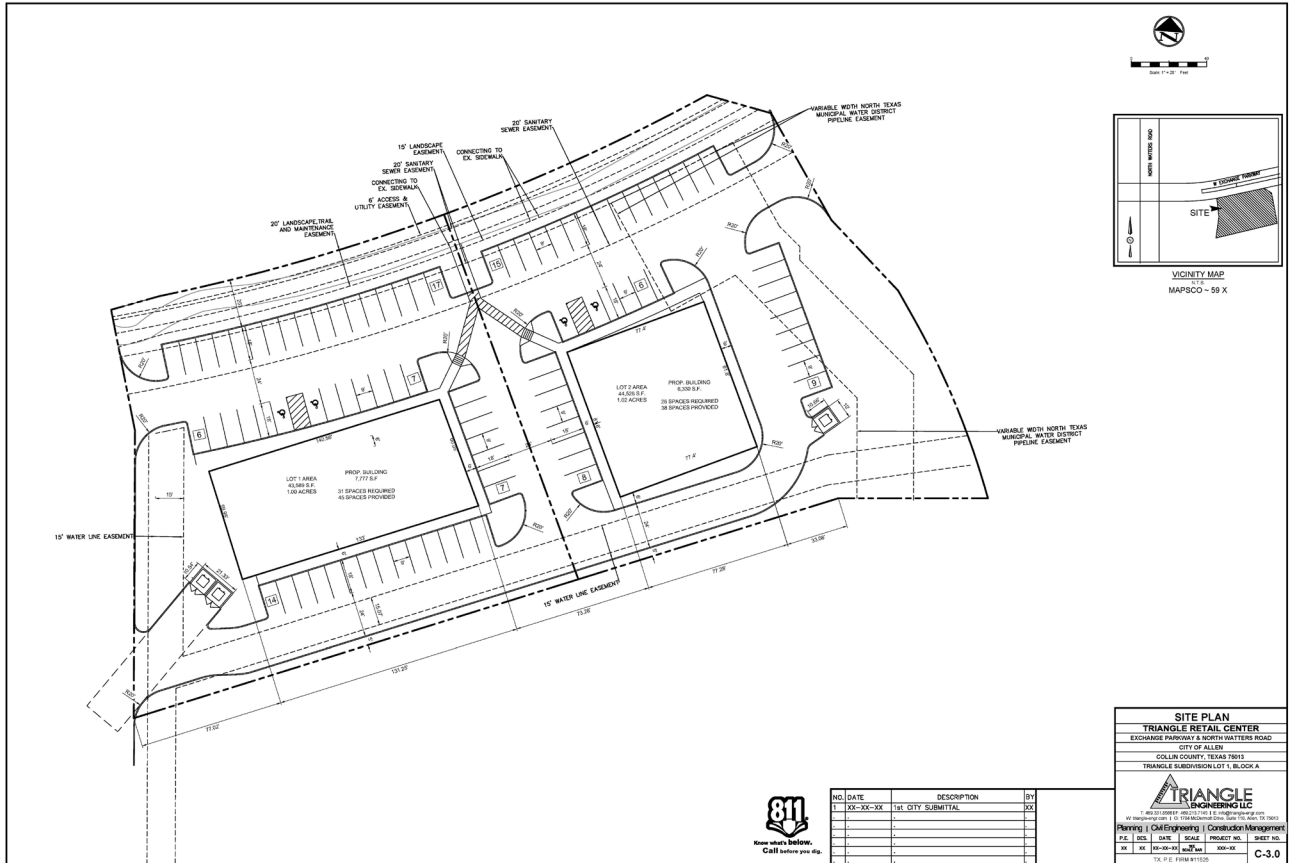


Exhibit "B"
Form of Restriction Agreement

WHEN RECORDED RETURN TO:

City of Allen, Texas
Attn: City Secretary
13000 William Dodson Parkway
Allen, Texas 75234

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

STATE OF TEXAS §
 § **RESTRICTION AGREEMENT**
COUNTY OF COLLIN § **(With Option to Repurchase and Right of First Refusal)**

This **RESTRICTION AGREEMENT** ("**Restriction Agreement**") is made and entered into as of the Effective Date by and between the **City of Allen** ("**City**"), a Texas home rule municipality, and **Tanya Rodgers**, ("**Developer**") (City and Developer sometimes hereafter collectively referred to as "**Parties**") or separately as "**a Party**" or "**the Party**")

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Agreement, Developer has purchased the Land from the AEDC; and

WHEREAS, prior to or concurrent with the sale of the Land to Developer, AEDC purchased the Land from City pursuant to that certain Purchase and Sale Agreement effective _____, 2022, between City and AEDC ("**the City Contract**") without City seeking sealed bids or conducting an auction prior to the sale of the Land to AEDC pursuant to the statutory exception to such requirements set forth in Texas Local Government Code §272.001(b)(4); and

WHEREAS, as a condition of the sale of the Land to AEDC and pursuant to Texas Local Government Code §272.001(b)(4), the City Contract requires that AEDC have the Land developed with the Improvements consistent with the Required Use; and

WHEREAS, AEDC has, as a condition of the conveyance of the Land to Developer, restricted the use of the Property and required Developer to develop the Property with the Improvements in accordance with the terms and conditions set forth herein; and

WHEREAS, as a condition to and in consideration of AEDC's conveyance of the Land to Developer, Developer has agreed to develop the Property in accordance with this Restriction Agreement; and

WHEREAS, Developer desires to grant City (i) an option to repurchase the Land or portions thereof in the event Developer fails to cause Commencement of Construction (hereinafter defined) of the Improvements in accordance with this Restriction Agreement and (ii) a Right of First Refusal (“ROFR”), in each case subject to the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I
Property Subject to Declaration

The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Developer and any subsequent owners of all or any part of the Property (as hereinafter defined) for the term specified in Section 6.3, subject to the terms of this Restriction Agreement.

Article II
Definitions

For purposes of this Restriction Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

“Commencement of Construction” means (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements, (ii) all necessary permits for the construction of the Improvements have been issued by the applicable governmental authorities and (iii) grading of the Land and construction of the building elements of the Improvements (whether located above or below ground) has commenced.

“Completion of Construction” means (i) substantial completion of the Improvements on the Land has occurred, and (ii) a certificate of occupancy has been issued by City for occupancy of the Improvements for the Required Use.

“Effective Date” means the date this Restriction Agreement is signed by the Parties.

“Force Majeure” means 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, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages, adverse weather conditions, transportation delays or difficulties, shortages of materials or labor, financial institution shutdowns, epidemic or pandemic, electronic funds transfer delays or difficulties, and economic disruptions.

“Improvements” means a building with not less than 6000 gross square feet designed for use for medical and other professional offices, including all water, sanitary sewer, electrical, landscaping, sidewalks, parking areas, driveways, fire lanes, and other related improvements and accessory structures, constructed and/or installed on the Property as approved by plan submitted to and approved by City in association with the Required Use.

“Land” means the real property described in Exhibit “A” attached hereto [*insert platted lot description prior to Closing*].

“Option Price” means Four Hundred Forty Thousand and No/100 Dollars (\$440,000.00).

“Option Period” means that period of time commencing on *[insert date which is one (1) year after the date of Closing]* and ending on *[Insert date that is two (2) years following the deadline for Commencement of Construction of the Improvements]*.

“Property” collectively means the Land, the Developer’s Land and any Improvements, or portion thereof, following construction thereof on the Land and/or Developer’s Land.

“Purchase Agreement” shall mean that certain *Purchase and Sale Agreement*, as amended or assigned, by and between AEDC and Developer, dated _____, 2022, relating to the sale of the Land by City to Developer.

“Required Use” means the use of the Property for (i) construction of the Improvements on the Land in accordance with applicable zoning regulations and ordinances, and (ii) use of the Improvements for medical and other professional offices any other additional compatible use which is approved by in writing by City and allowed per applicable City ordinances.

Article III City Repurchase Options

3.1 Grant of Repurchase Options. In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Developer and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Developer, and subject as hereinafter provided, Developer hereby grants to City an option to repurchase the Land (“**the Option**”).

3.2 Time for Exercising the Option. Subject to Section 3.3, below, the Option may be exercised by City in its sole discretion by providing written notice to Developer any time on or after *[insert date which is one (1) after the date of Closing]*, if Developer has failed to cause Commencement of Construction of the Improvements to occur on or before said date, which date shall be reasonably extended if delays are due to Force Majeure, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option;

3.3 Force Majeure. In the event of Force Majeure, Developer shall have such additional time to cause Commencement of Construction so long as Developer is diligently and faithfully pursuing the same. The commencement and termination dates of the Option Period shall be extended for the same number of days that the performance of Developer with respect to Commencement of Construction is extended by Force Majeure.

3.4 Sole Remedy. City’s sole and exclusive remedy for Developer’s failure to comply with the deadlines for the Commencement of Construction set forth herein shall be the exercise of the Option and repurchase of the Land or portion thereof in accordance with Article VI, below.

Article IV Right of First Refusal

4.1 Grant. Subject to the terms and conditions hereinabove and hereinafter set forth, Developer hereby agrees that City shall have, and hereby grants to City, during the period commencing upon the Effective Date and ending upon the Commencement of Construction (“**the ROFR Period**”), a right of first refusal (the “**ROFR**”) to purchase the Land on the terms and conditions set forth herein.

4.2 Notice of Third-Party Offer. If (i) Developer receives a bona fide offer for the purchase of any portion of Land that it intends to accept, or (ii) Developer receives any offer to purchase the Land or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Land, Developer shall give notice thereof in writing to City (the “**Third Party Notice**”). The Third Party Notice shall include a copy of any offer to be made or any offer received by Developer, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

4.3 City’s Exercise of ROFR. For a period of thirty (30) days after receipt by City of the Third Party Notice, City shall have the right to repurchase the Land, or so much of the Land that is subject to the Third Party Notice, upon the same terms and price as set forth in the Third Party Notice or for the Option Price, whichever is deemed by City to be more favorable to City (the “**ROFR Price**”). The ROFR may be exercised by City by providing written notice to Developer not later than thirty (30) days after City’s receipt of the Third Party Notice. City’s notice shall indicate acceptance of the terms set forth in the offer as recited in the Third Party Notice or the Option Price, as applicable.

4.4 City Fails to Exercise ROFR. If City does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third Party Notice:

(a) Developer may sell the Land, or portion thereof, at the price and on the terms and conditions described in the Third Party Notice during the one hundred eighty (180) day period following the date of the Third Party Notice; and

(b) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. Developer agrees not to sell the Land, or portion thereof, during the ROFR Period at any lower price, on any terms or conditions more favorable to the buyer than those set forth in the Third Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time; and

(c) The ROFR shall remain in full force and effect with respect to any portion of the Land that is not sold by Developer following City’s failure to exercise the ROFR with respect to the portion of the Land described in the Third Party Notice.

4.5 No Release of Restrictions Required. City’s failure to exercise the ROFR shall not constitute a release of the Option, City’s rights to repurchase the Property pursuant to the Option, or the obligations of any subsequent owner of the Land or portion thereof to comply with the obligations of this Restriction Agreement.

Article V Terms of Sale Upon Exercise of Right

5.1 Effect of Exercise of the Right. Upon any timely exercise of the Option or ROFR (each being “**the Right**”) by City in accordance with the foregoing provisions, the conveyance of the Land, or portion thereof, as applicable to City shall be in accordance with the provisions in this Article V.

5.2. Title, Survey, and Environmental Reports.

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, the Developer shall, at Developer’s expense, deliver or cause to be delivered to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Land to be conveyed to City, setting forth the state of title to the Property or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Land, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Developer may have in its possession with respect to the Land;

(iv) copies of all leases and rental agreements creating a leasehold interest in any portion of the Land; and

(v) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, the City shall have the right, at its sole discretion, to cause a boundary or "as-built" survey of the Land to be made by a registered professional land surveyor selected by City. Such survey shall be made at the sole cost and expense of City.

(c) City shall, not later than twenty (20) days after City's receipt of the last of the Title Commitment and the Survey (if applicable), notify Developer and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Developer shall in good faith attempt to satisfy them prior to Closing, but Developer shall not be obligated to incur any cost in doing so. If Developer delivers written notice to City not later than the tenth (10th) calendar day after Developer's receipt of City's objections that Developer is unable to satisfy such objections, City may either waive such objections and accept title as Developer is able to convey or terminate the exercise of the Right by written notice to Developer and the Title Company.

5.3 Closing.

(a) The closing of the sale of the Land or portion thereof identified in the notice exercising the Right shall occur not later than forty-five (45) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of Developer and City.

(b) At the closing, Developer shall deliver to City:

(i) a special warranty deed in form and substance substantially similar to the form used to convey the Land and related rights and appurtenances from City to Developer, conveying good and indefeasible fee title to the Land described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions (as defined in Section 5.6), save and except such oil, gas, and other minerals as may have been reserved by prior grantors; and

(ii) possession of the portion of the Land described in the notice of the exercise of the Right, free of parties in possession.

(c) At closing, City shall pay in cash or by certified or cashier's check the Option Price or the ROFR Price, whichever is applicable, out of which shall be paid all Closing Costs and other costs and expenses to be paid by Developer pursuant to this Article V.

5.4 Taxes. Developer shall pay at or before Closing all ad valorem taxes, plus any penalties, interest, court costs, and attorneys' fees, if any, due on delinquent amounts not paid, for tax years prior to the year in which Closing occurs assessed against the Property or portion thereof being repurchased. Developer will pay at Closing the pro-rated amount of ad valorem taxes for the Land for the calendar year of Closing in accordance with Texas Tax Code §26.11.

5.5 Closing Costs.

- (a) Developer will pay and be responsible for the following closing cost:
 - (i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Land;
 - (ii) all fees and premiums for Basic Owner's Title Policy, excluding any deletions from, or modifications of or endorsements, to the Basic Owner's Title Policy;
 - (iii) one-half (1/2) of the Title Company's escrow fees;
 - (iv) all recording fees;
 - (v) all costs and expenses incurred by or on behalf of Developer, including Developer's attorney's fees;
 - (vi) all costs related to obtaining any releases of liens on the portion of the Land relating to any loans secured by a deed of trust lien on the Land; and
 - (vii) such other incidental costs and fees customarily paid by sellers of real property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.
- (b) City will pay and be responsible for the following closing cost:
 - (i) all fees and premiums for the Survey;
 - (ii) one-half (1/2) of the Title Company's escrow fees;
 - (iii) all fees and premiums for any deletions from, or modifications of or endorsements, to the Basic Owner's Title Policy;
 - (iv) all costs and expenses incurred by or on behalf of City, including City's attorneys' fees; and
 - (v) such other incidental costs and fees customarily paid by purchasers of property in Collin County, Texas, for transactions of a similar nature to the transaction contemplated herein.

5.6 Permitted Exceptions. City acknowledges and agrees that the Land conveyed pursuant to this Article V will be conveyed by Developer at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by City, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by Developer; and (ii) such other matters as City may waive, or as Developer is not otherwise obligated to cure or remove.

5.7 Conveyance As Is. City acknowledges and agrees that the Land conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the

Closing. Except with respect to the quality of the title being conveyed by Developer as set forth in the Special Warranty Deed, City acknowledges and agrees that Developer will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Land, its condition, or any other matters whatsoever, made to or furnished to City by Developer or any employee or agent of Developer, except as specifically set forth in this Restriction Agreement.

Article VI Restrictions

6.1 Use of Property. No building or improvements shall be constructed, reconstructed, erected, altered, or placed on any portion of the Land or Developer's Land other than the Improvements or structures that will be used in conformance with the Required Use. The Property shall be used for no purpose other than the Required Use.

6.2 Term of Restrictions. The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of ten (10) years following the Completion of Construction of the Improvements.

Article VII Miscellaneous

7.1 Enforcement. City shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Subject to the limitation set forth in Section 6.1, above, enforcement of the provisions set forth in Section 6.1 contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) thirty (30) day notice periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council of the City of Allen to exercise its legislative duties and powers insofar as the Property is concerned. For further remedy, Developer, for itself, its successors, and assigns agrees that City may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with the Required Use or the provisions of Section 6.2. City's right to repurchase the Property pursuant to the exercise of the Right as set forth in this Restriction Agreement constitutes City's sole and exclusive remedy for any failure by Developer to Commence Construction of the Improvements on the Land in accordance with this Restriction Agreement. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof, except by expiration of the Term.

7.2 Amendment. No amendment or termination of this Restriction Agreement shall be effective unless and until approved by Developer and City; provided, however, City may, without the consent of Developer, terminate and release the restrictions set forth in Section 6.1 and/or Section 6.2. In the event Developer, or subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, Developer, or subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by City shall not be effective unless and until an instrument executed by City's Mayor or City Manager is recorded in the Official Public Records in the office of the Dallas County Clerk in accordance with this Section.

7.3 Notices. All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission, by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for City, to:

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.
500 North Akard, Suite 1800
Dallas, Texas 75201

If intended for Developer, to:

Tanya Rodgers
7140 Mossvine Drive
Dallas, Texas 75254

Any Party may at any time and from time to time by notice in writing to the other Party hereto change the name or address of the person to whom notice is to be given as hereinbefore provided.

7.4 Successors and Assigns. This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

7.5 Governing Law. This Restriction Agreement is entered into and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of laws provisions) of the State of Texas. Venue for any action under this Restriction 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.

7.6 Recording. The Parties agree that City may record this Restriction Agreement in the Official Public Records in the office of the Collin County Clerk. City agrees to execute and file a release of this Restriction Agreement, or the Restriction, Option, ROFR or other applicable portion of this Restriction Agreement, as appropriate, in said records upon request of Developer after the expiration or termination of this Restriction Agreement, or the Restriction, Option, ROFR, or other applicable portion of this Restriction Agreement.

7.7 Covenants Run with the Property. This Restriction Agreement and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property and accomplishing certain public purposes of the City of Allen and, consequently, shall run with the Property and be binding on Developer and all parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions and restrictions shall be for the benefit of the City of Allen, Texas. This Restriction Agreement is binding upon Developer and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Property shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Developer hereunder.

7.8 Severability. Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation, or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

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

(Signatures on Following Page)

City's Signature Page

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

CITY OF ALLEN, TEXAS

[EXHIBIT ONLY – DO NOT SIGN]

By: _____
Eric Ellwanger, City Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Acknowledged before me, the undersigned authority, this _____ day of _____, 202__, by Eric Ellwanger, City Manager of City of Allen, a Texas home rule municipality, on behalf of said corporation.

[EXHIBIT ONLY – DO NOT SIGN]

Notary Public, State of Texas

My Commission expires: _____

Developer's Signature Page

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

[EXHIBIT ONLY – DO NOT SIGN]

Tanya Rodgers

Developer's Acknowledgment

**STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

This instrument was acknowledged before me on the _____ day of _____, 2022, by Tanya Rodgers.

[EXHIBIT ONLY – DO NOT SIGN]

Notary Public, State of Texas

My Commission expires: _____

**Exhibit “A”
Description of the Land**

(to be inserted prior to Closing)